

Dear Members of the Board:

Thank you again for the opportunity to provide public testimony regarding the Heritage Landing 40B Comprehensive Permit Application on behalf of MIT and its research facilities, the Haystack Observatory, the Wallace Astrophysical Observatory, and the MIT Lincoln Laboratory Space Surveillance Complex (MIT Facilities). As we shared, some of MIT's concerns relating to light pollution, radio frequency interference (RFI), and unauthorized use of the MIT facilities' sites can be addressed by including Project conditions that mitigate the impacts of the Project. At your August 9<sup>th</sup> meeting, board members asked MIT representatives to provide a prioritized list of possible mitigating conditions. You also asked us to provide our understanding of how they may fit into your purview under the 40B Comprehensive Application process.

The authority of the ZBA to impose conditions on the Project can be found in Massachusetts General Laws c. 40B ("Chapter 40B"), Section 21 and applicable case law. Section 21 of Chapter 40B ("Section 21") indicates that a zoning board of appeals has "the power to issue permits or approvals" [with respect to a 40B project application], "including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section."

In Zoning Board of Appeals of Amesbury v. Housing Appeals Comm., 457 Mass. 748 (2010), the Massachusetts Supreme Judicial Court held that:

a zoning board of appeals, in acting on a comprehensive permit application under Section 21, has the same scope of authority as any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the office or board having supervision of the construction of buildings ... These functions relate to matters of clear local concern, such as building construction, zoning and subdivision control, land use planning, as well as health and safety of local residents (emphasis added)

We believe that the mitigating conditions described in the attached table would easily fit within those aspects of land use development which the ZBA has the power and authority to regulate and require pursuant to Section 21. For example, exterior lighting is an issue that a local board such as the ZBA often addresses in site plan decisions. RFI is akin to issues often addressed by a local board in cell tower decisions. Similarly, a perimeter fence for the Project will enhance the health and safety of residents by reducing unauthorized access to steeply sloped areas of the Facilities Site, which is without roads suitable for emergency vehicles and responders.

MIT understands that the conditions imposed by the ZBA with respect to the Project must be "consistent with local needs" and not "uneconomic", as set forth in Chapter 40B. The conditions proposed by MIT satisfy those criteria. A condition requiring dark sky lighting fixtures for the Project, a prohibition of street lights, exterior flood lamps, non-directional LED blue lights, exterior up-lighting, and the illumination of signs are likely to reduce rather than increase costs for the Project, would favorably affect long term lighting maintenance and replacement costs for the Project and would benefit the environment and the health and safety of the residents of the Project as well as the general public. A condition relating to RFI is unlikely to increase costs for the Project if the applicant and eventual residents of the Project are required to work with MIT during construction of the Project and thereafter to identify and install home electronics, such as garage door openers, which do not generate radio frequency interference with work being done at the Facilities Site. Finally, a perimeter fence for the Project is likely to be required in any event due to health and safety concerns related to sensitive uses adjacent to or in the vicinity of the Project and is unlikely to affect, in any material way, overall Project costs.

MIT appreciates the opportunity to provide this information. Please contact us if you need any more information about the attached language or MIT facilities.

Sincerely,

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