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November 28, 2023

Groton Zoning Board of Appeals
c/o Mr. Takashi Tada
Town of Groton
173 Main Street
Groton, MA 01450

RE: Heritage Landing 40B/MIT Email of November 21, 2023

Dear Members of the Board:

Reference is hereby made to the email dated November 21, 2023 from Annalisa Bhatia, Associate Director, Government and Community Relations, Massachusetts Institute of Technology. Because of the intervening holiday schedule, we have not had an opportunity to fully research the implications of her letter, but we would like to provide, at least, this preliminary response.

1. Our client intends to submit a revised site layout plan which will reduce the number of units, and move the project significantly further away from the MIT land (and away from the gun range). Because of the concerns raised by the Affordable Housing Trust and the Park Commission pertaining to restrictions on town land, because of the concerns regarding density expressed by the neighbors, because of concerns regarding trespassing and lighting expressed by MIT, and because of concerns raised by the Police Chief regarding the proximity of the gun range, our client reduced the size of the project to 28 units and shifted the location of the proposed units to the west. The closest dwelling unit is now proposed to be at least 360 feet from the MIT property line. We believe that the modifications to the layout help address the concerns raised by MIT and others.
2. Notwithstanding the foregoing, our client would not be averse to working out reasonable conditions of approval regarding the installation of fencing to deter trespassers.
3. As stated in our original application package, the imposition of restrictions and conditions on homeowners pertaining to the types of products they may have in their homes, and the potential that MIT personnel can periodically inspect their household devices "...would likely be objectionable to a number of potential unit owners....and will create unusual perpetual obligations upon the homeowners..". MIT has also proposed that the list of unacceptable devices would change from time to time. Although we are

certain that the work being performed at the MIT Facilities is worthwhile, unless there is a Groton Zoning Bylaw or applicable subdivision regulation) that provides advance notice to applicants of the potential imposition of such restrictions, we cannot concur that the ZBA has the authority to impose such restrictions. As established in Castle Estates, Inc. v. Park & Plan. Bd. of Medfield, 344 Mass. 329, 334, 182 N.E.2d 540, 545 (1962). “[t]he planning board, in any event, cannot impose conditions of this type upon its approval of subdivisions, where it has not included (or incorporated by reference to other regulatory provisions) in its regulations provisions defining (a) what ways and utilities are or may be required in connection with subdivision plans; (b) what standards are to be applied by the board in exercising any powers given to it by the regulations to withhold approval and to impose conditions; and (c) what those powers are. The subdivision control law attaches such importance to planning board regulations as to indicate to us that they should be comprehensive, reasonably definite, and carefully drafted, so that owners may know in advance what is or may be required of them and what standards and procedures will be applied to them. Without such regulations, the purposes of the law may easily be frustrated.”

4. MIT has referred to Zoning Board of Appeals of Amesbury v. Housing Appeals Comm., 457 Mass. 748 (2010) in support of their proposition that the ZBA can impose the conditions that favor MIT. However, MIT’s proposed conditions, although protective of their business plan, are not “types of conditions that the various local boards in whose stead the local zoning board acts might impose...” Zoning Bd. of Appeals of Amesbury v. Hous. Appeals Comm., 457 Mass. 748, 749, 933 N.E.2d 74, 77 (2010). “The clear import of [G.L. c.40B § 21], defining as it does the board’s power in terms of that belonging to a ‘local board,’ is that the board, when acting on an application for a comprehensive permit under the act, 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 officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.’ [citations omitted] In other words, as defined in § 21, the power of the board derives from, and is generally no greater than, that collectively possessed by these other bodies.” *Id.* at 756. Consequently, for the ZBA to impose the conditions requested by MIT, the ZBA would first have to find that the published zoning bylaw or applicable municipal regulations contain similar requirements that would be applicable to residential developments. We are not aware of any such requirements.
5. The same standards apply to MIT’s request for conditions pertaining to lighting. We are aware that some of the Town’s bylaws pertain to signs and commercial and industrial Site Plan Review, but it appears that MIT’s requests exceed the published requirements applicable to residential developments. And, whereas Public Safety is an area of concern for the ZBA, the ZBA should not impose limitations on lighting that would negatively impact the safety of residents.

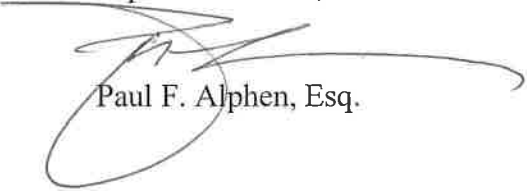
In summary, our client can concur to a reasonable condition for securing the subject property from the MIT land by a fence, such as a chain link fence. However, we remain strongly opposed to any condition of approval that would infringe on the rights of the applicant and/or the eventual

homeowners to use whatever lawful electronic or other products they may choose to be used within their home or for lighting the exterior of their home, the access driveways, the walkways, the rear yards, or the community land.

As we have more time to review the applicable case law, we may have more to say about MIT's proposed conditions. Meanwhile, your attention to the above information is appreciated.

Thank you for your attention to these matters.

Very truly yours,
Alphen & Santos, P.C.



Paul F. Alphen, Esq.