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Volume VII
Pages 1-119

Brookline Zoning Board of Appeals Hearing
40 Centre Street Comprehensive Permit Application
Roth Family, LLC
September 27, 2016, at 7:00 p.m.
Brookline Town Hall
333 Washington Street, 6th Floor
Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky

1 APPEARANCES

2 Board Members:

3 Jesse Geller, Chairman

4 Christopher Hussey

5 Kate Poverman

6 Steven Chiumenti

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.

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16 Applicant:

17 Bob Roth, Roth Family, LLC

18 Geoff Engler, Vice President, SEB

19 Peter W. Bartash, Associate Principal, CUBE 3 Studio

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1 PROCEEDINGS:

2 7:01 p.m.

3 MR. GELLER: Good evening, everyone. As you
4 can see, a new night, different venue. Again, as in
5 the last hearing, we're going to be somewhat challenged
6 to hear, so we're going to do our best to talk very
7 loudly, clearly, and we may speak slowly to help
8 people.

9 For the record, my name is Jesse Geller. To
10 my immediate right is Kate Poverman, to Ms. Poverman's
11 right is Steve Chiumenti, to my immediate left is Chris
12 Hussey, and our 40B consultant is --

13 MS. BARRETT: Don't you hate it when you do
14 that?

15 MR. GELLER: Tonight's hearing will be largely
16 in the following order: We will hear from Ms. Maria
17 Morelli with updates. As people will remember at the
18 last hearing, we gave certain charges for additional
19 information. We will then hear from the applicant if
20 the applicant has anything further to present. Peter
21 is shaking his head. And the board will then have a
22 further discussion based on the information at this
23 hearing.

24 Just for the record, the next hearing will be

1 October the 5th, 7:00 p.m. Do we know where? In the
2 selectmen's hearing room. And at that point we are
3 tentatively scheduled for the following: which will be
4 an updated staff report; we will have an update from
5 our design peer reviewer, Cliff Boehmer; we will have
6 an update from our traffic peer reviewer, Jim
7 Fitzgerald; and the board will once again have a
8 discussion.

9 Maria?

10 MS. MORELLI: So I'm actually going to stand
11 here, and just let me know if I need to project more.
12 Okay?

13 So I just wanted to remind the ZBA that the
14 last hearing, September 12th, your most recent charge
15 to the developer was the following: that the ZBA was
16 willing to relax their initial charge of eliminating
17 the sixth floor and achieving a one-to-one parking
18 ratio dependent on two things: one, if the developer
19 was willing to consider adequate stepping back of the
20 fifth and sixth floors; and B, if there was data
21 supporting waivers for parking ratios lower than one to
22 one.

23 MR. GELLER: Maria, not to be picky, but the
24 ZBA's charge was they would consider, okay?

1 MS. MORELLI: The ZBA would consider.

2 MR. GELLER: Would consider it.

3 MS. MORELLI: Right. Correct.

4 And secondly -- so just let me repeat the last
5 phrase -- data supporting waivers for parking ratios
6 lower than one to one as well as a complete traffic
7 study with the following components:

8 Now, I'm going to read through this list and
9 let you know how the developer has responded in terms
10 of submitting material.

11 First of all, the applicant has submitted
12 plans -- revised plans that we got today. It was
13 actually about two hours ago, so we have not had a
14 staff meeting with Cliff Boehmer and the project team
15 to review and provide you a report based on those
16 revised plans. We're hoping to have a staff meeting
17 this week on Thursday.

18 Secondly, there is some additional information
19 regarding the traffic study and the data that you've
20 requested but, as you'll see, it's not complete and
21 I'll have you evaluate that.

22 So what you wanted was a complete -- a parking
23 demand analysis, and the applicant has responded with
24 his own comments regarding that request, and that's in

1 your packet.

2 A complete traffic study, and with the
3 analysis, the applicant was to factor in that Brookline
4 does not permit overnight parking the way other urban
5 areas do. The component of this study would consist
6 of -- the study must be performed during a weekday with
7 school in session. That's not clear that that took
8 place.

9 Provide traffic counts, existing and proposed.
10 The applicant provided existing counts.

11 Factor in perspective development currently
12 under review. Consult the transportation division for
13 those projects to include in the area. We did not see
14 that in the materials.

15 Provide a crash history analysis. Crash
16 history would come from the Brookline Police
17 Department. That is has not been submitted yet.

18 Quantify space needed off-site. Provide
19 backup information that verifies the tallies of
20 available private and municipal parking spaces. The
21 applicant responded that off-site parking is not
22 needed, and that's in the packet.

23 What is the daytime plan for occupants who
24 would rely on overnight parking permits? Again, the

1 applicant's response to that is in your packet.

2 What is the parking plan for occupants of
3 affordable units? Does the developer expect them to
4 pay for market-rate parking? The applicant did provide
5 a plan for you to consider.

6 Provide data from analogous sites. I did not
7 see that.

8 You also did request the planning department
9 to provide you with an overview of permitting history
10 regarding any waivers given for parking ratios below
11 one to one, and what I forwarded to you today is a list
12 that Polly Selkoe has been maintaining. It spans 10
13 years. It has to do with new multifamily construction,
14 and you'll see there's very few -- there might be
15 parking waivers that were granted below. I would need
16 to verify that. But with the exception of two cases,
17 there aren't parking waivers given for anything below a
18 one-to-one ratio. That list does include affordable
19 housing developments, 40Bs, and 40As.

20 Okay. So I just want to quickly see if
21 there's anything else I wanted to say.

22 I think that's it for my report.

23 MR. GELLER: Questions for Maria?

24 MR. CHIUMENTI: We've never granted a less

1 than one-to-one parking requirement?

2 MS. MORELLI: So in this list that I have --
3 again, it's from Polly Selkoe -- there was a case on
4 86 Dummer Street. And this is an infill, so there are
5 buildings in this complex, but it's a new construction
6 that was actually approved by the ZBA in 2011. It was
7 for 118 units, but 86 of those units were existing and
8 then the parking was for 75 units, 72 of those parking
9 spaces existing. Again, this is an infill development
10 So the initial complex parking ratio is was .83 and
11 overall it's down to .63.

12 And then, of course, there's 45 Marion, which
13 is considered as an outlier. It's really unusual. But
14 as you can see in this list, it really spans different
15 types of developments. There's nothing below one to
16 one.

17 MR. GELLER: Other questions?

18 (No audible response.)

19 No. Before we move on to the developer, what
20 I would like to do, because I know our time is short
21 with Judi, I want to make sure -- I just want to make
22 sure if there are questions the ZBA members have,
23 because now is your chance.

24 MS. BARRETT: Yeah. The issue is I have to

1 get to the selectmen's meeting on or about 7:30.

2 MS. POVERMAN: I mean, there's so much
3 potential that can happen tonight and potential
4 pressures timewise. I know we don't have the privilege
5 of you staying around, and I had questions formulated.

6 If anybody else has a question, they can go
7 forward. That would be great because I'm trying to --
8 okay. Does anybody else have a question? Because I
9 know I have one and it's important. Talk among
10 yourselves for a minute.

11 MR. HUSSEY: One of the questions you had, it
12 seemed to me, Kate, was the conditions of -- the
13 conditions under which we could deny the permit, which
14 are local conditions. I think the safety and
15 environmental are the two basics.

16 MS. BARRETT: Those are essentially the deal
17 breakers.

18 MR. HUSSEY: Those are the deal breakers.

19 MS. BARRETT: The statute refers to other
20 concerns, but the things that have been successfully
21 litigated involve public safety and public health,
22 environmental impact.

23 MR. HUSSEY: Environmental doesn't apply here,
24 but can you elaborate a bit on the safety issues?

1 MS. BARRETT: There needs to be a documented,
2 telling safety issue that the applicant simply cannot
3 or declines to mitigate, to address in some way. You
4 really have to have that documented clearly, and I'm
5 not prepared to say we actually are there.

6 But I will say this: I am concerned, as I
7 suspect the rest of the board is, about the clock
8 ticking here on the 180 days. And I think that whether
9 it's tonight or the next meeting, you are going to have
10 to make a decision on whether you think you can live
11 with this project and communicate that to the
12 proponent. Because if the proponent can't accommodate
13 or refuses to accommodate or it's just that what you
14 want will make the project uneconomic, that is where
15 this is going. You need adequate time to have your
16 financial reviewer review a pro forma. The applicant,
17 first of all, needs to be able to come back and say
18 what you want me to do, I can't do, so I give you a
19 pro forma that shows I can't do it. This is where the
20 project changes.

21 That then goes to one of the financial
22 reviewers that you have, and that takes time. That's
23 not going to happen in two or three days. I've been
24 through this before. So I don't think you've got much

1 waiting room here. I think you've really got to decide
2 what you think you can live with. If you don't do it
3 tonight, then you need to do it by the next meeting
4 because I don't want to see you caught in a situation
5 where you need time, you need information, there isn't
6 any more information coming.

7 I mean, I don't know if that's going to
8 happen, but if that's the situation you're in, then the
9 risk to you is that you end up issuing a decision with
10 a whole lot of conditions in it because you don't
11 really have what you need to be able to write fewer
12 conditions.

13 But I think -- I would encourage you to be
14 thinking about how you would go about approving a
15 project on this site with whatever number of conditions
16 as opposed to denial, because you're at much greater
17 risk of being overturned, your denial. I think you
18 already know this. So I would be focusing on what
19 would it take to have an approval of the project. If
20 you can't get there, you can't get there, but I think
21 that's the approach that you need to take.

22 MR. HUSSEY: I've got one more question. On
23 the pro formas, how many projects do you know, can you
24 elaborate on where the pro forma has been produced and

1 it's contested by the financial reviewer and then held
2 up such that we could deny on the basis of that
3 pro forma?

4 MS. BARRETT: You would never deny on the
5 basis of a pro forma. A pro forma is: The board has
6 asked the applicant to do something and the applicant
7 says, I can't do that, you're going to make my project
8 uneconomic. The applicant gives you a pro forma that
9 shows what you're asking him for will make the project
10 uneconomic, and that's what goes to review. But you
11 don't get into a denial situation on economics. You
12 get into a denial situation on documentable health and
13 safety issues that cannot be mitigated by the project
14 or for which the applicant, for whatever reason, is
15 refusing.

16 MR. HUSSEY: So the pro forma that the
17 developer submits gets checked by a financial reviewer.

18 MS. BARRETT: That's correct.

19 MR. HUSSEY: And what if they come to a
20 disagreement?

21 MS. BARRETT: Well, then you have to make a
22 decision.

23 MS. POVERMAN: Don't you go to the HAC or --

24 MS. BARRETT: You only go to the HAC if you

1 issue a decision that the applicant is not happy with.

2 MS. POVERMAN: I mean, what I'm saying --

3 MR. CHIUMENTI: I think, ordinarily, in order
4 to have the HAC consider it, the HAC has to agree that
5 the conditions are uneconomic.

6 MS. BARRETT: But the HAC doesn't see anything
7 unless you issue a decision that the applicant appeals.

8 MR. CHIUMENTI: But they have to show that
9 it's uneconomic.

10 MS. BARRETT: Right. That is the issue. If
11 you approve the project with conditions and the
12 applicant claims that your conditions make the project
13 uneconomic, then the focus of the Housing Appeals
14 Committee review is: Is that really the case? And
15 perhaps what comes out is a decision where the Housing
16 Appeals Committee may uphold the conditions, may uphold
17 some of them, may not uphold any of them, may impose
18 their own.

19 MR. CHIUMENTI: So if we insist that this
20 building not be more than four stories, they come back
21 and say, well, they can't make their regulatory
22 dividend if this building is four stories, they have to
23 make that case to the Housing Appeals Committee first.

24 MS. BARRETT: Well, they have to make it to

1 you.

2 MR. CHIUMENTI: Well, we're disagreeing now.
3 The Housing Appeals Committee isn't going to consider
4 the list of standards that they consider unless, first
5 of all, what we've said makes the project uneconomic as
6 we defined it.

7 MS. BARRETT: If you issue a decision that the
8 applicant thinks makes the project uneconomic --

9 MR. CHIUMENTI: -- and the Housing Appeals
10 Committee agrees --

11 MS. BARRETT: That's the next step.

12 First of all, it doesn't get to the HAC unless
13 the applicant appeals. The only way it gets to the HAC
14 is if there's an appeal; there's a decision by this
15 board, and within 20 days there's an appeal. That's
16 how it gets to the Housing Appeals Committee.

17 The Housing Appeals Committee will then
18 consider the applicant's claim, which presumably will
19 be that the board issued a decision that makes the
20 project uneconomic, and we will then get into a
21 hearing.

22 MR. CHIUMENTI: So if we say this building
23 cannot be more than four stories and they can't
24 convince the Housing Appeals Committee that the project

1 is uneconomic, that's the end. It's a four-story
2 project.

3 MS. BARRETT: The Housing Appeals Committee is
4 not supposed to overturn the board's decision if the
5 applicant can't demonstrate that your conditions make
6 the project uneconomic.

7 MS. POVERMAN: And when you're at the HAC,
8 it's basically a mini trial.

9 MS. BARRETT: It's not quite that.

10 Well, first of all, before you ever get to a
11 hearing, there's a whole lot of other stuff. But, I
12 mean -- and they don't all go to hearings. Sometimes
13 it just gets settled, as I'm sure you can imagine.

14 But I just want to be clear that the issue is
15 if you grant a decision with conditions the applicant
16 claims will make the project uneconomic, then that's
17 what gets in front of the Housing Appeals Committee.
18 Or, of course, it's denied and that goes to the Housing
19 Appeals Committee.

20 But the issue is: You need to have time to
21 get the pro forma reviewed. And in order for a
22 competent reviewer to do that, they need time to verify
23 the assumptions in the pro forma. I mean, it isn't
24 just a question of taking somebody's spreadsheet and

1 saying, well, do these numbers all add up right? The
2 pro forma reviewer needs the time to sort of verify,
3 are the cost assumptions in here valid or not? And
4 then perhaps, you know, basically there's a pro forma.

5 MS. POVERMAN: So the pro forma -- I still
6 can't find a pro forma that's already been submitted.
7 Is the pro forma that the peer reviewer reviews the one
8 that's already been submitted or --

9 MS. BARRETT: No. Because what -- the issue
10 is this: You say -- and I'm just going to take this
11 hypothetical.

12 MS. POVERMAN: Oh, because you revise the
13 project.

14 MS. BARRETT: What he's going to give you is:
15 Here's the pro forma that proves that what you're
16 asking me to do I can't do.

17 MS. POVERMAN: Got it. Okay.

18 MS. BARRETT: You'll make my project
19 uneconomic if you make me do that. That's what goes
20 into the pro forma.

21 MS. POVERMAN: Okay. But the idea is to come
22 to an agreement and avoid all this.

23 MS. BARRETT: And what you also can't do is
24 have a situation where you ask the pro forma reviewer,

1 well, we wanted to take a story off, but he said he
2 can't, so let's take a story off -- let's take two off.
3 Let's cut the density to where -- you can't go shopping
4 on this. If you ask for a change in the project,
5 whatever that change is, that's what the pro forma
6 reviewer is going to review. That's what the applicant
7 has to give you.

8 Now, I don't know how long the applicant will
9 need to provide a pro forma that accomplishes whatever
10 the board asks for either, so don't assume that that
11 just gets whipped out of someone's pocket. That may
12 take a little time. And then the pro forma reviewer
13 probably needs a month.

14 MS. MORELLI: Chairman Geller, could I ask a
15 question?

16 MR. GELLER: Sure.

17 MS. MORELLI: Judi, you were going to prepare
18 a memo, and so this discussion is a little ahead of
19 you. It was going to include -- and you addressed it
20 already -- the triggers in the process, but you were
21 also prepared to talk about any risks should the
22 developer appeal to the HAC. If you could outline
23 that.

24 MS. BARRETT: Sure. That's not a problem. I

1 mean, here's the situation: If the pro forma reviewer
2 comes back and says, you know, I think these cost
3 assumptions are ridiculous, I think, really, the
4 applicant probably can accommodate the conditions
5 you're asking for or some of the conditions, then you
6 have something to discuss with the applicant. And that
7 could take more than a couple of meetings. Or the
8 applicant just simply says, I don't agree with the
9 pro forma reviewer, and you have to make a decision:
10 Are you listening to the applicant, or are you
11 listening to your independent professional?

12 If the applicant -- if the pro forma reviewer
13 comes back and says, I've looked at this, I've looked
14 at the cost assumptions. Some of them are fine, some
15 of them are bunk, but when I look at the plan in its
16 entirety, I don't see how the applicant is going to get
17 to a financial position with this project.

18 If that's what you have coming back from your
19 consultant, then it just increases -- it makes it more
20 complicated for the board to issue a decision that has
21 those conditions in it because you basically have
22 evidence on record that what you're asking the
23 applicant to do is make the project uneconomic. I'm
24 not saying that's going to happen. I just want the

1 board to understand that's that the sort of -- for lack
2 of a better word -- risk.

3 MR. HUSSEY: I would like to caution the
4 board, too. I've been involved in a lot of this, and
5 I'm afraid this is not a science. It is an art form.
6 There are a whole series of variables that can be taken
7 one way or the other, and that's why it takes a long
8 time to work it out and review it.

9 MS. BARRETT: Yeah.

10 MR. GEOFF ENGLER: Geoff Engler from SEB, LLC.
11 I'm the affordable housing consultant for the
12 applicant.

13 A couple points: For the most part, I agree
14 with everything that Judi said. I would -- one of the
15 questions -- I know of one case -- there may have been
16 two -- where the HAC said, you know, what? The project
17 is uneconomic, but the issues that the municipality
18 have identified override that uneconomic condition.
19 And I believe that was in Groton, and it had to do with
20 a very serious environmental issue. I don't remember
21 specifically what that was, but I think it was
22 something to do with being in a well recharge area,
23 something like that, so it was an egregious
24 environmental area.

1 The other important thing to consider relative
2 to the uneconomic discussion here is: We have the
3 benefit of a recently completed project that was
4 designed by the same architect. It's close to the same
5 building. We have real costs and a real contractor, so
6 we would have no issue and difficulty speculating
7 relative to the hard costs and rents of this project.
8 I think it would be a low bar for us to prove that.

9 But I'm just saying speculatively, if the
10 board were to say, let's take two stories off, we would
11 have, I think, very little difficulty showing that it's
12 uneconomic. And then the burden shifts back to the
13 board to show that those changes are of such a dire
14 need of health and safety that it warrants it. And in
15 my humble opinion, the difference between that and what
16 we're talking about in Groton is apples and oranges.

17 So that our perspective in general. I mean,
18 we're still hopeful that we can work something out
19 there. I don't think there's any reason --

20 MS. POVERMAN: I'm sorry to interrupt. I'm
21 looking forward to seeing what you guys produce. But
22 one of my questions is: What project is going to be
23 determined? Let's say, you know, we take Steve's
24 example. Okay. Take two floors off. What are we

1 looking at? The 20-unit -- you know, the one with 20
2 studios or the one with -- what are we looking at?

3 MS. BARRETT: You're going to ask -- if you
4 want this to get to a pro forma review -- I'm not
5 saying you should, but if that's where it's going, the
6 burden on the board is to say, based on the information
7 we have, this project as proposed is not approveable by
8 this board. Here are the changes we want you to make.
9 You have that obligation to tell the applicant, this is
10 what we want you to do. And then the applicant --
11 otherwise the applicant is just getting an ambiguous
12 message, so you have to be very clear what it is that
13 you're asking the applicant to do because that's the
14 basis on which that pro forma will be submitted.

15 MS. POVERMAN: I'm not sure that this project
16 as -- you know, the new garage has been formally
17 submitted. Has it been? That's my question.

18 MS. BARRETT: I don't know what.

19 MR. GEOFF ENGLER: Well, I mean, the
20 presentation we're making the evening is, you know, an
21 amended application. The plans that we'll represent
22 this evening reflect what we've heard from Cliff, what
23 we've heard from the planning department, so I would
24 consider the plan set that was submitted to be the

1 current plan.

2 MS. MORELLI: I just want to clarify that
3 those plans were submitted at 4:30 today, so we didn't
4 have the benefit of a staff meeting. But the applicant
5 was responding to the ZBA's charge, but we've not had a
6 staff meeting with Cliff to review them.

7 MR. GELLER: Let's back up for a minute. We
8 can check the record, the transcript, but I believe the
9 applicant has said on record that their revised plans
10 were formally submitted as the revised plans for this
11 project. I believe that's what you said.

12 MR. GEOFF ENGLER: Relative to -- yeah.

13 MR. GELLER: I think that's your question.

14 MS. STEINFELD: You just said that the revised
15 plans --

16 MR. GELLER: I said we haven't seen them yet,
17 but yes. I'll ask them that question after I've seen
18 them.

19 Anything else for Judi? I know she's got to
20 run.

21 (No audible response.)

22 MR. GELLER: So I'd like to invite the
23 applicant at this time to come forward and present
24 their revisions as well as anything else that they

1 would like to offer.

2 MR. BARTASH: Peter Bartash with CUBE 3
3 Studio, the architects for the project.

4 Tonight we're going to go over some quick
5 changes that were discussed conceptually at our last
6 working session with Cliff, the peer review
7 architect; the planning board staff; and then
8 internally amongst our team as the applicant.

9 What we're looking at here is the revised unit
10 mix. And so I know that the numbers are small. I will
11 read them so everybody can understand and they can get
12 on the record here.

13 So first and foremost, the project has been
14 revised from 45 to 40 units. As currently shown in the
15 plans that we're going to look at, we are proposing 17
16 studio units, 12 one-bed/one-bath units, 3 two-bed/two
17 bath units, and 8 three-bed/two-bath units. The total
18 net rentable square footage of the project has been
19 reduced to 30,518 net rentable square feet, and the
20 total residential gross square footage has been reduced
21 to 38,483 square feet.

22 We've also taken -- made some changes to the
23 parking as well. You'll see that we've incorporated
24 four stacker spaces. And though we did lose a standard

1 space as a result of changes that were made in the plan
2 to incorporate a setback at the upper level, we have
3 increased the total number of parking spaces to 21 on
4 the project, which achieves a .52 ratio relative to the
5 40-unit density that we just discussed.

6 So the changes that leads to all of this
7 information: We were asked by the board to look at
8 ways to increase the perception that this was a shorter
9 building up against Centre Street and to increase the
10 setback at the upper floors and carry that all the way
11 across the front facade, which we've looked at.

12 We were asked to increase the setbacks on the
13 left and right side of the building so that the
14 balconies would feel less like they were tacked on and
15 so that we would get more visible relief along those
16 facades.

17 We were asked to create a more cohesive design
18 language and to really think a little bit more
19 carefully about treating the entirety of the building
20 as one object rather than kind of creating a building
21 that looks like it's a series of pieces put together.

22 We were asked to think about parking.

23 We were asked to think about density.

24 And so what you can see here is the kind of

1 fruits of all of the changes that we're going to look
2 at in a little bit more detail as we go to the plans
3 and elevations.

4 Looking at the ground-floor plan, most of this
5 plan looks the same, but there are a few subtle changes
6 that we should talk about. Specifically, the elevator
7 stair room on this entire floor has been shifted back
8 by two feet, and that change carries all the way up
9 through the entire building.

10 So what happened when we did that? Well,
11 first we needed to move the striped area next to the
12 accessible parking space back by two feet, which had a
13 ripple effect through the rest of the garage, so we did
14 a few things: We revised the second sloped portion of
15 the garage and brought it forward towards the door so
16 that there's one continuous sloping ramp that leads you
17 into the garage, and in doing so, we shifted the
18 location of compact parking spaces to allow us to
19 incorporate some additional standard spaces at this
20 first level. And we incorporated four stacking spaces
21 which you can see here, one, two, three, and four.

22 In doing so, we were also able to increase the
23 size of the trash room, though we did decrease the
24 storage room slightly, and I point that out because at

1 one point earlier on we did discuss that storage room
2 as a potential overflow location for recycling. And in
3 this case, we've actually reallocated the square
4 footage back to the main trash and recycling room to
5 make that room even more useable than it's already
6 been.

7 Moving to the first floor, you'll note on the
8 next three plans that the exterior wall at floors two,
9 three, and four does remain at a 15-foot setback from
10 the front property line. However, again, the elevator
11 and stair core as well as the trash shoots have all
12 been moved 2 feet back to Centre Street.

13 So as we started to make these shifts, the
14 size of the units started to change and the way that
15 they're configured in the plans started to change, so
16 we started to shuffle them around. It's relatively --
17 it's close to where it was before, but we've made some
18 changes such as incorporating a studio in the back
19 left-hand corner on the bottom rather than having a
20 one-bedroom. We've incorporated these two studios here
21 and made this three-bedroom unit a little bit larger,
22 made very subtle shifts with demising with unit layout.

23 Again, these three plans going up from the
24 second, third, and fourth floor are all identical. The

1 fifth floor is where we start to notice some of the
2 changes that were discussed. There is where it gets
3 exciting.

4 So originally we had a balcony at the front
5 here that was 10 feet 10 inches deep. We have reduced
6 that balcony to be 4 feet deep and increased the common
7 space behind that balcony to be 10 feet deep. In this
8 climate, people spend much more time indoors than they
9 do out, and having a usable space at this location for
10 residents in the project, it felt more appropriate as
11 an interior than an outdoor space. This is not a place
12 for people to spend real time sitting and gathering
13 necessarily as it is a place for people to be
14 temporarily outside in the two and a half months we
15 have where you can enjoy that.

16 We also need to make this change in order to
17 respond to some of the changes in unit demising and
18 sizes through the rest of the project.

19 Now, why did that happen? Well, there used to
20 be two studio units where you see this Unit A4 in the
21 middle of the plan that has the balcony sticking off of
22 it. We've taken those units, we've combined them. We
23 changed the units' orientation in the plan so that we
24 can increase the setback from 1 foot to 3 foot on each

1 side of the plan. We've left two balconies in place at
2 this location because we realized there may be an
3 opportunity for us to provide balconies for the living
4 and for the bedrooms, per se, or we -- we're still
5 looking at that a little more closely, how that works.
6 But we also liked the way that they appeared on the
7 facade, and we'll see that shortly.

8 So the other notable point on this plan is
9 that that 2 feet we have discussed -- on the lower
10 floors, the corridor in front of the project gets
11 2 feet wider, but here we take the exterior wall and we
12 shift that back by 2 feet as well. So now from Centre
13 Street we have a continuous line that separates the
14 fourth and fifth floors and creates a stepped-back
15 facade. There are some other things that we've done to
16 emphasize that change, but from a planning perspective,
17 those are the fundamentals that we're looking at.

18 When we move up to the sixth and last
19 residential floor, you'll note that we've reclaimed the
20 common space here and incorporated that within a larger
21 two-bed unit that takes the place of the studio unit
22 from the floor below. And you'll see that the changes
23 in the side setback and the front setback carry up to
24 this level as well.

1 The roof plan mirrors all the changes we just
2 looked at.

3 Looking at the revised perspective -- so one
4 of the first areas that we talked about was the setback
5 along Centre Street, and we're going to start there.
6 You'll see that there's now a step from the fourth to
7 the fifth floor across the entire front of the facade,
8 and so the entire fourth and fifth floor are pushed
9 back.

10 We've also attempted to balance the height and
11 scale of the fifth and six floor by increasing the trim
12 depth at that setback to really emphasize that setback
13 and to really create some gravity and weight in that
14 location. We had a very slim band of trim at that
15 location, so we wanted to play that up a little bit.
16 We've also increased the depth of this trim bend down
17 low to start to help organize and weight the facade
18 appropriately as we look at it visually.

19 We heard some feedback from Cliff as well as
20 some members of the board at the last meeting that the
21 glass balcony railings were a little under character
22 with the rest of the project, so we've moved to an
23 aluminum railing system that has a mesh infill panel
24 that's -- it's very light and very transparent and it

1 doesn't have that same reflective quality as glass.
2 And so you're seeing at the balcony setback that new
3 railing system we discussed.

4 When we look at the side of the project here,
5 there's the changes in the massing that we talked about
6 where this area of the facade on the fifth and sixth
7 floors is set back now at 3 feet, and those balconies
8 are set back as well.

9 Now, by code, we do need those balconies to be
10 5 feet 6 inches deep, so they do project out past the
11 face of the facade. However, they're not projecting
12 out as far into the side yard setback. Originally,
13 this was only a 1-foot setback, so you'll remember that
14 the balconies projected past the face of the building
15 by an additional 2 feet than what's shown in this
16 image.

17 During our conversations with the board and in
18 the following discussions with the peer reviewer and
19 with planning staff, we were looking critically at how
20 to make this project feel more cohesive, how to make
21 this building feel like it was cohesive from all angles
22 on all sides. And a decision was made to remove the
23 base at the ground level here that was originally
24 masonry, to remove the lap siding from the second

1 through the fourth floors that used to have a red
2 color, and to take the material that we had at the
3 upper floor, to revise it from metal panel to fiber
4 cement panel and then to carry that panel down the
5 length of the facade. But we were going to use -- we
6 wanted to use color and trim to really start to create
7 that differentiation vertically.

8 The goal was to create an elevation and a
9 facade that feels more cohesive and doesn't feel as
10 disjointed. So when we look at the elevation, keep in
11 mind that that's our rationale for the changes that have
12 been made here.

13 So as we're looking up close in this image,
14 most of this looks similar to what we've seen in the
15 past. And we've done a few things. Like I said, we've
16 taken this trim band, we've changed the height of the
17 soffit here and thickened some of the brick detailing
18 to make it feel more robust.

19 But really what you're starting to notice as
20 you peer around the corner is the change in material
21 and color that happens from the fifth and sixth floor
22 to the fourth floor and down to the first floor. So
23 we're really trying to reinforce the diagram behind the
24 design here where you have this traditional element

1 that sits at the front of the project that faces
2 40 Centre Street and becomes the public edge and
3 experience with a more modern piece that sits behind
4 this and wraps up and over it.

5 And again, looking at a perspective on Centre
6 Street facing in the other direction, you'll notice at
7 the upper left-hand corner that we still do have that
8 setback, and if you were to step further back in this
9 image, you'd see, again, that that setback does carry
10 across the entire fourth floor of the project.

11 So in elevation, the elevation looks fairly
12 similar to what you had seen before, and that's because
13 really what we're talking about is a change in depth
14 here in relation to the front facade, a change in the
15 railing system, and then changes in the trim banding.
16 So these are really massaged at the detail level more
17 than globally, and we've been kind of working from big
18 picture down to these finer and finer details that
19 we've gone through.

20 We also feel that the change in scale of the
21 material at the floor and that texture is helping
22 reduce the apparent scale of the fifth and sixth floor.
23 If you remember it, there were smaller metal panel
24 systems that were designed to be on an angle, and we

1 felt that the size of those panels and their
2 orientation were really emphasizing the height at that
3 location, so we wanted to help try to bring that down
4 to make that feel a little bit more real.

5 Looking at the right-side elevation to the
6 left facade -- so initially, as we have talked about,
7 the base of the building was brick. This is a red
8 lapped siding, and then this is that metal panel. So
9 here you can see how using the same material starts to
10 create a connection between the main body of the
11 building and the upper floor but it's differentiated in
12 color. That's to help break the scale down vertically
13 when you're looking at it.

14 We also are carrying the same trim line and
15 refining where we're using trim to help clarify and
16 clean up the facade here, but we draw a parallel in
17 relationship to those masonry banding and accenting
18 that we have in the front facade where we do have the
19 brick.

20 The garage openings remain in place, but by
21 existing within the same field of material, they feel
22 less disconnected from the elevation up above. So
23 we're trying to create a more consistent facade here.

24 Looking at the rear of the project, again you

1 see that the same language and design content carries
2 around the back of the project.

3 And then looking at the left-hand side
4 elevation, one of the things that as architects we
5 think about is when you start to get very close to a
6 different -- when we have two different materials,
7 let's say brick and lap siding, that are similar in
8 color or tone, sometimes that color or tone can really
9 make one or both look off because they're trying too
10 hard to be the same thing. So by using a different
11 tone, like this fiber cement, up against the masonry,
12 we're really making it clear that these are different
13 materials. We're allowing the masonry to be itself,
14 and we want the fiber cement to be itself. We want
15 these things to be clear and legible as two distinct
16 elements. However, we want the diagram of this
17 traditional piece to read clearly within the context of
18 the more modern massing and design.

19 So that's -- in summary, those are the changes
20 that we've made to date in response to the board's
21 requests and our conversations with the peer review
22 architect. I'd be happy to answer any questions the
23 board has.

24 MR. GELLER: Questions?

1 MS. POVERMAN: I do have a couple.

2 MR. GELLER: Sure.

3 MS. POVERMAN: How deep is the actual setback
4 that the fifth and sixth floor have been pushed?

5 MR. BARTASH: So on the sides, it's now 3 feet
6 from the face -- the outermost face of the facade to
7 the innermost face of the facade, and there are two
8 different depths along --

9 MS. POVERMAN: Okay. So it's been pushed back
10 3 feet?

11 MR. GELLER: Just in that indent.

12 MS. POVERMAN: Just in the indentation?

13 MR. BARTASH: Just in this -- on the front,
14 the right-hand-most portion has been pushed back 2 feet
15 from the face of the building, and the left-hand-most
16 portion, which is where that balcony is, is back
17 4 feet.

18 One of the other changes that I've neglected
19 to mention while walking through the images is that we
20 have incorporated windows at the stair to make the
21 stair feel less uninhabited within the overall facade
22 as well.

23 MS. POVERMAN: So with the change in the
24 recess of the balconies, how much now do they

1 project -- how close is it now to the lot line,
2 basically?

3 MR. BARTASH: So you have 5 foot 1 inches from
4 the lot line to the face of the building. You're going
5 back another 3 feet to the beginning of the balcony,
6 and the balcony projects 5 feet 6 inches. So the
7 outermost face of the balcony here is out 2 feet 6
8 inches from here, which puts it 2 feet 7 inches from
9 the lot line.

10 MS. POVERMAN: Okay. Under regular zoning
11 laws, do you know, Maria, how far away it would have to
12 be from the lot line -- the balcony? I know there are
13 particular laws.

14 Or maybe you know.

15 MR. BARTASH: The laws limit the projection of
16 a balcony, I believe, in this district to no more than
17 4 feet over the required setback, so in this case, the
18 required setback is much greater. You could be no more
19 than 4 feet out from the setback.

20 In this case, because we're not dealing with
21 that setback, what we're up against is the code
22 requirements for these projections relative to distance
23 from the project line.

24 MS. POVERMAN: Well, technically aren't you

1 doing the setback because you're looking for a waiver
2 from that requirement?

3 MS. MORELLI: There's a building code
4 requirement in addition to the zoning.

5 MS. POVERMAN: Okay. Were there any side
6 setback changes in the building or anywhere in building
7 in terms of the right or left side?

8 MR. BARTASH: Only at the fifth and sixth
9 floors.

10 MS. POVERMAN: In the little divots?
11 How big was the common room previously? I
12 thought it was a pretty big size, the one off the
13 balcony.

14 MR. BARTASH: I don't believe it was more than
15 400 square feet.

16 MS. POVERMAN: What is it now?

17 MR. BARTASH: It is -- I think it's 275, if I
18 remember correctly.

19 So it's 280 square feet, but its depth is much
20 more attractive at 10 feet. I think it was around 6 or
21 7 feet at the last point.

22 MS. POVERMAN: Okay. So in the previous
23 iteration, what was the liveable square footage?

24 MR. BARTASH: I would have to go back and

1 look. I can pull it up --

2 MR. ROTH: 31,005 feet.

3 MS. POVERMAN: 31,000. And is that --

4 MR. ROTH: There was 31,005 feet in the
5 previous, and now it's approximately 30,500.

6 MS. POVERMAN: Okay. Thank you.

7 Why are there only four stackers added when my
8 understanding is previously there could be up to 12?

9 MR. BARTASH: I do need to clarify that. In
10 looking at the plan, there is no way for us to provide
11 12 stackers. I believe that the decision to provide
12 only four stackers is driven from the developer's
13 perspective.

14 MR. ROTH: Do you want me to address it?

15 MR. GELLER: Yeah, we'll let you answer the
16 question. I think Kate's question relates to -- is it
17 a technical base, or is it a discretionary base?

18 MS. POVERMAN: Exactly.

19 MR. ROTH: Discretionary.

20 MS. POVERMAN: Okay. All right, I'm done.
21 Thank you.

22 MR. HUSSEY: Peter, could you go back to the
23 typical floor plan on the upper floors that shows the
24 balconies. It appears that these balconies both

1 function off of this one unit; is that right?

2 MR. BARTASH: That's correct.

3 MR. HUSSEY: One of the neighbors is
4 requesting that the balconies be eliminated, but it
5 seems to me that if you eliminate one of these
6 balconies on both sides and only have one balcony off
7 the -- say the living room -- I don't know. I can't
8 see the layout, but presumably this is off -- one is
9 off the living room and the other one is off the
10 bedroom?

11 MR. BARTASH: That would be correct.

12 MR. HUSSEY: I would eliminate the ones off
13 the bedrooms, so whichever sides they are. But that
14 will satisfy one of the concerns of the neighbor.

15 That's the only question I've got.

16 MS. POVERMAN: Do you recall what neighbor,
17 Chris? What house are we talking about? The one --

18 MR. HUSSEY: I think there's a letter from the
19 Winchester Street apartments.

20 MS. POVERMAN: Those don't face the Winchester
21 Street apartments, do they?

22 MR. BARTASH: They do not.

23 MR. HUSSEY: That's all I've got.

24 MR. GELLER: Thank you. Anything else?

1 MS. POVERMAN: No.

2 MR. GELLER: Okay. Thank you, Peter. Will
3 these materials be submitted in written fashion to us
4 as well?

5 MR. BARTASH: Yes.

6 MR. ROTH: I guess I wanted to talk about a
7 few things.

8 MR. GELLER: Tell us who you are.

9 MR. ROTH: Bob Roth, a developer. And I just
10 wanted to talk about a few things. First of all, the
11 meeting sort of started off on feasibility and whether
12 or not to take a floor --

13 MS. POVERMAN: I can't hear you.

14 MR. ROTH: Originally, the meeting started off
15 with the idea of scaling down the project and whether
16 or not it's feasible or not feasible. Numbers are -- I
17 don't think that if you were to do a pro forma on this
18 project on this basis, that -- I think it's a very --
19 it's not a rich project. And what I'm saying is it
20 meets maybe the threshold of where we're at now.

21 Reducing the size, I've been very reluctant to
22 reduce the square footage because it's becoming less
23 and less feasible to do this project. It's very close.
24 And like people say, the numbers could be skewed a

1 little bit, but the bottom line is that the project
2 is -- it's right on the cusp right now.

3 I just wanted people to know that in the
4 Town of Brookline, since the affordable housing board
5 was instituted in 1948, there were -- which is about --
6 it's roughly 60 years now -- the projects in the first
7 30 years, January, 1,800 units in Brookline. Over the
8 last 30 years, the town has produced less than 300.

9 And the reason is very clear: Property is
10 very expensive in Brookline, and it was demonstrated on
11 the Dummer Street project. That Dummer Street project,
12 we built 32 units and it cost \$14 million -- almost
13 \$14 million, \$13.9 million, over \$550,000 a unit,
14 approximately \$550,000 a unit.

15 And you're talking about a project here that
16 could give perhaps 10 units -- affordable units to the
17 community, which -- translate that to \$5.5 million.
18 These are real losses, these five units. They are
19 real. You know, the cost of these things have, you
20 know, spread across the land and construction among
21 these affordable units. And they're expensive, and
22 that's why these units are not getting built in
23 Brookline. The town is not building them, and the only
24 way they're going to get built is through some of these

1 40B projects. Let the developers pay for them. And
2 the system is working.

3 So I just wanted to get the economics out so
4 we all know what we're talking about here. This is a
5 very expensive project to do. Land costs in Brookline
6 are very expensive.

7 Now, I know we've spent a lot of time, and I
8 think we've demonstrated good will here. We've come to
9 a number of meetings. We've been reactive to this
10 board. I believe we've been reactive to this board.
11 We've been reactive to Cliff, the urban designer's
12 comments. We've taken a building that I believe that
13 most people would say was not a good fit for this
14 building and we now have turned it into something
15 that -- you know, we're talking about smaller details.
16 And apparently, according to your urban designer, the
17 building now fits in the project -- in the community.
18 It has certain features that reflects the community.
19 This project is something that I think that the town
20 will be proud of. I think it reaches -- helps the town
21 reach the goal of its 40B goal and also provides good
22 housing, rental property.

23 Now, I guess I wanted to fall back on some of
24 the parking questions. Now, I've done a lot of

1 research since our last meeting. I've researched what
2 other towns, what other cities are doing, and it's a --
3 you can find studies across the board. You can find
4 studies in Seattle, Minnesota, all over. And you can
5 find studies that show that cities have elected to not
6 have a lot of parking provided for their cars -- for
7 their units. A lot of these cities are discouraging
8 entry of more cars into the city by eliminating
9 parking.

10 If you look at what actually drives parking
11 and demand, you have such things -- I mean, we've
12 talked about doing a very customized or off -- doing a
13 customized study or doing an off-the-shelf kind of
14 study. I've looked at it, and it looks like the
15 factors that you need to have -- to consider is, one,
16 the community demographics. What are the community
17 demographics in Coolidge Corner? The unit mix in the
18 apartments is critical. Are they three-bedroom units?
19 Are they two bedrooms? Are they studios? This unit
20 mix will attract a certain demographic. Our hope is
21 that we're going to attract younger people into the
22 community, people who -- these are predominantly studio
23 units. Almost 40 percent or more of the units are
24 studios, so the tenants will be people who are younger

1 people who are not maybe needing a car.

2 Also, the distance to local transportation.

3 This is the hub of Brookline. This is the
4 transportation hub. You have studios, a lot of studios
5 next to the transportation hub.

6 And then the next thing you have to consider
7 is: Where are these people going? Are they going
8 downtown? Are they going to the hospitals? And how
9 will they get there? The people who we expect to live
10 in this building are people who we expect will walk,
11 take the T, or take their bicycle.

12 Yeah, there's a possibility that in a
13 three-bedroom unit, for sure, there will be people who
14 have one car or the two-bedroom will have one car. But
15 overall, we think that the parking demand here is not
16 going to be exceeding .5 percent.

17 Other things to consider is that there's four
18 Zipcars 50 feet from the site.

19 We have to consider parking costs. You know,
20 if people want to be -- the people who are going to
21 live in these studios or one-bedroom units are going to
22 be cost conscious, and they're not going to want to pay
23 for a cost -- Brookline parking cost, \$250 for a car.
24 So that will discourage these people.

1 Also, we look at what is going on politically.
2 Some of the selectmen in certain towns and some of the
3 mayors in certain towns are looking to discourage
4 people from coming downtown with their cars.

5 And so we think, overall, that there's going
6 to be a demand that will be a lot less than one car.
7 We've had it mentioned in a couple of places. There's
8 a study that was done by TCC, the Collaborative Group,
9 when they did it for Boylston. They wrote in their
10 market study that they expect the .25 to 1.0 ratio for
11 those units on Boylston Street and -- on Beacon Street
12 rather. I should be corrected. It's on Beacon. It's
13 1180 Beacon Street.

14 And then you have your own consultant who had
15 replied in his study that given the proximity to
16 transit, one provided mode split appears to be
17 reasonable, such as as follows: 57 cars, 31 by
18 transportation, 10 by walking, and 3 by bicycle.

19 You know, we may be off. You know, maybe .5
20 is not the right ratio and maybe it's more. But we're
21 not talking about hundreds of units here. We're
22 talking about 40 units. And if we're wrong by a
23 fraction, there will be 8 or 10 cars that will need to
24 find private or public spaces in the area.

1 I know that we had a traffic study done. I
2 don't know if anything -- it came up late. I had to
3 hire a different transportation company -- or an
4 engineering company. My other engineering company,
5 after our last meeting, I called them up to do the
6 traffic count for us and he said three to four weeks.

7 And, you know, I said it's not soon enough.

8 So he says, well, you have to wait.

9 I hired MDM Transportation to do a study.
10 They did a study on a school day. I think Maria said
11 she wasn't sure it was done on a school day. It was
12 done on a school day. It was done on a Monday or a
13 Tuesday. You have in -- it's been circulated. The
14 peak times of these dates there -- the peak times were
15 done from 7:00 -- I think 8:00 in the morning or 7:30.
16 It's on your sheet when the peak times they did the
17 study. They also did the study in the evening.

18 The crash test had been -- we did make
19 application to the police department. I think they
20 sort of go on their own speed. We'll get the results
21 from that.

22 There are -- I just wanted to mention there
23 are a few things I didn't hand in to Maria at this
24 time, but there are examples -- not in Brookline. She

1 had reported -- Maria reported some other projects,
2 what their parking ratios are. The only ones -- we
3 found others in the Boston area -- in Boston. There
4 are two projects in Boston: the Arlington and the
5 Avalon Exeter totaling over 300 units but not a single
6 car -- not a single parking space available. There's
7 maybe 10 or 15 projects -- new projects that went on,
8 some in Fenway, that approached from 0 to .7.

9 There's also -- I dug an old FHA
10 requirement -- I'll submit all these to Maria -- but
11 the FHA requirements -- parking requirements --
12 demonstrate that the standard for a project like ours
13 would be .5 parking spaces.

14 I think that at this point, you know, we've
15 worked a long way. We've come a long way. We've
16 worked very hard. I think instead of us talking about
17 perhaps, you know, rejecting the project or taking
18 floors off the project, I think what we have is what we
19 have. I think what we should be concentrating on is
20 perhaps, you know, getting a better looking building if
21 that can be done. I think that people will see this on
22 an everyday basis, and I think that that's where we
23 should put our efforts.

24 In terms of why -- someone, I guess, asked why

1 we were only putting the four stackables. The reason
2 is is I've done extensive research on stackables. I'm
3 not sold on the stackables completely. Anything that
4 has moving parts is something to me that is a potential
5 problem. They have not been out in circulation here in
6 the Boston area. There are a few now, but whether or
7 not they're fully tested in terms of their -- how would
8 tenants be receiving them? I don't know how the
9 tenants will be receiving them.

10 So I had suggested that we put in four and see
11 how it goes. And if there is a strong -- and I'm wrong
12 in terms of the parking demand, and there is a strong
13 desire for more parking, we'll put in another four. So
14 we'll grow if there's a demand and people are receiving
15 them.

16 So I don't know if there's any other
17 questions, but we did give Maria a list of the
18 September 8th -- overnight parking, I know that's
19 been -- not taken too much heavily in consideration.
20 The overnight parking in Brookline, it shows that there
21 are approximately 90-something spaces available. They
22 sit vacant every day. I see it when I come in to 40
23 Centre Street. Centre Street -- I think it's Centre
24 Street East. I get them mixed up -- has 40 empty

1 spaces every night. The town doesn't collect any
2 revenue for that. They're expensive. They're \$150
3 just for an overnight, but it's a place for some people
4 who do the overflow. We're not South Brookline. We
5 have parking lots across the street. They are empty.
6 Overnight guests also can just file their credit card
7 for \$10 a night. And so I think we're -- in that case,
8 we're fortunate to have a potential overflow public
9 parking option.

10 And then there's also -- right next door to
11 us, the Hamilton Group owns 15 spaces, privately owned.
12 I would say -- and I've been trying to get ahold of
13 them for a while now, but I would say there's maybe --
14 they have 15 spaces. You know, my guess is that at
15 least 10 of them are empty. I don't see many cars in
16 them at this time. They're the end units on the
17 parking. We'll get the actual counts. And then on
18 Winchester Street, there's another additional 15 units.
19 So there is some private parking in the area, so if we
20 are wrong on our .5 and it turns out that this board is
21 right on .1, we will have approximately 16, 17 spaces
22 that people would have to fend for privately.

23 So that's what we're looking at. I think that
24 between the architecture and the parking, I think

1 there's -- I tried everything. I've put the stackables
2 in. I didn't want to put them in. We've reduced our
3 count from 45 to 40. We took one-bedroom units and we
4 made them studios. I'm trying to get to a point where
5 this project works for everybody. Hopefully we'll get
6 there.

7 MR. GELLER: Questions?

8 MR. HUSSEY: Yes.

9 Mr. Roth, how many parking spaces are on the
10 site now?

11 MR. ROTH: There's 12.

12 MR. HUSSEY: There are 12 on the site?

13 MR. ROTH: Yeah. If you do tandem parking --
14 if you do tandem parking, you're going to get as many
15 as 15.

16 MR. HUSSEY: Okay. So the net new parking
17 spaces -- your putting in -- proposing 21 now.

18 MR. ROTH: Yeah.

19 MR. HUSSEY: So the net new parking is nine;
20 right?

21 MR. ROTH: It depends if you count the tandem,
22 but yes.

23 MR. HUSSEY: Let's just -- you said 12 of the
24 existing.

1 MR. ROTH: Right.

2 MR. HUSSEY: So the net new parking is nine
3 spaces. That hasn't come up before -- affects the
4 safety issue.

5 MR. ROTH: Yeah. We had the traffic count
6 done on how we actually -- there's a doctor and a
7 dentist on the first floor. There's a single resident
8 on the top floor. It's not a lot of traffic, but it is
9 in the traffic study that was just recently put in.

10 During the time, you know, when there is very
11 little traffic coming out of the commercial center
12 across the street, I mean, there's no -- virtually --
13 there's very little traffic coming out of there at 8:00
14 in the morning or 9:00 in the morning, which is the
15 peak morning hour for a community. So we're fortunate
16 in that way because in the early mornings when no one's
17 coming out of the parking lot, there's not a whole lot
18 of traffic. You'll see it in the traffic report.
19 Centre Street is not a heavily trafficked street.

20 MR. HUSSEY: One other question, if I may, and
21 that is on the stacker units. I would assume that
22 those would be separate dwelling units that would have
23 the stackers in the parking spaces below.

24 MR. ROTH: Right.

1 MR. HUSSEY: Do you have any idea how that
2 would be managed?

3 MR. ROTH: I don't know. It's all foreign to
4 me in terms of how people live in the cities who -- you
5 know, I talked to a number of agents -- real estate
6 agents -- in terms of how they do things in the South
7 End, how they do things in Boston, and how they're
8 doing it in Brookline where two different -- two
9 different unit owners have each others' keys. I was --
10 you know, I guess I'm a little older and more
11 conventional, but it's seems like this is something
12 that's been going on for years.

13 And I guess if we think it's -- we can
14 discount the stackables in price and maybe that will
15 give people an incentive to parking their cars and
16 doing that. But, you know, that's why I said, let's do
17 four stackables and see how it goes. You know, people
18 work the stackables, how it works, and if it works out
19 fine and the people like it, we'll just put in more.

20 MR. HUSSEY: Thank you.

21 MR. GELLER: Peter, you may know the answer to
22 this technical question: Once you build the building,
23 is it possible to put additional stackers within the
24 structure?

1 MR. BARTASH: Yes, it is.

2 MR. CHIUMENTI: And we're expecting ordinary
3 people to go down and operate this machinery, lift a
4 4,000-pound vehicle up on a device. I mean, it strikes
5 me as a safety hazard. I mean, in a situation where
6 it's commercially operated by someone who's hired and a
7 valet who knows what he's doing is one thing. In this
8 situation, residents are going to be operating this
9 machinery themselves?

10 MR. ROTH: Well, I think that you have to see
11 them operate. I really do. I think you have to see
12 how simple they are. You know, I haven't
13 demonstrated -- it hasn't been demonstrated to me, but
14 there's a strong -- I hear a strong call from the ZBA
15 here that you want more parking. And I think in order
16 to do this, we need to take a little risk in terms of
17 putting four units in and see how they operate. If
18 they operate well, this could be a solution not only
19 for our project, but other projects.

20 MR. GELLER: I will tell you, Steve, that I
21 have clients who have them in very high-end housing who
22 use them -- use them every day. And in one particular
23 case, he's got sitting on top of a stacker a \$250,000
24 vehicle and he's never had an issue with this. I'm not

1 saying -- I'm simply telling you they exist, they're
2 used, they're used by people who are not engineers.

3 MR. HUSSEY: But these are stackers in a case
4 where both parking spaces are under the same unit?

5 MR. GELLER: Correct. I have not heard of
6 them utilized by two separate unit owners. I'm simply
7 speaking to the technical, can you press a button and
8 does it function? Is it a hazard?

9 MR. HUSSEY: Okay.

10 MR. GELLER: You know, the issue with whether
11 it's manageable to have two different apartments using
12 a single stacker, I think what we have to see is a
13 proposed narrative of -- they have to figure out how
14 they would propose to have it function for their
15 tenants, and I think we need to look at that narrative
16 and take a look at it. But, you know, I think they
17 would have to think through how they propose to have
18 it.

19 MR. HUSSEY: Okay.

20 MR. GELLER: Anything else? No?

21 MS. POVERMAN: Okay. As usual I jump around.
22 But I hated the idea of stackers when I first heard of
23 them, but I think that it's becoming a solution more
24 and more. There are different types of stackers and,

1 you know, they're just something which I think needs to
2 be considered more and more with people, in my view,
3 needing more and more parking with space narrowing. So
4 there are different types, different ways to use them,
5 and so I think it's worth exploring.

6 What is the cost per stacker?

7 MR. ROTH: You know, it runs the gamut. The
8 first ones that I -- that was proposed to me was ones
9 that didn't need to be operated where you have to
10 switch keys; that instead you actually slid it over and
11 it came down and it would come out. I know another 40B
12 project is planning on using those types of units, but
13 I was not interested in it. I've seen the video a half
14 a dozen times. To me -- the product is developed in
15 Australia. It's being used in Australia. They have a
16 San Diego contact who's a dealer for them. I called
17 him. I spoke to him for 20 minutes. He could not
18 identify one single project in the United States that
19 it's being used in.

20 I said, you know something? I like the idea,
21 but not for my project. You know, there's a lot of
22 moving parts. It seemed like the Cadillac of these
23 lifts. It's an innovative idea. It costs -- these
24 will run about \$25,000 and another \$5,000 maybe for

1 installation, so it's a \$30,000 go. And if there is a
2 problem with a pump or a wire or something, you know,
3 you have a service issue. So that is one solution that
4 is not for us.

5 And then there's the solution that we're
6 looking at, and those -- there's a number of those
7 types, and those are true and tested. They're used on
8 an everyday and a commercial basis. And Chairman had
9 said, people use them in their houses for luxury cars.
10 They put them up for storage, and they want to take
11 them out. They don't use them on an everyday basis,
12 but they -- and those things have been used for years
13 and years and years. And they -- like anything, you
14 get some with whistles and all kinds of things with
15 them. And they'll run on the lower end maybe about
16 \$5,000 and the higher end maybe \$7,000.

17 MS. POVERMAN: What is the maximum amount of
18 stackers you could fit in there?

19 MR. ROTH: I think we had thought we could put
20 in eight. Eight was the amount that we were talking
21 about. We can get up to twenty-seven parking spaces.

22 MR. HUSSEY: I must say I -- there's some
23 ambivalence, I think. One of the issues that keeps
24 coming up is the safety of adding pedestrians and

1 having more traffic in the area and all the neighbors,
2 and that's a concern of the board, so I don't quite
3 understand this push to have more parking on the site.

4 My tendency is not to do stackers; to have
5 less parking. The parking -- the only harm in less
6 parking is to the renters themselves, and that's a
7 choice. They could be told, you know, there's no more
8 parking spaces left, so you've got to make other
9 arrangements or rent other units. But in terms of
10 safety in the neighborhood, the pedestrians and cars
11 and traffic and what have you, my tendency is to stick
12 with just the minimum number of ordinary parking.

13 MS. POVERMAN: I think the point, in part, is
14 that if people don't -- as people in the neighborhood
15 testified to -- if you don't have on-site parking,
16 you're going to be circling around looking for parking.

17 MR. HUSSEY: What do you mean "circling
18 around"? You can't park overnight in Brookline.
19 People won't be circling around.

20 MS. POVERMAN: Right. Where will they park
21 during the day?

22 MR. HUSSEY: They'll not have a car. That's
23 the choice they're going to make.

24 MR. CHIUMENTI: All right. So we only have 17

1 parking spaces. Does that mean there are only going to
2 be 17 cars, or are you going to have 34 cars and people
3 have to do some -- you don't really stop there from
4 being cars just because you didn't provide parking.
5 And, in fact, you've got these people with 17 more cars
6 looking for a place to park or renting a place.

7 I can't think of a better community served by
8 public transportation than Manhattan. There's trains,
9 buses, everything redundant. And if you go to
10 Manhattan outside of the tourist areas, cars are parked
11 everywhere, up and down every street, every parking lot
12 is full. I can't think of a more difficult place to
13 have a car, but people do.

14 MR. HUSSEY: But they allow overnight parking.
15 Brookline does not. So the people either will find a
16 place -- find a rental parking place someplace else
17 off-site or they'll have to not have a car.

18 MR. CHIUMENTI: We haven't reduced the number
19 of cars in Brookline just because we made it a little
20 harder for people to have a car. We've just made them
21 put it someplace else.

22 MR. HUSSEY: Well, okay. So they're put
23 someplace else. That's their choice.

24 MS. POVERMAN: Actually, I want to make a

1 point which I made last night as well; that the reason
2 people can reduce the parking in this building is
3 because it's a 40B and that it's the 40Bs that are
4 taking the brunt of having insufficient parking.

5 So I see it as a fact of discrimination
6 against people who are not able to afford housing, to
7 have regular housing. So why should it be only -- why
8 should only the affordable housing people have to
9 scramble to look for parking? If you're a
10 regular-housing unit, they have to provide enough
11 housing to meet the market. Here we don't have to
12 worry about the market because you're saying, you know,
13 affordable housing people, why do I care how they get
14 to their job? Or, you know, they'll sort themselves
15 out or they'll work out how to get there. And I don't
16 think that's a fair system.

17 MR. GEOFF ENGLER: Can I comment on that?
18 That's entirely incorrect. I mean, the proportionality
19 of the parking in this building is the market units
20 have -- the affordable people -- parking is allocated
21 to the affordable units in proportion to the markets.
22 There's more markets --

23 MS. POVERMAN: No. That's not the point I'm
24 making.

1 MR. GEOFF ENGLER: Well, let me finish.

2 Take it from somebody, at one point, that
3 lived in Brookline several times in rental housing. Go
4 on Craigslist sometime and look at how many units are
5 for rent that do not include any parking spaces. I
6 would suggest it's almost 80 percent of them.

7 So to the gentleman's point, people that have
8 two cars are not going to rent in this building.
9 They're not going to circle the parking -- the building
10 looking for a place to park. They're not going to rent
11 there. Or they're going to rent a spot just like
12 anybody else in Brookline, a commercial tenant or a
13 resident tenant that has a surplus parking spot.

14 So I don't understand -- to try to extrapolate
15 a deficiency in parking to a matter of health and
16 safety, good luck trying to do that.

17 MS. POVERMAN: That's not what I said. That's
18 not what I said, but okay -- but to your point, why
19 should somebody who needs affordable housing say, I
20 can't live here because there's not enough parking?

21 MR. GEOFF ENGLER: They can live there.

22 MS. POVERMAN: No, they can't when they have
23 three spots. I mean, it's proportionate, right, so --

24 MR. GEOFF ENGLER: Why can't you live there?

1 MS. POVERMAN: Because there are going to be
2 three affordable spots. And if you have a car and you
3 need to drive out to Framingham for your job but the
4 affordable spots have already gone to the two- and
5 three-bedroom units --

6 MR. GEOFF ENGLER: How is that different than
7 the market units that are later to rent the market
8 units to have a car? How is that different?

9 MS. POVERMAN: Because affordable housing is
10 limited. It's very limited.

11 My point is that developers are using 40B to
12 be able to modify zoning laws, and some of these zoning
13 laws, yes, are parking. But I think the fact that --
14 and Maria made this point as well. The fact that the
15 solution to not have parking is to tell people to go
16 somewhere else is an acknowledgement that there's not
17 enough parking there.

18 MR. GEOFF ENGLER: By your logic, is it better
19 to have three affordable spots -- three affordable
20 units with three parking spots, or six affordable units
21 with three parking spots?

22 MS. POVERMAN: That's not the issue.

23 MR. GEOFF ENGLER: That's what you're saying,
24 though. That's your logic in that if you cannot

1 provide parking to affordable units, don't provide the
2 units.

3 MS. POVERMAN: That is not --

4 MR. ROTH: I'm going to jump in because we
5 are -- we did submit to Maria a program that allows a
6 certain amount of spaces reserved for affordable
7 housing.

8 MS. POVERMAN: Right. And I think that --

9 MR. ROTH: And I think that -- I think it was
10 either five -- I think there were five units that would
11 get affordable -- affordable units that would get
12 spaces.

13 So the other thing is -- and, you know, I
14 understand the struggle the board is having. And, I
15 mean, we're not trying to modify the zoning board's
16 codes. I mean, the zoning board, I understand, has a
17 charge and I respect that you guys come out every night
18 and sort of shepherd projects through the zoning
19 process with your zoning books and your -- you know,
20 you respect them.

21 The 40B project is different. It's sort of --
22 you know, if you didn't have the 40B projects, you
23 would not have affordable housing in Brookline.

24 MR. CHIUMENTI: We had 15 percent included in

1 our zoning in Brookline.

2 MR. GELLER: I think we're getting far off --

3 MS. POVERMAN: To get back, what we asked for
4 was a parking analysis -- a detailed parking analysis
5 to let us make the decision as to whether or not there
6 were any safety issues, in addition with the traffic
7 analysis, to determine what was appropriate parking.

8 I do not feel like what we received gives me
9 adequate data, adequate backup information to make that
10 decision. That's why I come out on --

11 MR. ROTH: You know, I guess the effort that I
12 made in this presentation and what I gave to Maria is
13 to tell you that after a lot of research, that there is
14 9, 10, maybe more factors that would go into parking
15 demand. And you can go to places like Minnesota, and
16 you can get 200, 300 units built in downtown because
17 that's what the zoning wants. They do not want to have
18 cars there.

19 So, I mean, what works -- there's so many
20 factors that you can't just pull some study. I can
21 pull up a half a dozen studies that will prove my point
22 that we do not need to have it. Then you can have
23 another half a dozen studies that will show that you
24 need more than what we have. What I'm saying is it's

1 too subjective. It's not a number you're going to get.
2 It's something that if we're wrong, people -- 10, 12
3 people are going to have to find private parking.

4 That's it. I mean, that's the downside of being wrong.

5 And I -- you know, to do a study, I think it's
6 just -- you know, your consultant is going to say
7 something, my consultant is going to say something, you
8 know, and we're not going to agree. If you wanted
9 someone to say that it's not a safety issue, I can
10 certainly provide you with that.

11 MS. POVERMAN: My reaction to this -- and I
12 may be entirely wrong -- is I hear that you don't want
13 to spend the money to hire a professional, so you did
14 the job yourself. And I am not satisfied with the
15 information I have received. You may be exactly right.
16 I don't know. That's the problem.

17 MR. ROTH: You'll never know.

18 MR. GEOFF ENGLER: Well, I have a point. I'm
19 not disagreeing with you. What's in the context of
20 40B -- and I'm not trying to be a wise guy. What is
21 the local need within the regulations that is not being
22 served by having inadequate parking?

23 MR. CHIUMENTI: It says adequate parking in
24 the regulation.

1 MS. POVERMAN: And one person pointed out the
2 Burrill versus Swampscott case where it was determined
3 that the lack of adequate parking which led to parking
4 on the street and people driving around was an issue.
5 Now, that did not turn the case.

6 MR. GEOFF ENGLER: No, it did not.

7 MS. POVERMAN: Exactly. I'm not saying it did
8 turn the case, but it was acknowledged as an issue. So
9 it's not something that we can just say la-di-da, it's
10 not an issue. It is something that is worth -- that is
11 why we are spending our time looking at it.

12 MR. CHIUMENTI: Also, our choice is not
13 necessarily to only reject the project. It is to have
14 a basis for making the project somewhat smaller.
15 That's what's in the regulation.

16 MR. GEOFF ENGLER: I understand that. My
17 question is -- and I understand your basis. Just to
18 play off that logic, you would say you feel
19 uncomfortable with the parking. You'd like to have a
20 one-to-one ratio. I'm just saying theoretically, for
21 18 spaces you will have 18 units. We go to the HAC and
22 we prove that it's uneconomic. What is the local need
23 that overrides the need for affordable housing in that
24 context that would allow the board to assert that 18

1 spaces overrides that need? That's the question.

2 MR. CHIUMENTI: The role would be your need to
3 show that you can't make the limited dividend that
4 you're entitled to make based on -- I wouldn't say 18,
5 one to one. I think the board would consider something
6 less than that. But the basis is that we are within
7 our rights to insist, based on the site and building
8 design, given the height and bulk of this building and
9 inadequate parking arraignments, that it should be a
10 little bit smaller. You would then have the burden to
11 show that you can't make the limited dividend. You to
12 go to the HAC. That's the way it works.

13 MR. GEOFF ENGLER: I understand that.

14 MR. CHIUMENTI: That's all I'm saying.

15 MS. MORELLI: Mr. Chairman, could I just ask
16 you, out of the data that I said wasn't supplied, could
17 you ask the applicant if he intends to provide traffic
18 counts for the perspective development? Some of the
19 omitted information -- all of this was due today so
20 that Jim Fitzgerald, our traffic peer reviewer, could
21 provide a report to you on October 5th. We'd like to
22 keep that schedule and I'd like to know -- if the
23 applicant refuses to provide any more data, then we
24 will have Jim Fitzgerald come on October 5th. If he is

1 going to provide more data, I'd like to know the
2 schedule so we can reschedule.

3 MR. GELLER: That's fine.

4 MR. ROTH: Well, let me address -- one of the
5 questions that she had asked about is what will the
6 project generate in the future, the proposed project?
7 Now, a traffic study was given to the board and to
8 Maria that demonstrated how many cars are being
9 generated at peak periods for this project. I believe
10 you have it.

11 MS. MORELLI: Excuse me. Can I just
12 interrupt? We wanted you to consult with the director
13 of engineering so that you could take into account the
14 fact that Brookline doesn't have -- that Brookline has
15 perspective developments. It's really hard to judge
16 from all these piecemeal emails that came from you and
17 not a traffic engineer to really give the ZBA the
18 technical data that they're asking for.

19 MR. ROTH: I'm sorry that the information --
20 you're not accepting my information, but the
21 information that I'm giving you is coming from a
22 professional engineer. The information that you have
23 received is straight out of the first traffic study.
24 It tells you exactly how many cars in the peak morning

1 and peak evening is being generated from 45 units at 40
2 Centre Street. You have that information.

3 MS. MORELLI: We need traffic counts based on
4 prospective -- on projects with the prospective
5 developments in the area, and the director of
6 engineering would be telling you what prospective
7 projects to include.

8 MR. GEOFF ENGLER: Maria, I understand the
9 request. Why do you need that?

10 MS. MORELLI: Why don't you ask the ZBA?

11 MR. GEOFF ENGLER: Why does the board need
12 that within the context of this plan?

13 MR. GELLER: We do we need a traffic study?

14 MR. GEOFF ENGLER: No. I didn't say a traffic
15 study.

16 MR. GELLER: Well, it's typically part of
17 every traffic study; is it not?

18 MR. GEOFF ENGLER: It is.

19 MR. GELLER: It is. And it hasn't been
20 provided.

21 MR. ROTH: Traffic counts have been.

22 MR. GELLER: No.

23 MR. GEOFF ENGLER: Okay.

24 MR. GELLER: So let me make this suggestion:

1 I'm going to make this a little easier. I don't think
2 we need to go back and forth here. There is a list
3 that remains outstanding. Let's forward that list to
4 the applicant. And what I would ask of the applicant
5 is if that information is available or if that
6 information is in process with your new traffic
7 consultant, that it be forwarded to Maria in time for
8 the October 5th hearing. If we don't have it by the
9 October 5th hearing, we'll simply assume that you don't
10 want to provide it.

11 MS. MORELLI: We need it earlier because
12 Mr. Fitzgerald needs a week.

13 MR. GELLER: What's Jim's deadline?

14 MS. MORELLI: Jim has a week, so I'd like to
15 know today. Because if it is not in process, okay, if
16 Mr. Roth doesn't intend to provide it, then I just need
17 to hear from him that he does not intend to provide it.

18 MR. GELLER: Is that what you're saying,
19 Mr. Roth?

20 MR. ROTH: You know, she gave a list of maybe
21 10 items that are on that list. Some of those items
22 will be performed, and some of those items will not.

23 MR. GEOFF ENGLER: Mr. Chairman, I would like
24 the opportunity to talk to my client, and we will get

1 to Maria tomorrow morning at the latest relative to
2 what we will provide and not provide.

3 MR. GELLER: Okay.

4 MS. STEINFELD: May I just reiterate, as far
5 as I'm concerned, we need the traffic peer reviewer to
6 provide the final report on the 5th, so whatever
7 information is forthcoming, it has to be done
8 considerably prior to the 5th.

9 MR. GELLER: I understand that.

10 MS. POVERMAN: May I just say that the traffic
11 peer reviewer needs to include hours of study that do
12 not just include hours when the commercial retail
13 center at East Centre Street is not open. A lot of the
14 traffic on Centre Street is generated by the retail
15 traffic there, and so it is not representative of
16 everything going on on Centre Street to look at it at
17 7:30 in the morning when nobody's going to those
18 stores. And at 5:00 at night when some people are,
19 it's a better indication, so I think it's very
20 important to include that.

21 Oh, I don't know if we have time to look at
22 the farmers market, and maybe we can just rely on the
23 anecdotal information and pictures we got from the
24 neighbors lining up and down the streets. But I think

1 that this is information we would have gotten if a
2 professional, thorough analysis had been done, and I'm
3 disappointed we didn't get it.

4 There are several data points I do want to get
5 in terms of the information about the apartment
6 building, and I'd just like to ask those and maybe then
7 we can move on to other things, if that's okay,
8 Mr. Chairman.

9 MR. GELLER: You're looking for more
10 information from the applicant? From Maria? Who --

11 MS. POVERMAN: The applicant. This should
12 have been part of a full study, given the nature of the
13 project, given the information that was given during
14 the course of our hearings. Given the project and
15 given -- facing a parking lot -- an analysis that
16 included data of cars going in and out of the retail
17 parking lot at 7:30 in the morning is pretty useless.

18 MR. ROTH: I'm sorry. That's the traditional
19 peak period, and if the board elects to change the
20 specifications of a traditional traffic study, we need
21 to know. We need to develop a scope of work. Because
22 every traffic engineer in the United States is going to
23 do peak hours, which means between 7:00 and 8:00 in the
24 morning, and if this board wants it different, then you

1 should state it.

2 MS. MORELLI: That's a question you can ask
3 Jim Fitzgerald.

4 MS. POVERMAN: Okay.

5 MS. MORELLI: That we would ask.

6 MS. POVERMAN: Okay. That's fine. And I just
7 have a couple more questions.

8 I know that the Marion Street project, which
9 there have been lot of comparisons to, charges rents
10 about \$4 per square foot. Are you planning on charging
11 the same rents at your project?

12 MR. ROTH: I think it's going to depend on the
13 market at the time.

14 MS. POVERMAN: Aren't you counting on it being
15 a certain price? How do you determine a pro forma if
16 you don't have an idea of how much you're going to
17 charge for rent?

18 MR. GELLER: We're not talking about a
19 pro forma now.

20 MS. POVERMAN: No. I know. You know, what?
21 All right. I apologize. I withdraw that question.

22 My assumption is that a developer has an idea
23 of what he's going to charge when he starts a project.
24 And I do apologize for getting testy.

1 Right now, what is your best estimate of the
2 rents you're going to charge?

3 MR. GELLER: This is going beyond the scope.

4 MS. POVERMAN: I think it's information we
5 need to have based on what we may need to decide today.

6 MR. HUSSEY: It would be in the pro forma. If
7 we push for a pro forma, it would be in the pro forma.

8 MS. POVERMAN: Okay. Let's see if I have
9 anything else.

10 MS. MORELLI: We are having a staff meeting on
11 Thursday. It would be helpful to know, as Judi advised
12 at the onset, is there anything about the revised
13 plans --

14 MR. GELLER: Yeah, we've sort of morphed the
15 order of things. We will have that discussion.

16 MS. POVERMAN: Let me just take a couple more
17 seconds.

18 MR. GELLER: I want to -- we still have
19 Mr. Roth, so if there are other questions for Mr. Roth,
20 I assume that's what you're looking for.

21 MS. POVERMAN: Exactly. That's it. Thank you
22 very much.

23 MR. GELLER: One question, Mr. Hussey?

24 MR. HUSSEY: One comment. When you get into

1 peak traffic around the Centre Street parking lot,
2 anecdotally, over the past 22 years, 2:30 is when
3 school is out. That's when it goes up, between 2:30
4 and 5:00 during the weekday.

5 MR. GELLER: Mr. Roth, do you want to --

6 MR. ROTH: I just wanted to close in saying
7 that I think that we've all worked very hard to get
8 here, and I know that we're going to have some
9 stumbling blocks on parking. I know that this board
10 would like to see one. We're at a half.

11 It would be -- you know, if this was a
12 200-unit project, I think the difference between a half
13 and one would be somewhat significant, but we're
14 talking about a 40-unit project. I think that to go
15 all this way and to stumble over a half of a space per
16 unit would be not a good thing. You know, it's just --
17 I think too much effort's been put into this. I think
18 we all know that this is a good project. It has to
19 work financially, and we'll continue to work to get
20 this thing done one way or another.

21 MR. GELLER: Thank you.

22 Okay. As we've done in the past -- well,
23 before we get there, I want to -- I simply want to
24 mention that we have received, as before,

1 correspondence from many of the neighbors. We've also
2 received correspondence from the -- I don't know what
3 his role is, but the owner of 45 Marion Street. And I
4 think it -- those will all be posted; correct?

5 MS. MORELLI: Yes.

6 MR. GELLER: Including that letter.

7 MS. MORELLI: Tomorrow.

8 MR. GELLER: Those will all be available. I
9 think the synopsis of the letter from Mr. Danesh is
10 that 45 Marion Street should not be used as an example,
11 and you can review the letter and see his logic behind
12 it. But I did want to acknowledge receipt of all of
13 that correspondence, and all of that correspondence is
14 included in the record of this hearing.

15 I think that the board, once again, needs to
16 have a conversation. And as Maria has started to
17 caution us about, it's important that we give clear
18 direction to the developer. And we've already -- well,
19 we sort of have had the conversation slightly backwards
20 where we put exclusive emphasis on parking, but I think
21 that there were other considerations that were
22 discussed, though there were differing opinions, and
23 what you saw tonight that was presented was in response
24 to comments that had previously been made.

1 To leap back to Maria's sort of introduction,
2 the question then becomes: Have the changes that
3 you've seen addressed the issues that you've raised?
4 Do you have further comments? What are those comments?
5 Again, these are comments that the developer takes and
6 either tries to work with them and resolve issues you
7 raise, or the developer says, I can't do that.

8 So I apologize for picking on you, Steve, in
9 advance.

10 MR. CHIUMENTI: Okay.

11 MR. GELLER: So two hearings ago you had
12 raised initially your concern -- it wasn't just you.
13 It was Ms. Poverman as well -- with six stories. And I
14 think you were -- as Ms. Morelli said, you were willing
15 to rethink that based on information you received,
16 maybe some internal thinking, and also based on the
17 developer's proposal to create more defined setbacks.

18 So from your perspective -- I'm not telling
19 you what to do, but you have to decide whether you want
20 to give to this developer further direction along those
21 lines, or are you satisfied at this point that they've
22 achieved whatever it is your issue was?

23 And, again, I apologize for picking on you.
24 Each one of us has to think along those lines because

1 we're at the end, and whatever the ask is, they need to
2 do it. So they've heard the ask for parking. Or
3 they've heard our response to parking. They haven't
4 heard our ask.

5 MR. CHIUMENTI: I basically felt the building
6 was too big, that there wasn't enough parking, and
7 there were inadequate setbacks. And I think we've come
8 a long way. The architects did a good job of
9 redefining the building to help to mitigate, somewhat,
10 the appearance. Obviously the parking is problematic.
11 Setbacks, you know, they've done, I think, what may be
12 enough.

13 I would say, and I -- I think it's true -- I
14 believe it's true that if we were to prevail in a
15 lawsuit, we pretty much would need to point to the
16 health and safety stuff.

17 But fundamentally, the developer gets a pass
18 on the local rules for zoning and instead has to
19 satisfy a list of rules and regulations, rules that
20 control the Housing Appeals Committee and that the
21 Housing Appeals Committee directs us to use. These are
22 a justifiable basis for us to insist, for example, that
23 the project be changed or be made smaller, for example.
24 As long as we have a rational basis for doing that,

1 then they have the burden to show that they can or
2 cannot make any money.

3 And I don't think that this project has been
4 changed enough at this point, although I do think that,
5 frankly, the advantage is -- the building next door is
6 about 40 feet. It's three stories, just about 40 feet.
7 Four stories, it would have seemed to me, would have
8 been consistent. The way they changed the upper
9 floors, it seems to me the fifth floor looks almost
10 like kind of a roof feature, like a mansard roof kind
11 of thing. I think that would be visually okay.

12 I think six floors are too many, and I think
13 eliminating the sixth floor helps to mitigate the
14 parking issue which, as I said, continues to be
15 problematic.

16 I mean, essentially the problem is -- and the
17 regulations on the thing have to do with -- in addition
18 to health and safety and open space, which, of course,
19 they've got no open space -- and they may not have a
20 health and safety issue or they may. I mean, but
21 that's -- we're down to the site and building design.
22 And the regulation clearly says we're entitled to
23 consider the height and bulk of the building and
24 adequacy of parking arrangements. I do think if they

1 eliminate a floor, that would help to mitigate the
2 parking as well. We're basically talking about just
3 the crush of people and activity that this building
4 brings to that spot.

5 Now, obviously they're entitled to build
6 something in any case. It just needs to answer, as I
7 say, our concerns that are -- we're entitled to be
8 concerned about under the regulations.

9 So I would say I like the way they changed the
10 upper floor. I think if they eliminated the sixth
11 floor, that'll help to mitigate the parking. And I
12 guess, you know, we can live with -- I think that I get
13 the feeling from board, and you in particular -- not to
14 pick on you -- but can live with --

15 MR. GELLER: That's fair.

16 MR. CHIUMENTI: There's nobody in my family I
17 would want operating an automobile lift, I have to tell
18 you. I'd be a little concerned myself, but I wouldn't
19 let my wife do it. And I don't think she'd be offended
20 to hear me say that. So I would say I would like to
21 see the sixth floor go.

22 MR. HUSSEY: I'd like to modify your request.
23 Peter, could we see the prospective front?

24 MR. GELLER: Well, he's able to make his

1 request. You can modify your own.

2 MR. HUSSEY: All right. I simply refer to
3 what Steve said, and I can read his testimony back, but
4 I don't think it's necessary. I think it would be
5 appropriate to do the ask for the reduction -- rather
6 than take it off of the sixth floor, as everybody's
7 talked about, I would eliminate one of the lower floors
8 so that you retain --

9 MR. GELLER: Chris, if what you're asking is
10 what I think you're asking, that would be a great
11 trick.

12 MR. CHIUMENTI: I agree with Chris. I think
13 you're right.

14 MR. HUSSEY: That wouldn't be difficult at
15 all, I don't think.

16 Peter, is that right?

17 MR. BARTASH: Correct.

18 MR. GELLER: Technically, it's feasible. You
19 mean visually --

20 MR. HUSSEY: Sure. So it would leave all of
21 this, what have you. Just move it down a floor.

22 MR. CHIUMENTI: I think visually it would fit
23 much better.

24 MR. HUSSEY: Okay. So that's the ask.

1 MR. GELLER: Okay. So I just want to be
2 clear. Your ask is a six-story building. It's just
3 that the break line is lower.

4 MR. HUSSEY: No. I want to make it a
5 five-story building.

6 MR. GELLER: But you want the break line also
7 lower.

8 MR. CHIUMENTI: Remove the fourth floor.

9 MR. HUSSEY: Remove the third or fourth floor.

10 MS. POVERMAN: Start the cement lower.

11 MR. CHIUMENTI: Cementitious board.

12 MS. POVERMAN: I agree with Steve. I do want
13 to commend you on the changes you made. I think it is
14 a much better looking building. You know, if I didn't
15 think that the balcony added visually to the look and
16 the indentation, I wouldn't be thrilled about them, but
17 I think they do soften things.

18 And I'm not sure I agree with taking off that
19 middle floor if -- one of the concerns I have -- and
20 this is going to sound counterintuitive -- is that it's
21 going to cause even more loss of space or room for the
22 developer to take off the third floor.

23 MR. HUSSEY: That's true.

24 MS. POVERMAN: So I'd like to know the numbers

1 of -- what those are.

2 I am amenable to a floor going off. Whether
3 it comes from the middle or the top, I would like to
4 see a floor go down, and I think that mitigates the
5 parking. Life is a compromise. It would not thrill
6 me, but I could live with it.

7 MR. GELLER: I don't have issue with the
8 six-story building that's articulated. I'm repeating
9 myself from two hearings ago or three hearings ago. I
10 don't have an issue with the six-story building.
11 There's a tall building behind it, a much taller
12 building behind it.

13 So my issue is not with the height. Again, it
14 is with the setbacks -- the articulation and the
15 setbacks. And I think that they've made a real effort
16 at stepping -- at starting that process of stepping the
17 building back.

18 Chris's idea is an interesting one. It
19 certainly visually lowers the building, so what Peter
20 has done at four stories, it will visually achieve at
21 three stories.

22 I had, in my mind, sort of played with this
23 notion of almost a -- if you take a look at the
24 building to the left, which, you know, there's a roof

1 line that occurs above -- a mansard that occurs above
2 the third floor, and I sort of played with that idea in
3 my mind as something that they could do here to also
4 set that line consistently and bring the building down.

5 You're shaking your head. You don't like it.

6 MR. HUSSEY: No, I don't. I'm afraid it will
7 look foolish. It'll be a mansard, but on an untypical
8 mansard configuration. It would be, as I've mentioned
9 at one point -- you'd be doing that in order to make
10 the transition of the building to the building next
11 door. In twenty years when that building is gone,
12 people are going to look at this building and say, what
13 the -- why on earth would you put a mansard on the top
14 floor?

15 MR. GELLER: So that's really my issue. And I
16 think that it performs the same function, which is that
17 it creates a less extensive building, it reduces the
18 parking demand, and all of those other things.

19 I do think that the response by the developer
20 with the stackers -- I don't have qualms with stackers
21 because in one particular case -- as I said, I have
22 clients who have them. In one particular case, the
23 person who has it for his Ferrari is an incredibly
24 demanding individual, and if it had been problematic, I

1 would have heard about it.

2 MS. MORELLI: Mr. Chairman, could I have
3 clarification on -- you talked about articulation. So
4 did you want to see, instead of an eliminated sixth
5 floor, a deeper setback?

6 MR. GELLER: Well, yeah, but I want to be
7 clear. You've got two of the voting members that are
8 telling them to remove a floor. Okay? So my take on
9 it is overruled by these other two.

10 And I apologize, Steve.

11 So I think those are the marching orders from
12 the ZBA members, and obviously that's something that
13 you're going to have to seriously think about.

14 MS. POVERMAN: And if we're told no now then
15 we need to start getting --

16 MR. GELLER: If we're told no now --

17 MR. GEOFF ENGLER: Well, I guess my question
18 is -- it's my job to advise my client. But let's say,
19 for this discussion's sake, we're not amenable to five
20 stories. We will submit a budget that demonstrates the
21 project is uneconomic. We will be shifting our focus
22 to providing that budget and that information and away
23 from attacking Maria's list that she had provided
24 earlier because there's no sense in our mind in

1 addressing those issues which are not related directly
2 to mass, which is what we're being told to focus on. I
3 just want that kind of understood by the board relative
4 to how we're going to approach the next hearing.

5 MS. POVERMAN: I think that's what we need to
6 know now, is if you do know and --

7 MR. ROTH: I do know. It's unquestionable, so
8 it's not even -- it's not whether I could just take off
9 a floor and it -- it's not going to happen. This
10 project is never going to work with a five-story
11 building. It just economically doesn't work, and I'm
12 not prepared to do that.

13 MR. GEOFF ENGLER: So the burden falls on us
14 to show -- you have the right as the board to say,
15 well, let us see your budgets, and we will provide
16 that.

17 MS. POVERMAN: We need to know exactly -- we
18 need to have -- give clear instruction on when we need
19 that information so that -- the financial pro forma,
20 because that's where we are now; right?

21 And, Alison, you know, we like to look to you,
22 and you, Maria, because this is where the timing is
23 critical.

24 MS. MORELLI: So we can do a schedule, but

1 just to be clear, you don't want to hear, obviously, a
2 follow-up from any technical peer reviewers next week.
3 That's -- you're beyond that?

4 MR. GELLER: Well, that's the question.

5 MR. CHIUMENTI: If there were a serious
6 problem, I mean, I guess it would be good to know that.
7 I mean, I think, given what we've heard so far, you
8 know, I think we're saying that this is the way we
9 think it needs to be. If there's a technical person
10 who has a problem we haven't heard, I think that we
11 want to hear that.

12 MS. POVERMAN: I think that there is --

13 MR. GELLER: So, Judi, where we are is that
14 the board has -- we've heard the applicant's
15 presentation of the changes, and there was initially
16 sentiment -- there was expression and concern still
17 with the parking by a majority of the board members,
18 but it's not universal -- the ratio of parking.

19 The majority of the voting board members
20 expressed that they still believe that in order to
21 address all of the larger issues that have been raised,
22 it is still necessary for the removal of a floor,
23 though in a manner that's slightly different than what
24 was suggested before, which is to say the red portion,

1 okay -- it's Mr. Hussey's suggestion that the red
2 portion be limited to three stories and that there be
3 two remaining floors of what?

4 MS. BARRETT: So two floors that are setback
5 with a different texture and color?

6 MR. HUSSEY: So if we eliminate a floor, it
7 would be one of the brick -- not the top floor.

8 MR. GELLER: And Ms. Poverman is saying she
9 disagrees with that --

10 (Multiple parties speaking.)

11 MR. GELLER: Well, let me get to the point.
12 The applicant has said that he cannot do that. That
13 renders the project economically unfeasible. We are
14 now discussing the mechanics of that.

15 One of the questions that has been asked --
16 because Mr. Engler has pointed out that they would stop
17 focusing on trying to address issues with this
18 building -- the other issues -- in the interim and they
19 will focus on the economics. And the question then has
20 been raised -- at our next hearing we were scheduled to
21 hear peer review: final peer review on design, final
22 peer review on traffic. And the question has been
23 raised whether that all now disappears and we solely
24 focus on the economics.

1 MS. BARRETT: If you're asking the applicant
2 to make a change and the applicant says, it's going to
3 make my project uneconomic, you kind of are going down
4 a path at this point of looking at economics.

5 Now, that doesn't mean you can't go back later
6 and look at other issues, but you're going down a path.
7 That's what that is. You're going down a path. So
8 that's basically the issue that you're putting in front
9 of the applicant, and you're asking the applicant to
10 demonstrate that what you want is going to make the
11 project not financeable. So everybody's going to focus
12 on that, and you're not going to go -- you're not going
13 to keep going into a lot of other issues until you
14 solve that question.

15 MS. POVERMAN: I think it's important,
16 especially because we are going to be dealing with the
17 economic feasibility of what we are suggesting, to ask
18 the developer to eliminate the top floor of the
19 building because less square footage is eliminated by
20 taking away that top floor. And by keeping in the
21 square footage on the third floor or fourth floor, it
22 will be more economically feasible of a project.

23 MS. BARRETT: I think we need to let them
24 figure that out.

1 MS. POVERMAN: No. I'm telling Chris that
2 because we are making an ask.

3 MS. BARRETT: You say take it down a floor.
4 Let's put it to the applicant to let them figure out
5 how they do it.

6 MS. POVERMAN: Well, no. Because I don't
7 think it's appropriate -- he's saying he's not going to
8 take down a floor and --

9 MS. BARRETT: But what you're saying is that's
10 what you want, so now they need to come back to you
11 with evidence, a pro forma analysis, that shows that
12 they're right. That's the path you're going down.

13 MR. HUSSEY: We are asking him to eliminate a
14 floor.

15 MS. BARRETT: Right.

16 MS. POVERMAN: Yes. But why don't we make it
17 a floor that has 12,000 feet versus -- or 10,000 square
18 feet verses 12,000 --

19 MS. BARRETT: I would like them --

20 MS. POVERMAN: Oh, it's only 400 square feet.
21 Okay, never mind.

22 MR. CHIUMENTI: I was only suggesting to Maria
23 that basically if, in fact, the site reviewer has
24 something important to say, it might still be useful

1 for us to hear it, I mean, because we may be, depending
2 on the --

3 MS. BARRETT: You may want to have them back
4 later or something. I mean, I'm not sure it gets you
5 anywhere to have them in when they're in the middle of
6 discussions on economics. That's just my experience.

7 MR. CHIUMENTI: Yeah. I suppose the traffic
8 person is not going to tell us --

9 MS. BARRETT: Is this primarily around the
10 parking ratio?

11 MR. CHIUMENTI: It's just -- it's the bulk of
12 the building, the concentration of population, and
13 parking is part of that. This is an enormous building
14 for that lot. It adds a lot of pressure on the thing.
15 It's visually, it's traffic, it's people, it's what
16 happens when you have a six-story building instead of a
17 five-story building or even a four-story building. So
18 it's a little more -- I think it's all part of the same
19 thing. Bulk -- the bulk of the building, which -- and
20 obviously the fact that the parking is limited to the
21 first floor.

22 MS. BARRETT: When you impose a condition like
23 that -- which may be a perfectly valid condition, but I
24 just want to carry this to a logical conclusion -- in

1 essence what you're saying is, legally, that taking
2 that building down a floor is a local concern that
3 outweighs the regional need for affordable housing.

4 MR. CHIUMENTI: Or outweighs the regional need
5 for two or three different apartments --

6 MS. BARRETT: I'm just saying that that's the
7 finding that you have to make. You have to make it
8 tonight. If you're going to make that decision and
9 you're going to issue a comp. permit that takes a floor
10 off, then you're making that determination.

11 MR. CHIUMENTI: Right.

12 MS. POVERMAN: That's my concern about saying
13 why we don't need the additional information about the
14 traffic study, etc., because that is how we demonstrate
15 a local concern.

16 MS. BARRETT: Right.

17 MS. POVERMAN: How do we get that?

18 MS. BARRETT: They may not provide it. They
19 may say that they're not going to do it. I don't know
20 where you stand on that. I just walked back into the
21 meeting.

22 So, I mean, the board is certainly entitled to
23 ask for information that it needs to make a decision.
24 The applicant should provide the information. If the

1 applicant is not going to provide it, you can spin the
2 wheels on this forever, but if they're not going to
3 provide it, they're not going to provide it. And what
4 you need to make sure is that there's a record that the
5 board has made a reasonable request for information
6 that it needs to evaluate the project and you don't
7 have it.

8 I'm not trying to be difficult. I'm being
9 very straight with you -- very straight with you.

10 MR. CHIUMENTI: And they have the preliminary
11 requirement to go -- after that to go to the Housing
12 Appeals Committee and begin by making the case that
13 they make to us, that it's not feasible.

14 MS. POVERMAN: No. I think we made a request
15 for that information on traffic. What does everyone
16 recall --

17 MS. MORELLI: Regarding the traffic
18 information, I supplied a list which I will -- I sent
19 it to the ZBA. I will forward that to the applicant.
20 Mr. Engler stated that he would be discussing that
21 outstanding list with the applicant. That was before
22 your discussion to eliminate one floor.

23 In response to that, Mr. Engler said there's
24 no point in providing that additional information.

1 They'll just work on a pro forma.

2 MS. POVERMAN: My recollection, which may well
3 by faulty, is that Mr. Roth indicated he did not want a
4 more comprehensive traffic analysis done.

5 MS. MORELLI: And Mr. Engler said he wanted
6 the opportunity to discuss that with the applicant.

7 MR. GEOFF ENGLER: Right. So I clearly
8 understand the board's position. I mean, many members
9 of the board have had the chance to deal with me on
10 several occasions. The neighbors might think
11 otherwise, but I try to envision myself to be a
12 reasonable person.

13 The board's position, as I understand it,
14 relative to the traffic data and the parking and the
15 way they're going is that a fifth story -- or removing
16 a floor solves those issues, solves the traffic issue
17 and the parking issue.

18 And from my perspective -- you can ask
19 whatever legal counsel you have -- that would be a huge
20 obstacle for the town to prove that, yes, a five-story
21 building with 30 units or 32 units is safe and good but
22 a six-story building with 40 units creates unsafe
23 conditions and traffic and issues with health and
24 safety that override the need. It's not going to work

1 for the town. It's just a losing effort for the town.

2 So I hope maybe there's some -- and the point
3 I was making is, you know, perhaps providing better
4 data relative to parking and traffic could get you more
5 comfortable. But if we go down the road as a
6 five-story building, there's no point in us doing all
7 that because it's not -- you know, it's not where this
8 discussion is going. So that's my only point.

9 MS. BARRETT: Right. To be fair to the
10 applicant, I think that's true. You know, you're
11 asking them to go one way. Let them go one way. If
12 you want them to go a different way, then push that
13 way. But they're not going to do both.

14 So if what you're concerned about -- I mean, I
15 have to be honest with you. I respect the board's
16 position on this, so please don't take this the wrong
17 way, but I do think Mr. Engler has a point, that it
18 would be a real hard sell to tell the Housing Appeals
19 Committee that a 35-unit project, or whatever the
20 number is, is somehow okay and 40 is not. That would
21 be a very difficult case to make.

22 MR. CHIUMENTI: I think we could make the case
23 that this is an unreasonable burden on this
24 neighborhood. They only get to the Housing Appeals

1 Committee if, in fact, 35 is uneconomic and 40 is.

2 MS. BARRETT: Right.

3 MR. CHIUMENTI: Only then do they get to
4 discuss whether they can have the 40.

5 MS. BARRETT: Right, true. No, I do
6 understand that. I'm just saying that if you're going
7 to go down that path, I don't think they're going to
8 come back with a whole lot of other studies. They're
9 going to focus on the pro forma because that's the path
10 you've taken them down if that's your direction.

11 MR. GEOFF ENGLER: Can I make one other point?
12 And I know that legal counsel and the board will
13 understand this, but it's important to understand that
14 before the Housing Appeals Committee, it's a de novo
15 hearing, so we go back to our original plan. So the
16 setbacks on the fifth and sixth floor and the other
17 setbacks to the front of the building, we start fresh
18 and all the lost square footage everything is back in
19 play.

20 MR. CHIUMENTI: I believe it's the project
21 that's pending before the board, which is this --

22 MR. GEOFF ENGLER: No, it's not.

23 MS. BARRETT: I have to tell you, although I
24 agree that that may be where you start, I think that

1 when an applicant has come back with revised plans and
2 suggests an alternative, my experience is that the
3 Housing Appeals Committee would kind of look at you and
4 say, well, you said you would build this.

5 MR. CHIUMENTI: That's why Jesse was asking
6 you specifically if this is the project.

7 MS. BARRETT: So this would be the plan of
8 record referenced in the decision.

9 MR. GEOFF ENGLER: It would be, yes, but it's
10 not the plan that was filed with the board originally.

11 MS. BARRETT: I understand that. But
12 applicants routinely submit revised plans and --

13 MR. GEOFF ENGLER: Agreed. I think we're
14 saying the same thing.

15 MS. POVERMAN: Let's say they show it's
16 uneconomic. I don't understand, really, if it's an
17 approval with conditions, we say, well, we disagree.
18 We think it's economical and --

19 MS. BARRETT: That's the risk you take.
20 That's the risk you take. That's the risk you take.

21 MS. MORELLI: So the conditions that the ZBA
22 puts on the project might not necessarily survive at
23 HAC.

24 MS. BARRETT: Right.

1 MR. CHIUMENTI: But we're basically, in
2 effect, approving this as a five-story building. If,
3 in fact, it is uneconomic, then they get this.

4 MS. MORELLI: Not necessarily with the
5 conditions that you impose.

6 MS. BARRETT: The Housing Appeals Committee
7 routinely imposes conditions of its own based on
8 hearings, so I wouldn't get too anxious here about what
9 you're going to end up with.

10 I just think if an applicant has come forth
11 and said, I can build this, and the board fundamentally
12 doesn't have a problem with this concept but wants it
13 smaller and that's what the argument is, I don't really
14 think you go back to square one. I do agree that
15 that's where you start. I don't think that's where you
16 end up.

17 MR. GELLER: Let me -- given the additional
18 information, let's turn again -- we had a difference of
19 opinion, as some ZBAs sometimes have.

20 MS. BARRETT: Right, sure.

21 MR. GELLER: And my opinion was that, frankly,
22 I didn't have an issue with five and that it's really
23 about the articulation, the step-back, the same
24 comments I made before.

1 Let me turn to the other ZBA members, the
2 voting ones, and ask them, you know, why don't you
3 continue your discussion between yourselves, amongst
4 us. Is your ask the same?

5 MS. POVERMAN: Well, here's why I felt like
6 I'm pushed into this position of doing this now, and
7 it's similar to what I felt last time, which is that my
8 feet are being held -- I felt like they were being held
9 to the fire so that if I didn't say, okay, we're not
10 going to take away the sixth floor, the developer, you
11 know, wasn't going to suggest anything else so that --
12 and I didn't hear a rousing, we're going to get you the
13 information you want. And not hearing that, I'm like,
14 okay, you know, then we have to make a decision now.
15 There's no commitment on the developer's side, so we
16 have to act to make sure that we take --

17 MR. GELLER: Can I say that --

18 MS. POVERMAN: Well, no. There's something
19 else I want to say.

20 So we have to protect our own interests in
21 being able to do a pro forma review if you think that's
22 necessary.

23 The other thing is: I was looking at the new
24 Homewood Suites on Boylston, and it's five stories, and

1 it just looks so big. And I was trying to imagine it
2 in the context of Centre Street, and it's similar. I
3 think it has, you know, the red and then the step-back
4 and it's just so big. And that's part of what just --

5 MR. ROTH: This building is 60 feet wide. The
6 building on Boylston Street is probably 360 feet wide.
7 When you walk past this building, you only have 40 feet
8 exposure. This is about a single-family-house size.

9 MS. POVERMAN: Yeah, but I'm going to be
10 across the street looking at it.

11 MS. BARRETT: I think I'm probably going to be
12 the heavy here, and I hate doing this, I really do,
13 because I sympathize with the position the board is in.

14 You have 180 days. You have 180 days. The
15 clock is ticking. And I don't get the sense that you
16 have an applicant who's being very cooperative, so I
17 don't think you can bank on getting an extension here.

18 You need to make a decision, what you can live
19 with, and tell the applicant. And if the applicant
20 says, I can't do that, then you say, bring us a
21 pro forma. We will have it reviewed. If you think
22 that there is still an opportunity to discuss this
23 project and perhaps get something better for the
24 community, then don't push this to a pro forma. That's

1 your choice. I mean, you have 180 days, and what you
2 don't want to do is find yourself on day 179 without a
3 decision that you can vote on and file with the town
4 clerk. That's what you don't want to have.

5 So part of what happens in this process is
6 that you start -- not tonight, certainly, but as you're
7 approaching the end of the 180-day cycle, you start to
8 work on draft conditions that you can discuss in a
9 meeting. Because what that does is that puts the
10 applicant in a position to say, well, I can live with
11 that or I can't. So, you know, if you get to the end
12 and you haven't done all the deliberation yet, but at
13 least you've framed what the conditions are and you've
14 decided what the waivers will be, and then writing the
15 rest of the decision is, you know, up to you. But you
16 want to be able to get to that point so you can act
17 within that 180 days. And you have to -- really, I
18 just -- you're going to have to make a decision, and
19 you may have to make that decision with imperfect
20 information.

21 MS. POVERMAN: Well, I would like to work -- I
22 would like to work, but I don't feel like I have that
23 cooperation. I mean, I would like to be able, as we
24 sit up there, to work and see if we can get something

1 that's more agreeable. Based on what we've gotten so
2 far and the unwillingness to get extensions, I just
3 don't feel comfortable that I'm going to get that.

4 If we get an extension tonight, then yeah,
5 let's go forward and see what we can do. I think that
6 this could be a beautiful building. It could be an
7 object building. You can really make something nice
8 and make a statement. But I feel like I'm being
9 pushed --

10 MR. GEOFF ENGLER: Well, let me ask you a
11 question, because we're talking about two different
12 things. Why don't we just play a theoretical. What if
13 I said we would submit to you a detailed parking demand
14 analysis that supported half a space and what if I said
15 we submitted a detailed traffic study that says there
16 are no issues of safety, then what would the board's
17 position be?

18 MS. BARRETT: Well, you'd have to have that
19 peer reviewed.

20 MR. GEOFF ENGLER: I understand.

21 MS. BARRETT: But the board asked for that
22 before.

23 MR. GEOFF ENGLER: Judi, I understand that,
24 and that's a fair point. But let's just say and then

1 you came back and said, well, okay, that's great. We
2 think the building is too big, you know, five stories.
3 You're not going to have time for that, so I guess
4 that's my -- my concern is, you know, is it the traffic
5 or the parking or is the height? So that's, you know,
6 I guess -- and you don't have to answer that question,
7 but that's the question I'm asking myself in my head.

8 MS. POVERMAN: I think that's very valid,
9 Geoff. And I've read enough HAC cases to know that the
10 law is against the town and --

11 MS. BARRETT: Well, the law is for affordable
12 housing.

13 MS. POVERMAN: Thank you. The law reads local
14 concerns very narrowly in some instances -- shall I put
15 it that way -- so that it might be an uphill battle to
16 show that what we are articulating as local concerns
17 would succeed -- or your view might prevail, let me
18 just put it that way. I don't want to be onerous with
19 the developer.

20 But we -- as we are now, you know, we can't
21 say, yeah, let's go forward and try and negotiate
22 unless we have an extension. If we don't get the
23 extension, I feel like we have no choice. And I don't
24 want to do that. I feel like --

1 MR. GEOFF ENGLER: Maria, Alison, I should
2 know this. When's the 180 days --

3 MS. STEINFELD: November 21st.

4 MR. GEOFF ENGLER: I was going to say -- I
5 have to confer with my client, but I've been in plenty
6 of public hearings with a week left and we're talking
7 of -- listen, time is scarce, I understand that, but I
8 wouldn't -- I can't say definitively that we're going
9 to give you an extension. I'd love to say that. I
10 would not say that it's 100 percent off the table
11 either.

12 MS. BARRETT: Well, the problem is that they
13 have to plan their meetings.

14 MR. GEOFF ENGLER: I understand that.

15 MS. MORELLI: So we were scheduled to have
16 Cliff tonight, and then obviously we didn't have a
17 staff meeting, so we didn't want to waste his time. We
18 were going to have a staff meeting on Thursday.

19 If you recall, Mr. Boehmer's -- as part of
20 your charge, he had a list of things in his final
21 report submitted to you on 9/12 that had to do with the
22 deeper setback.

23 I understand from discussions with Mr. Roth
24 they looked at a deeper step-back on the fifth and

1 sixth floors and didn't want to lose the square
2 footage. I don't know if they're willing to revisit
3 that, because that's where Mr. Boehmer's final report
4 was, with deeper --

5 MR. ROTH: I disagree with that totally. I
6 disagree with that totally.

7 MS. MORELLI: With what?

8 MR. ROTH: That was not the discussion we had
9 with step-backs. There was no determined amount of --
10 amount of step-back that was made. No stated amount
11 was given.

12 I'll be very clear. The last meeting we had
13 with this board, we heard your urban designer speak
14 about this building saying that this building fits into
15 the neighborhood well. And it had six -- six stories
16 was acceptable. He didn't have a problem with six
17 stories. This is an urban designer expert that this
18 board hired.

19 Now, I understand you have all your expertise
20 in your own field, but this board took it upon itself
21 to hire an urban designer and have a report made. It's
22 clear in the record that he stood by the six stories,
23 and it's clear that the building will fit in.

24 Now, if this board wants to overrule the urban

1 designer and go to a five-story building, then what
2 we're talking about here in this design, more design
3 work, more traffic studies, shadow studies, is
4 definitely off the table.

5 In terms of extensions, if we need extensions,
6 I will grant the extensions.

7 MS. POVERMAN: But we need an extension now.

8 MR. ROTH: You know, what I'm hearing is that
9 you want five stories. That's the last thing I heard.
10 And at that point, I couldn't see giving an extension.

11 MR. GELLER: Do you want to continue to work
12 on articulation of the building as a six-story
13 building --

14 MS. POVERMAN: Not without an extension.

15 MR. GELLER: Are you willing to continue the
16 discussion of trying to articulate the building as a
17 six-story building if they're willing to give a short
18 extension that -- to allow for that discussion? And
19 they haven't agreed to do that.

20 MS. POVERMAN: If we get the additional
21 outstanding information, yes.

22 MR. GELLER: I'm trying to keep this as simple
23 as possible.

24 MS. POVERMAN: Okay, yes.

1 MR. GELLER: He is willing to give a short-
2 term extension.

3 I'm not speaking for you. Yes?

4 So, Chris?

5 MR. HUSSEY: I'm sorry. Restate that
6 question. I'm a little bit lost here.

7 MR. GELLER: The question I am asking is --
8 it has to be a real extension -- would you continue the
9 discussion of articulation of the building which would
10 include leaving the building at six stories and other
11 articulation review?

12 MR. HUSSEY: Yeah.

13 MR. GELLER: Okay. So I'm going to put it
14 back to you.

15 MR. GEOFF ENGLER: I didn't hear the answer.

16 MR. GELLER: He said yes.

17 So what the ZBA -- what Kate and Chris are
18 saying is that in order to have the discussion --
19 they're not -- just like you're not going to tell us
20 definitively certain things, they're not telling you
21 that absolutely they agree to have a six-story
22 building. What they're saying is to allow the parties
23 to continue to have this discussion, to allow you to
24 continue to show us articulation that may, in fact,

1 address their concerns, leaving a six story building,
2 without telling you that that's going to be their final
3 decision.

4 The tradeoff is: The ZBA needs more time.
5 We're not asking for 120 days. I think a reasonable
6 ask is 30 days. But in fairness, the ZBA needs to know
7 that now because we can't simply wait. We just don't
8 have the luxury, given what needs to be done. So it's
9 real simple. I think it's real simple.

10 The ZBA is asking, in order to be able to
11 continue the discussion about articulation of the
12 building -- which we've been having. You've done some
13 things and the board has said they like some things and
14 other things they still want done. And in order to
15 give you an opportunity to look at the information
16 request and respond accordingly, will you grant an
17 extension on the 180 days for an additional 30 days?
18 It seems to me it's reasonable.

19 MR. ROTH: Well, first of all -- I don't think
20 it's so simple, first of all. It's not a simple,
21 clear-cut -- what I want -- you know, I don't want to
22 have you in a position that you need time and you have
23 to ask me for that time, because the truth is is that I
24 want to build this building. I want to appear

1 cooperative. I want to work with the board.

2 But I can't come to a board meeting two weeks
3 ago where this board said that six stories is okay, and
4 then come to this board meeting tonight and says it's
5 not okay, because there's been a lot of work that has
6 been done over the last few weeks, two board meetings,
7 and now we're getting a very different response. So
8 over two weeks -- I see that we've lost two weeks of
9 time here and we didn't get anything.

10 And if this board laid out their conditions
11 tonight or whenever, next week, and said, okay, we'll
12 accept six stories, we'll accept X amount of parking
13 spaces, we'll do this and this, commitments, then I'd
14 be happy to provide whatever studies you wanted, give
15 you more time to digest it.

16 But I would not just say, okay, you have a
17 month, so we can talk about this building for another
18 two weeks and then come back here and say, oh, the
19 articulations are not so good, we really don't like the
20 parking ratio, and we're going to make it a five-story
21 building. It's time for me and it's money for me. I
22 need a commitment from this board. This board has not
23 given me any commitments in two meetings.

24 You made a commitment last -- it sounded like

1 a commitment last week that it was six stories. Now
2 it's five stories. I can't operate that way.

3 MR. GEOFF ENGLER: Can I ask a question? And
4 it might be for Maria and Alison or the chairman.
5 Relative to -- let's just say, for discussion's sake,
6 an extension was granted. What happens -- what's the
7 purpose of the hearing next week? Is this articulation
8 discussion something that's occurring with the planning
9 staff and Cliff during the day? Just walk me through a
10 little bit, you know, how you -- how the town sees that
11 extension being used.

12 MR. GELLER: I'll tell you how I would see it
13 being used. I would see it being used via the same
14 mechanisms that have gone on in the past, which is to
15 say that -- I don't know if you personally, but I
16 assume it's the design team that are really speaking
17 with one another and trying to address specific
18 articulation concerns expressed by the ZBA members.
19 And I see this giving an opportunity for that
20 conversation to continue.

21 And look, we may get to the end and your
22 conclusion may be, well, we just can't do that; and the
23 ZBA's conclusion may be, well, it's not enough. But
24 it's giving both sides time to work together to not go

1 down the road of economic feasibility.

2 MR. ROTH: This issue is not just
3 articulation. We're also talking about parking. I
4 mean, we can go and talk about articulation on this
5 building all day long. We can do it for next week, the
6 week after. We can continue doing this. And we can
7 maybe even satisfy you. But we may not be able to
8 satisfy you on the parking.

9 MS. BARRETT: Well, I think that one of the
10 things the board asked for was some kind of utilization
11 analysis to demonstrate that the amount of parking
12 you're proposing is, in fact, adequate for the project,
13 and I haven't seen that. I mean, that's reasonable
14 information to request.

15 MR. ROTH: I guess my take on this -- and I've
16 talked to two professional engineers -- is that parking
17 is not a safety issue. Parking is a market issue. And
18 this board can make it all day long, an argument that
19 it's a safety issue, but I'm going to tell you I can
20 get professional engineers to say that it's not.

21 MR. GEOFF ENGLER: Can I have two minutes with
22 my client?

23 MR. GELLER: Absolutely.

24 (Recess taken from 9:24 p.m. to 9:30 p.m.)

1 MR. GELLER: We're reopening the hearing.

2 MR. GEOFF ENGLER: As a show of good faith,
3 we're prepared to grant a 30-day extension with the
4 clear expectation that a six-story building is what
5 we're working towards, and we will endeavor to work --

6 UNIDENTIFIED AUDIENCE MEMBERS: No, no.

7 MR. GELLER: I don't think he's saying that
8 the board is agreeing on a six-story building. He's
9 expressing his intent of the discussion.

10 MR. GEOFF ENGLER: Correct. I'm not saying a
11 30-day extension is dependent on you saying now, yes, a
12 six-story building. Thank you for restating what I
13 was -- the point I so inarticulately made. But yes, we
14 are granting a 30-day extension.

15 MR. GELLER: Thank you. And -- I thank you,
16 and hopefully it will be a continually constructive
17 conversation.

18 So, Alison --

19 MS. STEINFELD: Okay. When you're ready,
20 we'll discuss the next phase.

21 MR. GELLER: So in terms of getting the most
22 that we can out of the time we have -- and look, I hope
23 we finish up sooner rather than later. It's not my
24 goal to extend this out if we don't have to.

1 I think I -- we need to deal with two issues
2 which are the outstanding schedule of items that we
3 have; right? So we have design -- we're continuing
4 Cliff's report, and we have Jim's report as well, and
5 then I will attach to that the outstanding information
6 requests. And I understand some of them -- what I
7 would ask is that you relook at those requests and that
8 you communicate with Maria on those that you believe
9 you can provide, will provide, won't provide. And that
10 will help that process, I think. Okay? That's
11 information.

12 Two, in terms of where they go -- where Peter
13 goes, the board needs to be very clear with the
14 applicant in the request about articulation issues,
15 okay, so that Peter can try and address concerns.
16 Okay?

17 Mr. HUSSEY: So the articulation issues --
18 could they also include looking at a further step-back,
19 either front or back?

20 MR. GELLER: Yes.

21 MS. BARRETT: Good.

22 MR. HUSSEY: Okay. Thank you.

23 MR. GELLER: And it could -- I would point
24 out, Mr. Hussey, that it also could include your

1 creative suggestion of, you know, altering the color
2 coding.

3 MR. CHIUMENTI: I don't think he was
4 suggesting three --

5 MR. GELLER: I understand, but the same sort
6 of idea, I think, exists.

7 MR. HUSSEY: Color?

8 MR. GELLER: Red versus white.

9 MR. CHIUMENTI: Well, Chris didn't mean three
10 red brick and three --

11 MR. GELLER: Well, that's the question.

12 MR. HUSSEY: Well, they can look into it if
13 they want, the appearance and the massing.

14 MR. GELLER: Right, okay.

15 So, Kate?

16 MS. POVERMAN: I agree, actually. You've been
17 talking about -- you've been the articulation king, and
18 I would like to know what you mean by "articulation"
19 because I do understand it as further setbacks, but I
20 would like to hear what you mean by that.

21 MR. GELLER: That's what I mean by that. And
22 I mean, in my mind --

23 (Multiple parties speaking.)

24 MR. GELLER: Yeah, I'm not an architect.

1 MR. GEOFF ENGLER: I think the first order of
2 business should be to get this revised plan in the
3 hands of your urban designer and set up a meeting with
4 Maria and Cliff and our design team to go through it
5 and see what his suggestions are.

6 MS. MORELLI: I can give you just a quick
7 summary. I don't have his report in front of me, but
8 Section 6 of his summary did have some suggestions
9 about what the applicant should be working on.

10 At the last hearing you agreed that Section 6
11 was total -- is something that would be a baseline for
12 them to start thinking about. For instance, that there
13 should be recessed balconies, not protruding balconies;
14 recessing the fifth and sixth floor across the entire
15 front facade. Those are the two biggest things.

16 I think Mr. Boehmer had an issue with the
17 balcony common area concentrated on the upper left and
18 not necessarily all of Centre Street. He thought that
19 there might be a benefit to the -- improvement to
20 shadow impacts on Centre Street if there were further
21 articulation of the front facade.

22 MR. GELLER: I'm agreeing with Mr. Boehmer so
23 far.

24 MR. GEOFF ENGLER: Well, rather than -- Maria,

1 rather than you reading what he wrote before this
2 latest version, why don't we just have a meeting with
3 him and see what he has to say?

4 MS. BARRETT: That's what you need to do.

5 MR. GELLER: I'm fine with that.

6 MS. BARRETT: I agree.

7 MR. GELLER: Other ZBA members?

8 MR. HUSSEY: That's the Thursday meeting?

9 MS. POVERMAN: Well, I would like to see if
10 something could be done to -- in the back, to lessen
11 the impact of the view for 19 Winchester, just to make
12 it a little -- (interruption in the proceedings.)

13 MS. POVERMAN: Right now I think it's just a
14 block. I just think articulation includes -- can
15 include a four-way rein in. I'm just saying that
16 that's something I think would be great. Do with it
17 what you will.

18 MR. GELLER: Okay. So that's what we're going
19 to do.

20 And obviously, Alison, in terms of plotting
21 out this hearing, again, you understand we want this
22 over as quickly as possible, but on the other hand we
23 now need to plot this out accordingly.

24 MS. BARRETT: A question for the applicant:

1 Are you going to provide a letter to the board that
2 they can file with the town clerk?

3 MR. GEOFF ENGLER: Yes.

4 MS. STEINFELD: What we'd like to propose,
5 since October is so difficult, we would like to hold
6 the hearing on October 5th. Give us, the planning
7 department staff, some time to think about things. It
8 may be a very short meeting. We may ask that only two
9 of you show up and just continue it, but I don't want
10 to lose it. So if tonight you can continue to the 5th,
11 October 5th, and my sense is the only other night
12 available in October is October 27th.

13 MS. POVERMAN: Do we have that in our
14 schedules already?

15 MS. STEINFELD: No. But I think you're all
16 available October 27th.

17 MR. GELLER: Here would be my ask, because I
18 have twisted their arm for the 30 days -- for the
19 30-day extension: If there are things that we can
20 accomplish on October 5th, I want to accomplish them.
21 I want -- I really want to try and keep this as close
22 to our original schedule as possible. I understand if
23 we can't accomplish constructive things on October 5th,
24 then there's no point in having that hearing. I

1 understand that. But I really do want to do what I
2 told this gentleman we would do, which is we would try
3 and push it along.

4 MS. STEINFELD: So, yes, we need some time to
5 think about it.

6 MR. GELLER: Understood.

7 MS. STEINFELD: So October 5th we will let you
8 know how many of you have to show up; if it's going to
9 be a full hearing or if it's just you open it, continue
10 it, and leave. Only two of you have to be here. But
11 as of now, assume that all of you will be here and
12 there's a public hearing.

13 MR. GELLER: Okay. So we are continuing this
14 hearing until October 5th. It is unclear what the
15 subject or subjects will be on October 5th. If we can,
16 we will have a substantive subject at that time. There
17 is a chance that may simply continue until --

18 MS. STEINFELD: -- another date.

19 MR. GELLER: -- another date.

20 MS. STEINFELD: And it will probably be
21 October 27th.

22 MS. BARRETT: You don't have to decide that
23 tonight.

24 MR. GELLER: I want to thank everyone for your

1 patience, and I want to thank the applicant for his
2 consideration.

3 (Proceedings adjourned at 9:39 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
7 of my shorthand notes so taken.

8 I further certify that I am not a relative
9 or employee of any of the parties, nor am I
10 financially interested in the action.

11 I declare under penalty of perjury that the
12 foregoing is true and correct.

13 Dated this 7th day of October, 2016.

14 

15 Kristen Krakofsky, Notary Public

16 My commission expires November 3, 2017.

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