Volume I

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Brookline Zoning Board of Appeals

Application for a Comprehensive Permit

By Chestnut Hill Realty

Puddingstone at Chestnut Hill

May 9, 2016 at 7:00 p.m.

Office of Town Counsel

333 Washington Street, 6th Floor

Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky

1 APPEARANCES
2 Board Members:
3 Mark Zuroff, Chairman
4 Jonathan Book
5 Christopher Hussey
6 Lark Palermo
7
8 Town Staff:
9 Alison Steinfeld, Planning Director
10 Maria Morelli, Senior Planner
11
12 40B Consultant:
13 Judi Barrett, Director of Municipal Services
14 RKG Associates, Inc.
15
16 Applicant:
17 Marc Levin, Director of Development,
18 Chestnut Hill Realty
19 Steven Schwartz, Esquire, Goulston & Storrs
20 Theo Kindermans, Stantec
21
22 Members of the public:
23 Judy Leichtner
24

1 PROCEEDINGS
2 7:03 p.m.
3 MR. ZUROFF: Good evening, ladies and
4 gentlemen. I'm calling to order this meeting of the
5 Zoning Board of Appeals.
6 My name is Mark Zuroff, and I will be sitting
7 in as chairman for this project. The members of the
8 board that will be sitting alongside me are Christopher
9 Hussey to my left, to my right is Jonathan Book, and to
10 his right is Lark Palermo.
11 We will also have representatives of the town
12 planning and -- planning departments and other
13 departments here. And we have with us, also sitting up
14 here, Judi Barrett, who is a 40B consultant for the
15 town.
16 So this is specifically for the project we
17 will call from here on as the "Puddingstone
18 Application." It's an application for a new
19 development within the boundaries of Hancock Village.
20 And we see that there are people here that we have seen
21 before. Gentlemen, nice to see you again.
22 I would just like to open the meeting by
23 saying we understand that there are members of the
24 public that are interested in this procedure. This is

1 a 40B application, and as such, it is governed very
2 closely by statute.
3 Those of us that sit on the board tonight and
4 in the future meetings have been through the process
5 before. We understand that the process is governed by
6 statute. It is our intention, in going through this
7 process, to hear the applicant, to listen to its
8 presentation, to review the materials that are given to
9 us, and to consider those factors as well as the input
10 of the public and the consultants that may be
11 designated and appointed by the town to review the
12 application.
13 We will take our time and give every member of
14 the public a chance to express their concerns, their
15 feelings, their considerations. But ultimately, the
16 decision of the board will come down to what is best
17 for the town, what is governed by statute, and to
18 interpret the law in the best way possible. I will
19 allow our 40B consultant and other members of the town
20 to articulate better what 40B means, what the process
21 means.
22 But we are governed by the statute. We have a
23 time constraint. We have a certain amount of time to
24 hear all of the applicant's presentations, to consider

1 the input of experts and other reviewers, and to come
2 to a decision, and that time limit is 180 days in
3 total. Now, that can be extended by agreement with the
4 developer, and we will consider that if it becomes
5 necessary.
6 But the bottom line here is that we will
7 follow the law, we will interpret what we hear, we will
8 ask many questions, I'm sure, and we will decide based
9 on what we hear and what we see.
10 So I'm sure all of you will have questions,
11 but without going any further, I just wanted to give
12 you an overview.
13 I've already introduced the members of the
14 panel. I'm going to introduce to you Judi Barrett, who
15 is director of municipal services with RKG Associates,
16 Inc. She has been hired by the town and by Mass
17 Housing Partnership, or no?
18 MS. BARRETT: The town has an agreement with
19 Mass Housing Partnership.
20 MR. ZUROFF: Right. And she will act as our
21 40B consultant because she has considerable experience
22 in this area. So let me introduce her to you and let
23 her address you on 40B.
24 MS. BARRETT: All right. I have a few slides

1 to go through to kind of acquaint people with Chapter
2 40B. I'd be happy to take any questions at the
3 conclusion of the slides, but it might be better if I
4 just go through them first and if you have questions,
5 by all means, I'd be happy to address them when I'm
6 done.
7 The presentation -- the slides that I'm going
8 to show you this evening were compiled by several
9 agencies and organizations that frequently work
10 together to advocate for affordable housing in
11 Massachusetts.
12 Those organizations include Mass Housing
13 Partnership, which is a program that provides funds for
14 consultants like me to assist boards of appeal; the
15 Citizens Housing and Planning Association, CHAPA; the
16 state agency that sort of stewards Chapter 40B, which
17 is the Department of Housing and Community Development;
18 and Mass Housing, which is the agency that provides
19 most but not all of the subsidizing agencies'
20 responsibilities for projects in Massachusetts. So
21 everybody kind of had a role in developing these
22 slides.
23 There are certain things that have to happen
24 when a comprehensive permit comes through the door.

1 First of all is making sure that its actually eligible
2 to be here.
3 Mass Housing Partnership, as I said, does
4 provide funding for communities to bring on a
5 consultant to help the board. I know you've worked
6 with the program before. I think Edie Netter was your
7 previous consultant. Edie is an attorney, I'm a
8 planner by training, so we approach these things a
9 little bit differently. But I would think, for the
10 most part, you're probably going to hear similar
11 information from me that you heard from her.
12 I want to talk a little bit, too, about sort
13 of what the submission requirements are for a Chapter
14 40B application so you can know what it is the board's
15 looking at for this process.
16 As I said, MHP provides financial assistance
17 for towns looking for consultants. I don't need to go
18 through all of this. That's why I'm here.
19 So let me just sort of walk back a little bit.
20 This law was passed in -- it went into effect in
21 November of 1969. The perspective of Chapter 40B is
22 that there was a need for affordable housing in
23 communities that don't meet certain thresholds.
24 And the most commonly sited threshold is that

1 when less than 10 percent of the community's year-round
2 housing is affordable, which I will explain more in a
3 minute about what that means.
4 Then there is the presumption of need for
5 affordable housing. That presumption also exists in
6 communities where less than 1.5 percent of the land
7 area that is zoned for residential or commercial or
8 industrial use is occupied by low or moderate housing,
9 or when there is a particular year in which, you know,
10 less than -- or rather more than .3 percent of your
11 total land area zoned for residential, commercial, or
12 industrial use is under construction for low or
13 moderate income housing.
14 So these are sort of thresholds in the statute
15 that say there's a need or there's not a need.
16 Now, of course, you can have a presumption of
17 need and have other mitigating factors. But the
18 statute assumes that if you are below any of these
19 thresholds, then you have a presumption of need that
20 pretty much obligates the town to give fair
21 consideration if not preferential consideration to the
22 request to build affordable housing.
23 By regulation, DHCD has created some
24 additional ways for communities to establish that they

1 have met local needs in addition to the 10 percent or
2 the 1.5 percent that I mentioned earlier.
3 One is that if a community has a housing
4 production plan that has been approved by DHCD and the
5 community meets certain production thresholds within a
6 given year, that the community can claim sort of safe
7 harbor. Well, we're entitled to a break because we've
8 done a lot to produce under this housing production
9 plan that DHCD has approved. So that's one of the
10 so-called safe harbor provisions.
11 Another is that even if you're not under an
12 approved housing production plan, if you produce a
13 certain number of units, generally 2 percent of your
14 year-round housing stock, you would take a break for a
15 year.
16 Large projects, there's an assumption that a
17 very, very large project might be more than a community
18 can handle and so an application that comes in that
19 exceeds certain thresholds would probably be deniable
20 by the board without redress to the State Housing
21 Appeals Committee which handles these projects.
22 And then also there's this idea of a related
23 application which basically means if someone came to a
24 local board and asked for approval to do something

1 under zoning and it was turned down and the applicant
2 wasn't happy, that the applicant sort of ran to the
3 state and said I want to do a Chapter 40B application,
4 the board of appeals would certainly be within its
5 rights to say, well, you know, we don't have to do this
6 quite yet. There's sort of a cooling-off period that's
7 assumed.
8 Typically the subsidizing agency would kind of
9 look for these things and make sure that -- you know,
10 that these don't apply. But these are so-called safe
11 harbor provisions, which would be operative on a
12 temporary basis as if you were at 10 percent.
13 Critical application submission requirements:
14 First of all, is the applicant a public agency, a
15 nonprofit, or a limited dividend organization, which
16 essentially means a for-profit developer who's free to
17 limit their profits. That's one of the sort of
18 critical requirements.
19 Another is, does the applicant actually have
20 site control? Does the applicant either own the
21 property or have a purchase and sale agreement and
22 therefore control the site?
23 And the third kind of key requirement is
24 whether the applicant has a project eligibility letter.

1 We now call this a "PEL." We used to call it a "site
2 approval letter." But does the applicant have an
3 approval letter from the subsidizing agency that has
4 reviewed the project under their own guidelines and
5 determined that it's a fundable project? And there are
6 criteria that the subsidizing agencies use to apply in
7 reviewing the application.
8 So if an applicant has all three of these
9 requirements, then they're at least eligible to apply
10 to the board for what is called a "comprehensive
11 permit."
12 A comprehensive permit application is a little
13 bit different from what boards typically see. It is --
14 the application is based on a preliminary plan, which
15 is a little bit different from a final plan. We can
16 talk about that more a little bit later. But a
17 preliminary plan is essentially that which can
18 establish, to a reasonable degree, that it's a feasible
19 project.
20 And existing conditions and locus map, you
21 know, where is this, what are the conditions on the
22 site; preliminary, scaled, architectural drawings;
23 tabulation of the proposed buildings by type, size, and
24 ground coverage; a preliminary subdivision plan if one

1 is called for. Many things do not involve a
2 subdivision, but when they do, there needs to be a
3 preliminary plan, preliminary utilities plan, and a
4 list of requested waivers.
5 And the waivers are important because one of
6 the sort of premises of Chapter 40B is that there
7 are -- that the need for a comprehensive permit is
8 because there are regulatory barriers in the community
9 which would make it difficult to build affordable
10 housing. So the applicant asks the board to please
11 waive the following requirements and your local rules
12 so that I can then build a project which the
13 subsidizing agency says is okay.
14 There are these deadlines that are really
15 critical to the board in conducting this process. The
16 Chair already referred to the 180 days, the clock for
17 which begins this evening with the opening of the
18 public hearing. Your 180-day window to review the
19 application would close on November 5th if there were
20 no extensions.
21 Within seven days of receiving an application,
22 the board or the staff of the community have an
23 obligation to get the application out to all the
24 various departments and boards that would typically

1 review the development application.
2 The hearing has to be advertised at least 14
3 days prior to the hearing date, and the hearing, of
4 course, must happen within 30 days of the receipt of
5 the application. That's one of the key differences in
6 Chapter 40B relative to other applications. You have
7 30 days to open the public hearing.
8 If the board feels that it has the right to
9 deny the application for one of those safe harbor
10 provisions I referred to or because the board believes
11 that the town has met one of the statutory
12 requirements, then the board needs to notify the
13 applicant within 15 days of opening the hearing, we
14 think we can deny your application because we meet one
15 of these requirements.
16 The applicant has 15 days to appeal that
17 decision to the Department of Housing and Community
18 Development, which then has 30 days to review the whole
19 matter and render a determination. While that's all
20 going, that 180-day period sort of goes on hold.
21 As I mentioned before, there's a 180-day
22 clock, within which the board is supposed to complete
23 its review of the application.
24 Once the hearing closes, the board has 40 days

1 to render its decision.
2 Once the decision is filed with the town
3 clerk, there's a 20-day appeal period. That's what it
4 is with just about any other zoning approval.
5 But those are all sort of the timelines for a
6 comprehensive permit that people need to be aware of.
7 So some of these are right out of the Zoning Act, and
8 some of them are within the statute that governs the
9 comprehensive permit, which is 40B.
10 I just went through all of this. You don't
11 need me to repeat it. I'm pretty impressed that I
12 remembered all those dates.
13 So one of the things that needs to happen,
14 just so the board kind of knows -- can perceive the
15 impact of the project and be thinking about questions
16 that they may have with the applicant is to conduct a
17 site and a neighborhood visit kind of early in the
18 process so you can understand the site and the
19 neighborhood conditions and how the proposed project is
20 apt to sit on the site and where abutters are who are
21 most likely to be affected by the proposed project.
22 So the site visit is really key. We would all
23 like to be able to do things off of, you know, Google
24 Maps and so forth, but it just doesn't work. You need

1 to go out and look at the property.
2 In almost every comprehensive permit process
3 I've been involved with, the board hires outside peer
4 review consultants to assist with the review of the
5 application even in communities that have a lot of
6 staff. This is just a very labor-intensive process,
7 and it's helpful to the board to have expert
8 consultants.
9 So typically, we will have consultants to look
10 at the civil engineering aspect of the project,
11 stormwater, traffic, and architecture. There may be a
12 financial review later in the process if necessary.
13 The financial review is to determine whether the
14 project requires all the relief that the applicant has
15 requested or can some of that relief be denied and
16 still the project would be economical. That comes
17 later.
18 A review of studies prepared on behalf of the
19 applicant is what the board is entitled to request a
20 review of. You can't request independent studies that
21 the applicant hasn't submitted as part of their
22 application.
23 All the results of both the -- of course the
24 application is a public record and certainly the

1 results of the peer review are made part of the hearing
2 records as well.
3 How would one make 180 days work in a project
4 that is big and involves a lot of preliminary
5 information?
6 My experience is that the way you can sort of
7 make this successful is to focus as soon as possible on
8 kind of the real project issues that the board actually
9 has jurisdiction to consider.
10 You know, you get your peer review consultants
11 on board. You may not necessarily fully deploy them
12 until you've had some chance to sort of talk with the
13 applicant about what will or will not fly, and that
14 varies tremendously from project to project. But you
15 certainly want to get your peer review consultants on
16 board as soon as possible.
17 You can certainly request additional
18 information of the applicant. The issue the applicant
19 always has to wrestle with is is this really something
20 that I have to do at this point or are you asking for
21 information that really goes beyond the preliminary
22 plan and could be treated as a condition of approval.
23 And, again, that varies a lot from project to project.
24 Never hesitate to ask for graphics that might

1 help to clarify the height of the building, the
2 massing, setback, or just its impact on the
3 neighborhood. I often find that boards really benefit
4 from being able to visualize that which is perhaps not
5 all that clear in a preliminary plan as certainly a
6 narrative.
7 Negotiating with developers is possible. It's
8 typically done in this process. Many communities
9 establish sort of work sessions with developers, which
10 can be productive. They are purely advisory. They run
11 parallel to the public hearings. They are typically --
12 they can be conducted as a public meeting. They can be
13 conducted in closed sessions. It's something that you
14 would want to discuss with your town counsel.
15 But sometimes work sessions are just really
16 helpful to sort of get at details that are not things
17 that you would want to hide from the public hearing
18 process, but rather it's a little bit easier to discuss
19 if you can kind of focus on, perhaps, the issues in a
20 work session and then come back to the board with a
21 report and with any recommendations or advice for the
22 board that the staff and the planning department might
23 offer. So work sessions are a helpful way to manage
24 this process and, again, help the board live with that

1 180-day period.
2 The board's jurisdiction in a Chapter 40B
3 application is just very important to understand
4 because ultimately the board has to balance the need
5 for affordable housing, which is evidenced by not being
6 at 10 percent, if you will, with these concerns that
7 the statute recognizes as valid local concerns:
8 Public health, public safety, adverse
9 environmental impact, design, advocacy of open space on
10 the site or in the surrounding neighborhood, planning
11 concerns, and then sort of other local concerns that
12 really have to do with sort of the physical development
13 of the site.
14 You almost need to think about reviewing a
15 Chapter 40B application as though it's any other kind
16 of development application. And things that we would
17 not be able to ask an applicant for some other
18 application, you really can't ask of a Chapter 40B
19 either. So this is the type of consideration that any
20 board would typically look at and review in a
21 development, and that is the jurisdictional window of
22 the board of appeals in this case.
23 Deliberations are really sort of that point
24 when you are sort of trying to decide whether you're

1 going to grant this permit or not. It's important,
2 perhaps, to have kind of a logical list of issues that
3 you might work through in delivering what you plan to
4 do.
5 My experience is it's a good idea to hold the
6 hearing open while you're trying to discuss potential
7 conditions if you're going to -- if you think you're
8 going to approve the project, or even if you're not.
9 But to have a discussion with the applicant while the
10 hearing is still open so that if you have questions or
11 the applicant has questions, you can have that
12 discussion. Because, of course, as you know, once the
13 hearing closes, you can't engage in further substantive
14 discussion with the proponent.
15 So towns vary in how they handle this. My
16 experience is simply, it works best to sort of discuss
17 potential conditions while the hearing is open,
18 certainly to review the requested waivers and make a
19 determination of whether you think they're all
20 necessary. And if not, you know, is there any sort of
21 opportunity to negotiate with the applicant, as I said,
22 ideally to sort of discuss all of this -- certainly the
23 waivers at least -- before the public hearing is
24 closed.

1 You have three ways to go with a comprehensive
2 permit. You can either deny it, you can approve it as
3 submitted, or you can approve it with conditions.
4 Most of these are approved with conditions for
5 good reason, because when you deny and the applicant
6 appeals, the sole -- or the primary matter, in a way
7 almost the sole matter before the Housing Appeals
8 Committee is where you are relative to one of those
9 statutory thresholds. So typically approval with
10 conditions is the way this goes because then when
11 there's an appeal, the focus is on the conditions and
12 whether they render the project uneconomic.
13 So that's part of why it's important to hold
14 the hearing open while you're thinking about conditions
15 so you can actually have a discussion with the
16 applicant about whether they think something that you'd
17 want to do would make the project uneconomic. If they
18 do, that's typically where the discussion about a pro
19 forma review, if it's going to happen, would happen.
20 The conditions need to be sort of consistent
21 with those local needs that I outlined earlier. You
22 can't just sort of reduce the number of units for
23 reasons that go beyond those local conditions.
24 So if you have valid design concerns or a

1 valid open space concern on the site or something like
2 that, those are certainly appropriate reasons to
3 discuss with the applicant, reducing the number of
4 units. But you have to sort of anchor it in what are
5 those sort of jurisdictional elements of the board and
6 not those areas where you really don't -- you can't go.
7 If the applicant is unhappy, the applicant can
8 appeal to an agency or a body known as the Housing
9 Appeals Committee. Other parties who may be aggrieved
10 would go to the superior court or land court.
11 This whole issue about what is the board's
12 authority under Chapter 40B -- a few years ago there
13 was a pretty important case involving the Town of
14 Amesbury where the board had really sort of tried to, I
15 think, go beyond matters that would topically be up for
16 review with any kind of development.
17 And the court held that, no, really, you know,
18 your authority is limited to these matters that I
19 referred to earlier, just the physical kind of aspects
20 of the project. But if there are other things that
21 you're concerned about such as impact on municipal
22 services that goes beyond the board's authority, then
23 you really can't go there.
24 And so Amesbury's decision, I think, really

1 kind of helps define and clarify -- some would say
2 limits, but I would say clarify what the jurisdiction
3 of the board is. And you may hear me bring this up at
4 various points along the way as the hearing process
5 continues.
6 So after this is over, if you approve the
7 project, if it's not appealed or if it's appealed and
8 the appeal is resolved, you know, the applicant doesn't
9 just go get the building permit. They still have to go
10 to the subsidizing agency for what's called "final
11 approval." There are final plans which have to be
12 prepared and submitted to the building department.
13 Those plans have to be substantially consistent with
14 the plans that you approved which were preliminary in
15 the comprehensive permit.
16 And if the applicant discovers that -- in
17 preparing their final plans that they needed some
18 additional relief or they needed to make some changes
19 to the plans that you've approved, they can come back
20 to you and request a change. If it's a minor change,
21 you can approve it administratively. If you think it's
22 a substantive change, then you can determine that and
23 reopen the public hearing and so forth in order to
24 consider that request.

1 There are lots of other things that happen
2 after a comprehensive permit is approved. There's an
3 agreement that is on record that sort of controls the
4 affordability restriction on the property so that when
5 you have affordable units, there's a way of kind of
6 guaranteeing they stay affordable over time.
7 If it's a homeownership project, there's a
8 deed rider that flows with the affordable unit. It
9 rolls over each time the unit is sold.
10 There's also a monitoring agreement to make
11 sure that the units are actually monitored and
12 properly -- and occupied in the case of rental --
13 rented units by people who are actually income
14 eligible.
15 There's a whole set of fair housing
16 requirements that go along with Chapter 40B -- which I
17 won't belabor here -- but they have to do with how
18 tenants or homebuyers are selected, how the outreach is
19 done to let people know, if they're income eligible,
20 that there's an affordable housing opportunity in your
21 community.
22 There's a lot that has to be prepared by the
23 subsidizing agency, and that is really the subsidizing
24 agency's control. You may request up to 70 percent of

1 units to be awarded on the basis of local preference.
2 The subsidizing agencies may or may not approve that,
3 but you certainly can request it. You just need to
4 sort of be able to document need because the
5 overarching concern would be compliance with the
6 Federal Fair Housing Act.
7 The permit will lapse within three years
8 unless the applicant comes to you beforehand and says,
9 I'm just not ready to go forward; please grant me an
10 extension.
11 Transfer of the comprehensive permit is not
12 really something the board controls, although the
13 applicant is obligated to notify you if there's going
14 to be a transfer. That's really overseen by the
15 subsidizing agency.
16 Inspections during construction, towns handle
17 this very differently. Some communities handle it
18 entirely with in-house staff, some communities have
19 consulting help all the way through to handle
20 inspections if the building department is very busy and
21 so forth.
22 So there are -- there's a potential for
23 consulting help to the town beyond the comprehensive
24 permit process, but it would be to help the departments

1 sort of manage their permitting obligations because
2 you're approving the development, but they're actually
3 approving the ability to construct it.
4 So that's really sort of the overview I had
5 wanted to do. I'm happy to field a few questions if
6 you want, Mr. Chairman, or I can do that later, but
7 that's the overview.
8 MR. ZUROFF: Anybody have any questions on the
9 board?
10 MR. HUSSEY: No. Not at the moment. Thanks.
11 UNIDENTIFIED AUDIENCE MEMBER: Can that be
12 posted on the planning board's website? It was very
13 informative.
14 MS. BARRETT: I'm going to leave it with you,
15 so if you want to put it up, that's fine.
16 MR. ZUROFF: I see no reason why it can't.
17 MS. MORELLI: Yes, we will.
18 MR. ZUROFF: It will be.
19 UNIDENTIFIED AUDIENCE MEMBER: Could you
20 define "days"?
21 MS. BARRETT: Calendar days.
22 UNIDENTIFIED AUDIENCE MEMBER: Calendar days,
23 not business days?
24 MS. BARRETT: No.

1 UNIDENTIFIED AUDIENCE MEMBER: No extensions,
2 no holidays. Thank you.
3 MR. SCHWARTZ: If the last day's a holiday, we
4 would go to the next day.
5 MS. BARRETT: Certainly. Right. If the last
6 day is a holiday, then we would go to the next business
7 day. Okay?
8 MR. ZUROFF: Thank you, Judi.
9 MS. BARRETT: No problem.
10 MR. ZUROFF: Before I move the meeting on to
11 Maria Morelli, I just want to also --
12 MS. MORELLI: The applicant.
13 MR. ZUROFF: To the applicant. Well, I
14 thought maybe you would react to the eligibility or
15 give us a status on the eligibility. No?
16 MS. STEINFELD: On the threshold?
17 MR. ZUROFF: Yes.
18 MS. STEINFELD: Alison Steinfeld, planning
19 director. The town is currently at 8.6 percent.
20 That's our subsidized housing inventory, so we are
21 clearly not at 10 percent. We're something like
22 1.3 percent of the area threshold, and we don't come
23 close to any of the other thresholds, so unfortunately
24 it's not a possibility for the board at this time.

1 MR. ZUROFF: I wanted to add for the members
2 of the audience that I want you all to recognize that
3 we, as members of the board, sit here as volunteers.
4 We are members of your community as well as you are. I
5 actually live very close to the neighborhood. So we
6 understand that your concerns are for the town and for
7 your neighborhood. We are parts of that, so don't feel
8 that we're not on your side. We are representatives of
9 you as well as the town, and we take that into
10 consideration.
11 I also wanted to note that we recognize the
12 fact that there is -- the Residence of South Brookline
13 permit, which some of us sat on, does exist. We take
14 note of the fact that those 161 units are, for all
15 intents and purposes, existing. They are part of the
16 neighborhood, and they are considered part of the
17 abutters for this project, even though they're not
18 built.
19 And lastly, my note is that we will be
20 establishing a schedule for our meetings, and we will
21 continue each meeting as is necessary to keep the
22 process going. We will go as far as we intend to go on
23 each particular meeting we have an agenda planned. We
24 will try to finish as much as possible in each meeting

1 but, as necessary, we will continue to the next
2 meeting.
3 So we will now hear from the developer,
4 Mr. Levin.
5 MR. LEVIN: Good evening, Chairman Zuroff, ZBA
6 board members, planning staff, departments. I'm Marc
7 Levin, Chestnut Hill Realty. This evening we'll be
8 presenting a 40B project at Hancock Village called
9 Puddingstone at Chestnut Hill.
10 During 2014 and '15, we learned a lot working
11 with the ZBA, planning staff, and town boards and
12 Brookline residents on the plans for the Residences of
13 South Brookline. I look forward to working with you on
14 the plans for Puddingstone at Chestnut Hill. I know
15 most of you are familiar with the Residences of South
16 Brookline, and it's important to note that this is a
17 different project.
18 We have a great experienced team for this
19 project. It's the same team that worked with the ZBA
20 on the Residences of South Brookline.
21 Chestnut Hill Realty was founded by Brookline
22 native Ed Zuker in 1969. He owned and managed 30
23 apartment communities comprised of over 4,800 apartment
24 homes throughout greater Boston and Rhode Island. This

1 family-run business has been in existence for 47 years.
2 We're here for the long term. We are not merchant
3 builders or developers. We will be here to manage the
4 properties for years to come. And that's the good
5 news.
6 Chestnut Hill Realty is an industry leader in
7 property management. We have professional on-site
8 management. We spend capital on resident retention
9 that fosters long-term tenancies. We are always
10 investing in our apartment communities to make them
11 better. We guarantee a 24-hour response to maintenance
12 calls, and we hire private contractors for trash and
13 snow removal at no cost to the municipalities.
14 Sustainability principles are very important
15 to our corporate philosophy. With a focus on green
16 living, we help not only reduce the environmental
17 footprint left by CHR, but we help our residents to do
18 the same. Puddingstone at Chestnut Hill will
19 incorporate these sustainable principles.
20 CHR makes substantial investments in our
21 projects. In the past few years, we've made
22 significant upgrades to many of our apartment
23 communities including Hancock Village. Our annual
24 investment in our buildings and units are double the

1 industry average. It's all part of the corporate
2 philosophy of treating our properties like people's
3 homes, which they are.
4 We're very proud of our Brookline portfolio,
5 most of which we've owned for decades. Chestnut Hill
6 Realty owns over 1,000 units in Brookline. A number of
7 them are signature properties, like Longwood Towers and
8 the recently acquired 1443 Beacon Street.
9 Giving back is also integral to the corporate
10 culture. Chestnut Hill Realty supports many local and
11 national charities and encourages its employees and
12 residents to be active through annual drives,
13 year-round fund-raising activities, and volunteerism.
14 These are just some of the organizations that Chestnut
15 Hill Realty and its employees support. And here's some
16 of the other local charities that we support.
17 Landscaping has always been near and dear to
18 the principal of CHR, Ed Zuker. We have a full-time
19 horticulturist and arborist on staff as well as a
20 department devoted entirely to landscaping. The
21 landscaping department is also involved in community
22 beautification as well, such as the Brookline locations
23 mentioned here.
24 Much of our recent investments are focused on

1 upgrading and enhancing our existing apartment
2 communities. The first four projects were infill
3 developments on properties we had owned for many years.
4 These infill projects are well integrated into the
5 existing apartment home communities. Once built, they
6 improved the overall quality of life at these
7 locations.
8 Over the past four years, we've also permitted
9 a number of new apartment communities. We have
10 recently completed Fenway Diamond, a 49-unit luxury
11 apartment community on Minor Street in Boston.
12 We have under construction Hancock Estates at
13 Chestnut Hill, which is 88 units of luxury rental
14 housing in Newton on Lagrange Street.
15 As you know, we received a comprehensive
16 permit for the Residences of South Brookline, 161-unit
17 market-rate and affordable development at Hancock
18 Village.
19 We have also permitted and begun building new
20 units in three of our apartment buildings in Cambridge.
21 This is a rendering of the 5-story 49-unit
22 development in the Fenway. This urban infill has been
23 carefully designed to compliment the architecture of
24 the abutting properties. It contains 6 affordable

1 units and 43 market-rate apartments. We began leasing
2 the apartment homes in the fall of 2015, and it is now
3 nearly completely rented.
4 This is a rendering of our 3-story, 88-unit
5 development in Newton. The site design was carefully
6 developed to preserve much of the natural surroundings.
7 It contained 13 affordable and 75 market-rate units.
8 Construction has begun with an anticipated delivery in
9 the spring of 2017.
10 Hancock Village is perhaps Chestnut Hill
11 Realty's most important housing community. It has 789
12 apartment homes in Brookline and West Roxbury. CHR has
13 owned Hancock Village for 30 years. We have been
14 careful stewards of the apartment buildings and the
15 land. We have added substantially to the landscaping
16 over the years, and we have recently undertaken a
17 renovation program to bring the units up to today's
18 standard. We've added bathrooms, updated kitchens,
19 added washer/dryers, AC, and many other modern
20 features.
21 This photo was taken sometime shortly after
22 Hancock Village was completed. As you can see from
23 these photos, much of the existing landscaping has been
24 added over time. These photos show the care we have

1 taken with the property over the past 30 years. Today
2 Hancock Village is a testimonial to Ed's commitment to
3 landscaping.
4 Hancock Village takes up approximately 50
5 acres in Brookline including approximately 530
6 apartment homes. As it currently exists today, Hancock
7 Village has a floor area ratio of only .29. The FAR
8 allowed in the M.5 district is .50. The land was zoned
9 many years ago anticipating this higher density. If
10 the Residences of South Brookline and Puddingstone at
11 Chestnut Hill were built today, Hancock Village would
12 have an FAR of over .46, still lower than the .50 that
13 is allowed in the M.5 district. The land area shaded
14 in green is the M.5 district. As you'll see,
15 Puddingstone is located excessively within this
16 district.
17 In June of 2013, an affiliate of Chestnut Hill
18 Realty applied for a PEL for 192 apartment units. In
19 February of 2015, the Brookline Zoning Board of Appeals
20 issued a comprehensive permit for 161 apartment homes.
21 Puddingstone at Chestnut Hill: This is an
22 aerial of the Puddingstone lot in the context of
23 Hancock Village and the surrounding areas. It's 5.44
24 acres in the southwestern corner of the property next

1 to the West Roxbury line. As previously mentioned,
2 it's entirely located in the M.5 zoning district.
3 There are no single-family homes near this 40B lot. In
4 fact, the closest single-family home is over 900 feet
5 away.
6 So this is the program: We have 226
7 apartments, 283 garage parking spaces, 56 surface
8 spaces, for a total of 339 spaces. That's a 1.5 space
9 per unit ratio. There are 28 existing apartments in 3
10 two-story buildings. There's also 12, four-bedroom
11 apartments in 3, two-and-a-half story buildings. And
12 there's 186 apartment homes in the apartment building.
13 The apartment building has amenities such as
14 elevator access to the garage below, a media room, a
15 wi-fi lounge, exercise facilities, and high-end
16 finishes.
17 This is a closer view of the 40B site plan of
18 Puddingstone with the lot lines in blue. So here you
19 have the existing buildings that are included in the
20 40B project, these are your three infill buildings, and
21 this is the apartment building.
22 We have included 28 existing townhomes in
23 Puddingstone at Chestnut Hill. Outlined in red you can
24 see the location of the existing buildings that are

1 included in Puddingstone. Outlined in green is a
2 closer view of the existing buildings that are included
3 in our project.
4 As I mentioned, there are 28 apartments in
5 these 3, two-story buildings, 22 of which will be
6 market rate and 6 will be affordable. There are 12,
7 one-bedroom, 14 two-bedroom, and 2 three-bedroom in
8 those existing buildings. All of these units will be
9 significantly upgraded with new kitchens and baths,
10 washer/dryer, and upgraded flooring.
11 Here are the projected average market rents.
12 These are just averages, as the units vary in size.
13 Six of the existing market-rate -- currently
14 market-rate apartments would now be affordable. The
15 affordable rents are $874 for a one-bedroom, $1,042 for
16 a two-bedroom, and $1,198 for a three-bedroom. The
17 income guidelines are set by HUD. Residents in the
18 affordable apartments can pay no more than 30 percent
19 of their annual income on rent, including the
20 utilities. There can be no more than two people per
21 bedroom.
22 The affordable unit tenants will be chosen by
23 a lottery from a pool of those who apply that are
24 qualified. The town can pursue local preference for up

1 to 70 percent of the affordable units. The local
2 preference is often given to people who already live in
3 Brookline or work for the town. It is expected that
4 hundreds of residents will apply to live in the
5 affordable apartments.
6 These are the infill buildings. They're two
7 and a half story, and they step down to two stories
8 with surface parking nearby. They have brick and fiber
9 cement board exteriors that are in keeping with the
10 look of the existing buildings. The living room,
11 dining room, and kitchen are on the first floor, and
12 the bedrooms are on the upper floors.
13 The appearance of these buildings is very
14 similar to the infill buildings at the Residences of
15 South Brookline. The three infill buildings are
16 outlined in green. They're on a cul-de-sac that
17 includes parking for the residents.
18 There are 12 apartments in these 3,
19 two-and-a-half story buildings, 9 of which are market
20 rate and 3 affordable. All 12 are four-bedroom
21 apartments.
22 Here are the target residents that you would
23 imagine would like to live in these units. They will
24 appeal to residents who want larger units with more

1 bedrooms. These apartments will be very desirable with
2 spacious layouts, good lighting, quality finishes,
3 in-unit washer and dryers, and central air
4 conditioning.
5 The projected average market rent for the
6 four-bedroom units is $5,000, plus or minus.
7 This is the average affordable rent and income
8 guidelines for the four-bedroom apartments.
9 This is a view of the apartment building and
10 the driveway from Gerry Road. For the exterior, we
11 will use similar materials as the infill buildings:
12 brick and fiber board cement. So that view of the
13 building is the view from Gerry Road from right about
14 here. You see the entrance coming in, you see the
15 building -- the existing buildings of Puddingstone in
16 the foreground.
17 So once again, this is Gerry Road, this is
18 the entrance to the project, these are the existing
19 buildings that are within Puddingstone, and that's the
20 apartment building.
21 This is a view from Sherman Road, which is
22 looking between these two building, neither of which
23 are in the project. This is the Boston line right
24 here. So looking back, this is what you see from

1 Sherman Road.
2 There are 186 apartment homes in this
3 building, 150 of which are market rate and 36 are
4 affordable. There are 54 one-bedroom units, 118
5 two-bedrooms, and 18 threes.
6 The target residents for this building are
7 residents who want one-floor living, residents who want
8 an elevated building, seniors, empty nesters, single
9 professionals and couples, residents who have mobility
10 issues, residents who want indoor parking, and existing
11 Brookline residents who are selling a home or want to
12 move to a nicer apartment.
13 Here are the projected average market-rate
14 rents. Once again, these are just averages and will
15 vary by apartment size and the location within the
16 building.
17 The affordable rents are the same as those in
18 the existing units as well as the infill units.
19 I'd now like to introduce you to Theo
20 Kindermans of Stantec who will get into the site
21 planning in a little more detail.
22 MR. KINDERMANS: Good evening, members of the
23 board. My name is Theo Kindermans. I'm a principal
24 with Stantec Planning and Landscape Architecture with

1 an office in Boston, Massachusetts. I'm a site planner
2 for this project. I'm going to just touch quickly on a
3 bit more of the detail of the site plan and what all
4 went into it.
5 As Marc mentioned, the site's located on the
6 western part of the Hancock Village development just
7 west of Independence Drive. The site is accessed
8 through Sherman Road, and that lines up with Thornton
9 Road that's coming up the east side. Sherman Road,
10 it's a one-way loop that goes around -- goes right
11 about here from Boston into Brookline, becomes Gerry
12 Road in Brookline, and then exits onto Independence
13 Drive.
14 As I mentioned, there is a -- the
15 Brookline/Boston border is right about here and runs
16 sort of like this over -- just on the edge of Boston.
17 To the west of the property is the Hoar
18 Sanctuary. That is not a direct abutter. It's a
19 direct abutter to Hancock Village itself, not to the
20 leased property. It has some wetlands out in the
21 sanctuary, but our entire lease line is outside the
22 100-foot state buffer and 150-foot town regulated area.
23 As Marc mentioned, our nearest single-family
24 homes are on Beverly Road, and from where the building

1 is located, it's over 900 feet as the crow flies.
2 And this is the close-up. As mentioned, our
3 entrance is off Gerry Road coming in. As you approach
4 the building, there is a turn-off to the right which
5 accesses the lower level of the parking area, the
6 parking garage.
7 Continuing, we have the drop-off, main
8 entrance of the apartment building. Continuing, we
9 have a little parking area that will function mainly as
10 a visitor parking area. Continuing onward, there's the
11 entrance to the upper garage level with some additional
12 parking in between these buildings. And then
13 continuing on, we have a cul-de-sac with some surface
14 parking that serves as the infill building's.
15 And this is all designed to increase the
16 access for fire apparatus, and fire apparatus can
17 easily make it around this site.
18 The location of this -- the main apartment
19 building was carefully chosen because it's a pretty --
20 there's quite a bit of topographic relief in this area.
21 We've tucked the building into the slope as much as we
22 could. Therefore, the two levels of parking below the
23 building are really almost underground and taking
24 advantage of the sort of topography. The building fits

1 in well with its surroundings. Although it's larger
2 than its surrounding building, it'll fit in nicely.
3 By tucking all of this development in the
4 existing development, it's considered an infill site
5 and from a smart growth principle, it is very
6 desirable.
7 The next slide shows you sort of the
8 crossection from Sherman Road through the existing --
9 one of the existing apartment buildings or townhouse
10 buildings that's part of our development, through the
11 apartment building, the driveway, and another building
12 that's part of our development.
13 So it's Sherman Road. It's one of the
14 existing buildings, our six-story building with two
15 levels of garage below set into the slope. And by
16 doing that, setting it into the slope even relatively
17 close to one of the existing units, our six-story
18 building is barely two stories higher than our
19 two-story building that sits next door.
20 This is an image that Marc already showed you.
21 This gives the existing buildings with our apartment
22 building. This is the backside, as Marc said, from
23 Sherman Road, which is in Boston. And here you also
24 see the fire lane access to the rear of our building.

1 A quick couple of comments about site
2 engineering. As I mentioned, no portion of the
3 developed area is located in any state or locally
4 regulated resource area. It has been designed to meet
5 and exceed all the DEP stormwater management standards,
6 and I'm sure that later on in the process we'll go into
7 this in greater detail. For the standards, it's
8 considered a new development over a previously
9 determined site, and as I said, we meet or exceed all
10 of them.
11 And then one big item also is that the
12 utilities that we're connecting in and that will be
13 servicing this project are all existing either on the
14 site currently or in the abutting Hancock Village
15 property.
16 Stormwater management -- and again, I'm sure
17 we'll go into this deeper in one of the later sessions.
18 But stormwater is designed to mimic the existing
19 hydrology. It ties into -- there's three systems
20 really that detain and infiltrate the stormwater.
21 This system and this system are both from our
22 infiltration system. This is the detention system.
23 One outlets into Gerry Road here and has -- and then
24 continues onward. This system outlets right through

1 here and into Gerry Road there and then all of that
2 stormwater then goes to -- the overflow goes to
3 Independence Drive.
4 We have six proprietary cleaning units,
5 stormwater cleaning units on-site -- seven actually --
6 and so they are a large part of our LID approach to the
7 stormwater to this project.
8 Utilities, as I said, they're all right there.
9 Electricity and gas that service this come right off of
10 Gerry Road. There's also a water line that connects
11 through here and then connects into a line here that
12 will make a loop, and that will service these
13 buildings. There's a sewer line that's right about
14 there that meets the three infill buildings it will tie
15 into, and the apartment building will tie into Sherman
16 Road right here with its sewer.
17 And the planting plan is pretty robust and it
18 mimics what currently is out in the existing Hancock
19 Village and we'll make -- we'll ensure that the site
20 blends in well with the current landscaping that's
21 present.
22 And although I'm not a traffic engineer, I can
23 play one on TV. And there's a few slides here that
24 explain our -- what the sort of overall traffic scheme

1 is here. The same intersections that were studied two
2 years ago, we -- at that point in time, we expanded --
3 because of BETA, the peer reviewer, we expanded the
4 traffic study. We studied all the same intersections
5 again for this proposal.
6 This proposal also took into account that the
7 Residences of South Brookline was constructed, so all
8 that traffic that will be generated by that development
9 we assumed is present.
10 So these were sort of the conclusions out of
11 our traffic study, that we have some modest traffic
12 increases that are on-site. And the biggest increase,
13 actually, is in the evening peak where we have about --
14 an increase of about two -- just the evening peak hour
15 has about an increase of two vehicles per minute
16 because of this development.
17 But the adjacent roads, Independence, VFW,
18 have more than an adequate capacity to handle all of
19 the traffic. Any of the intersections that we studied,
20 none of them are showing any degradation in capacity
21 because of the increase.
22 The access to the public roads from our
23 development through the existing roads, Sherman and
24 Gerry, is actually going to be a bit improved, and I'll

1 touch upon that a little bit later.
2 And we are greatly improving site circulation
3 by adding sidewalks or walkways where there currently
4 aren't any on Hancock Village, and we are providing
5 much better fire apparatus access to the existing units
6 that currently are hard to reach by fire apparatus.
7 The access -- one of the recommendations of
8 improvement that we're proposing is -- currently, as I
9 mentioned before, Sherman Road is a one-way road coming
10 in and doing this and then the people access
11 Independence in this location. We're actually
12 proposing to reverse the one-way loop so that we --
13 again, a four-way intersection here, making it a much
14 safer intersection because it's a four-way.
15 And we're also proposing some improvements to
16 that intersection, which is this intersection. The
17 improvements are the installation of a traffic light,
18 which the increase in traffic does warrant, and then
19 we're also -- just like the other intersections at
20 Independence, we're going to be proposing some bump-
21 outs and crossings so that it's safe to cross the road
22 at that location.
23 And this is the transportation demand
24 management that we agreed to in the Residences of South

1 Brookline proposal and, of course, we'd be
2 incorporating that in this proposal and expanding on
3 it.
4 And now I would like to turn it over to Steve
5 Schwartz who will finish it.
6 MR. SCHWARTZ: Thank you, Mr. Chairman. For
7 the record, Steven Schwartz of Goulston & Storrs,
8 counsel for the applicant. I appreciate this
9 opportunity and want to thank Ms. Barrett for her very
10 comprehensive review of 40B, the process, procedure,
11 generally. Saves me some time going through some of
12 that.
13 So I'm just going to spend a couple of minutes
14 going through some of the affordable housing and
15 regulatory aspects of this application.
16 The project eligibility letter for this
17 project was issued by letter from MassDevelopment on
18 April 6, 2016. The program is MassDevelopment
19 Tax-Exempt Bond Financing Program. Under that program,
20 20 percent of the units are going to be made affordable
21 to households earning no more than 50 percent of the
22 area median income. That was true also of the
23 Residences of South Brookline project.
24 It's unlike probably the majority of 40B

1 applications that you might see in other communities
2 where 25 percent of the units are made affordable to
3 households earning no more than 80 percent of the area's
4 median income. So as a result of that, 46 of the
5 units, which is 20 percent, will be affordable.
6 However, as the board knows from our prior
7 application and probably other applications for rental
8 projects, under DHCD rule, all 226 units, upon
9 approval, will count towards the town's subsidized
10 housing inventory.
11 The reason for this is DHCD decided from a
12 regulatory guideline perspective, a policy perspective,
13 that they wanted to encourage the creation of rental
14 housing, perceiving a specific need for rental housing
15 in the Commonwealth. So as opposed to home ownership
16 projects where only the affordable units count towards
17 the inventory, in a rental project, all of the units
18 count.
19 Ms. Steinfeld referenced the SHI. I just
20 wanted to go through a couple of numbers here because
21 we have a slight deviation there and that really
22 relates to the Residences of South Brookline project
23 itself.
24 According to the most recent SHI that was

1 published by DHCD -- I believe it's online in December
2 of 2014, which is prior to the approval of the
3 Residences of South Brookline -- Brookline has 26,201
4 units, year-round units. That number stays the same
5 based on the 2010 census. So that number won't change.
6 The so-called denominator will not change until the
7 2020 census figures are published.
8 The numerator, however, can and does change
9 based on the creation of new units that qualify for the
10 SHI. Under the December 2014 SHI, there were 2,111
11 units that were qualified, and that was 8.1 percent
12 under that table. In February of 2015, as was
13 mentioned previously, the Residences of South
14 Brookline, at 161 units, was approved. When you add
15 the 2,111 to the 161 of the Residences of South
16 Brookline, that's how you get to that number, 22,257.
17 However, under the DHCD rules, the 161 units,
18 although they went on the SHI when that project was
19 approved and the decision was filed with the town
20 clerk, because of the appeal of that project by the
21 Town of Brookline and by certain abutters, that -- a
22 building permit was not able to be issued for that
23 project.
24 As a result, on the first anniversary of that

1 decision having been filed, those units are no longer
2 eligible for counting on the SHI.
3 And so we're really back down -- unless there
4 are some other projects that I'm not aware of, I think
5 we're back down to roughly the 8.1 percent that we were
6 at before -- the town was at before, which means that
7 upon approval of this project -- if this project is
8 approved, if a building permit -- if and when a
9 building permit is issued for the Residences of South
10 Brookline, the town will be 137 units short. As of
11 today, it's roughly about 300 units shy of that figure.
12 We have agreed in the past, for the prior
13 decision, and are amenable to agreeing here, for having
14 the affordable units being such in perpetuity, which
15 means as long as this project is there benefiting from
16 the comprehensive permit, the units -- the affordable
17 units will stay as such.
18 And as Marc mentioned earlier, we are amenable
19 to a condition where up to 70 percent of the units can
20 be made available for local preference upon a finding
21 by the subsidizing agency, MassDevelopment, based on
22 information that will be provided by the town
23 justifying that local preference. So we're more than
24 happy to cooperate in that effort, but ultimately the

1 burden of showing a need for that is for the town to
2 bear, and we will corporate in any way we can.
3 This slide -- and it's very difficult to read.
4 I apologize for that. But this slide is from the Town
5 of Brookline's website, and it really shows the
6 dispersion, the location of units, affordable units
7 within the Town of Brookline.
8 The different colors represent different types
9 of development, either publicly owned or
10 Brookline-Housing-Authority-operated housing, rental,
11 privately owned rental housing, and privately owned for
12 sale condominium housing, and some other types of
13 affordable units. And the bigger the circle you see in
14 this map, the bigger the project is.
15 The primary reason why we're showing this map
16 here is if you look at South Brookline, which is the
17 area south of Route 9 essentially, what you'll find is
18 there's essentially little to no affordable housing in
19 the town's housing stock. This does not show the 161
20 units of the Residences of South Brookline, but other
21 than that, it's a really very small handful of
22 affordable units.
23 And so our position, I think that it's really
24 that affordable housing should be dispersed on an

1 equitable basis where possible throughout the town.
2 And, in particular, when it comes to this site, which
3 has been touched on before, which is an existing
4 multifamily development where the zoning contemplates a
5 density that this project would afford, that it is
6 appropriate, very appropriate, to move forward with
7 this development on that basis.
8 I've touched on this before, and I won't
9 belabor this point. There has been some back and
10 forth -- and there was previously at the Residences of
11 South Brookline -- about to what extent this project is
12 a smart growth project.
13 And I'm not going to stand here and tell you
14 that every aspect of the smart growth principles of the
15 Commonwealth are met by this development, but the
16 primary focus is that this is an existing multifamily
17 site and we'll make use of the infrastructure that is
18 there. We'll provide a transportation demand
19 management plan that will encourage less single-vehicle
20 use.
21 And I also think it's noteworthy that in
22 particular with this project, that the various types of
23 the infill and the existing units are mostly one- and
24 two-bedroom. The infill four-bedroom units and flats

1 in the apartment building really do attract different
2 types and will appeal to different types of folks and
3 demographics in the population.
4 So we think, for these reasons, this is a good
5 development from the smart growth principles of the
6 Commonwealth.
7 Finally, we very much appreciate the
8 opportunity to work with the town -- last time the town
9 staff, in particular, and with the board. We found it
10 to be an excellent process last time. We look forward
11 to that. We fully anticipate, as Mr. Chairman, you
12 mentioned, an in-depth review of all of these areas
13 that are listed up on the slide.
14 With regard to these issues, we anticipate
15 that the town may wish to have peer review, which we
16 fully cooperate with, as we did last time.
17 With regard to waivers, we're not making a
18 presentation of our waiver request this evening. What
19 we found last time and what we've found for other
20 projects is as the project plans get very refined, more
21 refined through this process, we'll work closely with
22 town staff, particularly the planning staff and the
23 zoning enforcement officer, to come up with a
24 definitive list of waivers which we can then discuss in

1 greater detail with the board.
2 As it relates to waivers, I believe our
3 philosophy is the waivers follow the plan. So if and
4 when this board gets to a point where it's comfortable
5 with our plan and believes it's a good plan, then we
6 need to make sure we do our job to make sure we're
7 covering all the waivers that are necessary to build
8 that plan.
9 So it's a little bit different from a 40A
10 hearing, for example, for a variance hearing where we
11 need to make a showing of a hardship or something
12 unique about this parcel in order to justify a
13 variance. That's not quite the way it works in 40B.
14 So I'm happy to answer questions about that or
15 anything else, but at this point our presentation is
16 completed.
17 MR. ZUROFF: Well, my first question,
18 Mr. Schwartz, is -- since you've mentioned it, it's my
19 duty to ask you -- will you agree to appropriate peer
20 review by each of the -- the matters that you've got on
21 the board there? Because that's what we would like to
22 do.
23 MR. SCHWARTZ: Yes. We'll work out the
24 details, I'm sure, with planning staff as we did last

1 time.
2 MR. ZUROFF: Thank you.
3 Any questions from the board to the applicant?
4 MR. HUSSEY: No.
5 MR. ZUROFF: No. Okay.
6 Maria?
7 MS. MORELLI: Hi. I'm Maria Morelli,
8 planning, Brookline Planning Department. I've reviewed
9 the application for completeness in accordance with the
10 state regs found under 760 CMR 56.05, and I've also
11 reviewed them against the local regs.
12 And the local regs, just to let you know, are
13 fairly consistent with the state regs except for a few
14 areas which I've noted in the letter before you. I've
15 given this letter to the applicant, and I will post it
16 online.
17 There are required application elements, and I
18 listed them. This is something that can be reasonably
19 provided within two weeks, as the applicant and I have
20 discussed, and I find that acceptable.
21 I do want to point out there are some
22 additional materials that are not required as part of
23 the regulations, and I've given the applicant some of
24 that information now.

1 I do want to emphasize that as the departments
2 provide testimony, they might be requesting more
3 clarification or more materials and certainly that will
4 come out in peer review as well. So if there's any
5 concern, there is an opportunity to provide additional
6 materials, and I'm sure, as in the past, the project
7 team will be cooperative.
8 So by May 23rd, I expect the outstanding
9 information to be distributed to the ZBA and the staff.
10 MR. ZUROFF: Mr. Schwartz, is that okay with
11 you?
12 MR. SCHWARTZ: Yes, sir.
13 MR. ZUROFF: Thank you.
14 Any questions for Ms. Morelli?
15 (No audible response.)
16 Alison, do you have anything to add at this
17 point?
18 MS. STEINFELD: Thank you, Mr. Chairman.
19 Alison Steinfeld, planning director. As our 40B
20 consultant has already advised, the comprehensive
21 permit is clearly under your jurisdiction but the
22 planning department is available to assist you in any
23 and every way we can.
24 At a minimum, we will provide staff support to

1 you in order to help coordinate the process, arrange
2 for technical analyses by both municipal staff and peer
3 reviewers, ensure that this is a transparent process,
4 provide for timely public input, respond to your
5 questions and requests for additional information, and
6 serve as a conduit for information between you and the
7 public.
8 The planning department will be placing
9 information on the town's website, and I urge all
10 interested parties to continually check that site for
11 information.
12 As you, of course, know, this is the first in
13 a series of 40Bs that we anticipate will be going
14 before the ZBA within the next few months. Based on
15 our prior discussions with the ZBA, it is agreed that
16 we will follow a uniform process that will apply to all
17 40B applications and be consistent with the rules and
18 regulations promulgated by the state.
19 While I'm promoting efficiency as opposed to
20 expediency, we must consistently keep in mind that
21 there is a state-imposed deadline of November 5, 2016.
22 In order to meet that deadline, I strongly recommend at
23 this point that you take two steps tonight.
24 One is to schedule a site visit. If you

1 desire, we can request the applicant to stake out the
2 proposed development and identify what, if any, trees
3 are anticipated to be removed.
4 I further request that you appoint a working
5 group. And as we've discussed, that working group
6 would consist of one member of the ZBA; one of the
7 planning board; the building commissioner and/or his
8 designee; the planning director; the assistant director
9 for regulatory planning and/or her designees; the 40B
10 consultant, Judi Barrett; the urban design peer
11 reviewer; and the developer's team.
12 The working group's purposes are to discuss
13 and attempt to find answers or solutions to your
14 concerns and provide advice and recommendations to the
15 board during your deliberations. The working group
16 clearly has no authority to make decisions or negotiate
17 agreements with the applicant.
18 So in summary, in terms of what we're looking
19 for tonight is a site visit scheduled and the
20 applicant's agreement to participate in a working
21 group.
22 I appreciate the applicant's agreement to
23 proceed to hire peer reviewers. We will be discussing
24 that with you and engage a peer reviewer in traffic,

1 urban design, and site and stormwater and civil
2 engineering.
3 So we are prepared to begin our work and,
4 quite honestly, we've already begun it as evidenced by
5 the appearance of Judi Barrett, and we look forward to
6 working with you and the applicant.
7 MR. ZUROFF: Thank you, Alison.
8 MS. STEINFELD: Thank you.
9 MR. ZUROFF: Questions?
10 MR. BOOK: Should we come up with a set date
11 for a site visit?
12 MR. ZUROFF: Well, I'll put that out, then.
13 Yes, I recommend that we designate a time and a place
14 for a site visit depending on your schedules.
15 MR. HUSSEY: Assuming, hopefully, it will be
16 warmer than the last site visit.
17 MR. ZUROFF: I think, given the fact that
18 we're starting at a different date, I hope it will be.
19 Would the applicant agree to do the stake out
20 and to designate the trees that are being taken out or
21 where the new trees may be going in so that we can get
22 a good assessment of the site? And how much time do
23 you need to do that?
24 MR. SCHWARTZ: If you could just give us a

1 moment while we discuss that.
2 MR. ZUROFF: Sure.
3 In the meantime, your schedules?
4 (Discussion amongst the board.)
5 MS. STEINFELD: We will be scheduling the next
6 public hearing for June 6th.
7 MR. ZUROFF: Right. It would be nice if we
8 could do it before then, but ...
9 MR. SCHWARTZ: We just have to go back -- if
10 my memory serves -- our collective memory serves on the
11 applicant's side, we don't recall staking out the
12 buildings last time. So I'm not sure if that's a
13 standard that's changed in the interim. It's quite a
14 bit of work, actually, getting a surveyor out there and
15 staking out all those buildings.
16 So we would respectfully request that the
17 staking out that was done and the preparation for that
18 site visit be comparable to what was done for the
19 Residences of South Brookline project. But we can work
20 that out with the planning staff if that's --
21 MR. ZUROFF: I think it is something that we
22 would like to work out. It would be helpful, not
23 necessarily to have a complete stake out of every jog
24 in the building but maybe approximate locations of the

1 corners so that we know approximately where they're
2 sited. I think we had some idea of where the buildings
3 were.
4 MR. KINDERMANS: If it's within a foot or two
5 or three --
6 MR. SCHWARTZ: If it doesn't have to be within
7 surveying standards, we can do that.
8 MR. ZUROFF: I think if it's close, that would
9 be helpful.
10 MR. LEVIN: Anything short of hiring a
11 surveyor would -- hiring a surveyor would require us to
12 figure out when we could get one out there. But if we
13 can do approximations, then we could do it. Our civil
14 engineer could do it.
15 MR. ZUROFF: I think we'll accept that.
16 MR. LEVIN: Okay. It's probably going to take
17 a couple weeks to get this done.
18 MR. ZUROFF: So approximately what date would
19 we be comfortable in scheduling something, at least
20 preliminarily?
21 MR. LEVIN: So we would try to do that in
22 conjunction with the information that was requested by
23 the planning staff, so hopefully by May 23rd. We
24 certainly anticipated having the trees identified by

1 that time. Now we would just add the scope to the
2 efforts and have that done by the 23rd.
3 MR. ZUROFF: Well, the 23rd, I think, is a
4 Monday. We're not comfortable with that. How about
5 the 24th?
6 MR. SCHWARTZ: For a site visit?
7 MR. ZUROFF: For the site visit.
8 MR. SCHWARTZ: That works.
9 MR. ZUROFF: Would that be okay? Is that
10 okay, board members?
11 MR. HUSSEY: Yeah.
12 MR. ZUROFF: Planning?
13 MR. SCHWARTZ: In the afternoon?
14 MR. ZUROFF: First thing in the morning I
15 think is preference.
16 MR. SCHWARTZ: Okay.
17 MS. STEINFELD: And what's first thing?
18 MR. ZUROFF: First thing in the morning, well,
19 for me is 7:00.
20 Would 8:30 be okay?
21 MR. LEVIN: The earlier the better, but 8:30
22 sounds fine.
23 MR. ZUROFF: Okay. So for the record, 8:30 on
24 the morning of the 24th. For those of you in the

1 public, the public is not barred from this. You're
2 welcome to walk the site with us. But it is not a
3 public forum, so while you can accompany us, you can't
4 talk to us. But you can certainly see the site and see
5 where everything is designated by the developer.
6 Yes?
7 MS. LEICHTNER: The last time, there was a
8 request that some kind of balloons or something go up
9 so the height would be available for people to know
10 exactly how high they are. It was denied the last
11 time, but I think it's worth asking again whether
12 people could see exactly how high these buildings --
13 MR. ZUROFF: But if it's a windy day, it isn't
14 going to help that much but --
15 MS. BARRETT: Can you make sure the people
16 that speak identify themselves?
17 MR. ZUROFF: Oh, yes.
18 MS. LEICHTNER: I'm sorry. Judy Leichtner,
19 town meeting member, Precinct 16.
20 MR. ZUROFF: Thank you.
21 MR. LEVIN: We'll look into that.
22 MR. ZUROFF: I know it's an unusual -- but if
23 you can, we would like to have some idea. Hopefully
24 the wind won't blow.

1 MS. PALERMO: Mr. Chairman, perhaps if they
2 could do the one that we know is going to be the
3 highest building. It does not have to be all of them.
4 MR. SCHWARTZ: We will look into that. My
5 experience, for what it's worth, is more often than
6 not, if there's any kind of wind, those balloon tests
7 are of minimal use. But we will look into it. But
8 I've been at more than one site visit where the
9 balloons -- it's really hard --
10 MR. ZUROFF: Understood and noted.
11 So we have a tentative scheduled site visit
12 for the 24th at 8:30 a.m.
13 Just to clarify, as I recall, the last time we
14 met at the Chestnut Hill offices and we went from
15 there. Is that your intention?
16 MR. LEVIN: That's perfectly fine.
17 MR. ZUROFF: That's on Independence Drive.
18 MS. STEINFELD: 300.
19 MR. ZUROFF: 300 Independence Drive.
20 Okay. And then is there anything else you
21 want to add to that? I have another question.
22 Do you want to -- Alison, you're going to
23 schedule the working group; correct?
24 MS. STEINFELD: As soon as we establish one.

1 MR. ZUROFF: Okay. But the developer has
2 agreed to participate in the working group; is that
3 correct?
4 MR. LEVIN: Yes.
5 MR. ZUROFF: And you'll work out the schedule?
6 MS. STEINFELD: Right.
7 MR. ZUROFF: All right. Does anyone on the
8 board have any other questions that they want to --
9 MS. PALERMO: I have a question. I'm not sure
10 if this is appropriate, but because I'm new to the
11 board and was not here for the deliberations on the
12 original proposal for the Residences of South
13 Brookline, and I only have sort of a glancing
14 familiarity with Hancock Village as a whole, if there
15 were a way for Stantec to prepare a plan so that I
16 could sort of put all this in context --
17 MR. ZUROFF: I think there are plans. You can
18 find them.
19 MS. PALERMO: Okay. I looked through here,
20 but a plan of what exists now with an overlay of this
21 proposal and an overlay of the Residences of South
22 Brookline so I can see on one piece of paper what
23 exists right now and what you intend to retain and what
24 you'd be replacing in one big plan.

MR. ZUROFF: You can overlay one plan on the other?

MR. LEVIN: We can do that easy enough.

MS. PALERMO: That would be very helpful.

MR. SCHWARTZ: Just to be very clear, because I'm not sure it came up, is that there is no elimination of any buildings. I wasn't sure if that was your implication of what was being replaced. All of the existing buildings are remaining.

MS. PALERMO: Okay. Thank you.

MR. HUSSEY: I think what Lark is referring to is on the back of your drawings, I think the L000 drawing would be the simplest one to have an overlay because it just shows the buildings. There's a photograph plan that shows everything, but it's hard to read. But this shows all the buildings, and if they can do an overlay of this --

MS. PALERMO: Exactly.

MR. ZUROFF: Mr. Levin, you can handle that; correct?

MR. LEVIN: That's fine.

MR. ZUROFF: An overlay?

MR. LEVIN: Yes.

MR. ZUROFF: Thank you.

1 Okay. So I think we have covered everything
2 that we had on the schedule for this evening. We will
3 obviously have a chance for the public to speak, but we
4 have accomplished what we wanted to accomplish for
5 today, so I'm going to ask that we formally continue
6 this hearing to the 6th of June at 7:00 p.m. in this
7 room, at which point we will have other matters to put
8 before you and we start hearing from the public at some
9 point.
10 So unless somebody else has something else to
11 say, I will adjourn the meeting, and thank you all for
12 coming.
13 Oh, do we need to vote on a continuance?
14 All right. So move for a continuance to June
15 6th. All in favor?
16 (All affirmative.)
17 MR. ZUROFF: So moved and so carried. Thank
18 you. Thank you, all.
19 (Proceedings adjourned at 8:30 p.m.)
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1 I, Kristen C. Krakofsky, court reporter and
2 notary public in and for the Commonwealth of
3 Massachusetts, certify:
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth and
6 that the foregoing is a true and correct transcript of
7 my shorthand notes so taken.
8 I further certify that I am not a relative or
9 employee of any of the parties, nor am I financially
10 interested in the action.
11 I declare under penalty of perjury that the
12 foregoing is true and correct.
13 Dated this 19th day of May, 2016.
14
15
16 _____
17 Kristen Krakofsky, Notary Public
18 My commission expires November 3, 2017.
19
20
21
22
23
24

Errata Sheet

NAME OF CASE: BROOKLINE ZONING BOARD OF APPEALS
DATE OF DEPOSITION: 05/09/2016
NAME OF WITNESS: PROCEEDINGS
Reason Codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____
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