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Via email petermatchak@ashlandmass.com

Peter Matchak, Town Planner
Town of Ashland
101 Main Street
Ashland, MA 01721

Re: 501 Pond Street, Ashland, MA
Mixed Use Project-PSMUOD

Dear Peter:

This letter is meant to provide a legal opinion on certain matters in response to the CGC Associates, Inc., review letter dated June 22, 2022 (“CGC Review”), and supplements our legal memorandum dated July 21, 2022.

Converse Way

The first matter to be addressed is whether a portion of the project site, constituting land formerly known as Converse Way on previously recorded plans, may be calculated as part of the “buildable lot area” under the PSMUOD bylaw. Converse Way is not a street as defined in the Zoning Bylaw, and has never been improved as such. Fee ownership in the property constituting Converse Way will be conveyed to the applicant and made a part of the project site. As stated in our memorandum previously submitted to the Planning Board, the way is subject to easement rights to the adjoining property owner, which easement rights have been preserved in the project plans and integrated with the parking and access drive along the southern property boundary.

The project plans are consistent with the easement, including use of the area for parking, an access drive, landscaping and hardscaping improvements. Moreover, all of the 22,286 sq. ft. contained within the way may be considered “buildable lot area” as that term is used in the PSMUOD bylaw. While there is no definition for “buildable lot area” contained within the PSMUOD or otherwise within the Zoning Bylaw, Section 8.8.6.1.a requires 30,000 sq. ft. of “buildable lot area” in a single, contiguous site, all within the boundaries of the overlay district. The project as proposed meets all of those criteria. The only constraint imposed on the definition of “buildable lot area” is found in Section 8.8.6.1.b which provides that no portion of a street, as defined by the bylaw may be included. By omission then, “buildable lot area” may include land subject to other zoning or legal constraints, such as setback limitations, easement rights, stormwater improvements and the like. Given that Converse Way is not now nor ever has been a street as defined in the bylaw, all of the 22,286 sq. ft. can be used for purposes of calculating “buildable lot area” and density provisions that stem therefrom.

Loading Areas

The CGC Review states that loading areas are required for non-residential uses, and makes reference to Section 5.2.1 of the Zoning Bylaw. However, under the broad design and approval authority of the PSMUOD Bylaw, particularly Sections 8.8.2, “[a]ny development proposed under the PSMUOD bylaw is not subject to the regulations of the underlying district.” Therefore, Section 5.2.1 does not expressly apply to the project. There are, of course, use and dimensional standards explicitly set forth in the PSMUOD bylaw, including Section 8.8.8 (Parking Requirements), and that section includes by reference the general regulations for parking under Section 5.1 of the Zoning Bylaw, but no such provision applies to or references the underlying requirements for loading areas.

While the Planning Board has the discretionary authority under the Special Permit provisions of the PSMUOD bylaw to condition approval on the provision for loading areas, there is no requirement for such. In addition, even when loading areas are expressly required, assuming Section 5.2 (Loading Areas) applies in the same manner as Parking Requirements, the Planning Board may waive those requirements by granting a Special Permit, where the “Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit.” Given that the project has been carefully designed to accommodate parking and access for both residential and non-residential uses, together with public open space and pedestrian access (including the Woonerf plaza), accomplishing both safety and public benefit goals, loading area requirements are not appropriate in this instance.

Sincerely,

Mark A. Kablack