

From: Jay Talerman [mailto:jay@bbmatlaw.com]
Sent: Monday, December 12, 2016 9:14 AM
To: Maria Morelli; Joslin Murphy
Cc: Michael Jacobs
Subject: 420 North Harvard

Maria, Joslin: I attach a letter that Mike Jacobs wrote to the Board regarding this project. While I am not intimately familiar with the current proposal, it is my understanding that the applicant presently proposes a commercial use within the structure at 49 Coolidge Street. It is also my understanding that such commercial uses are not permitted in the zoning district within which 49 Coolidge Street resides. If that is the case, then, pursuant to the Jepson decision that Mike referenced, the ZBA has no authority to waive zoning bylaws to allow such a commercial use. It is my suggestion that the Board be apprised of this premise before reviewing the present draft decision. While we certainly do not want to place any barriers toward arriving at a final decision on a revised project that, in most respects, represents a mutually acceptable compromise, we caution against voting on a waiver that would violate the existing law under c. 40B.

Additionally, should the ZBA vote to allow commercial uses anywhere in the project, it is important, in my experience, to impose a condition that the profits generated by any such commercial use will be factored in the limited dividend analysis.

Thanks,

Jay

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