



July 29, 2016

**BY ELECTRONIC MAIL: pselkoe@brooklinema.gov
AND BY FIRST CLASS MAIL**

Brookline Zoning Board of Appeals
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

Re: Application for Comprehensive Permit – 40 Centre Street, Brookline, MA

Dear Members of the Board:

As you may recall we represents neighbors and abutters to the proposed 45-unit apartment building on 10,889 square feet of land located at 40 Centre Street, Brookline (the “Project” and the “Project Site”), which is the subject of a pending application for a comprehensive permit under General Laws Chapter 40B, Sections 20-23 proposed by Roth Family, LLC (the “Developer”).

At the Board’s last session of the public hearing on June 20, 2016, representatives of the neighborhood and town officials raised a number of substantive issues with the Project, from the adequacy of the Project’s trash management plan to excavation and stormwater infiltration impacts on abutting properties. It was our understanding that, in response to this discussion and testimony, the Developer and town staff had agreed to take on specific follow-up tasks, to assist the Board in collecting the information it needs to make informed decisions on waiver requests and potential conditions for its decision. The purpose of this letter is to summarize the most important “action items” we thought would be addressed between June 20th and the upcoming hearing on August 1st.

First, and most importantly, we expected the Developer to present a revised plan that responded to the numerous criticisms raised at the last two hearings. Mr. Roth specifically stated on June 20th that he was willing to “compromise,” that he was willing to change the design of the building, that he wanted an “elegant” building, and that he was “committed” to working with the Town on this Project. We are surprised that, as of today’s date, no revisions to the conceptual plan for the 45-unit building have been filed with the Board.

Second, it was our understanding, based on comments made by the Town’s planning staff at the hearing, that the Planning Department and the Building Commissioner would review the

completeness of the Developer's list of requested waivers, the consideration of which is probably the most important task the Zoning Board has in this process. We also understood that the Town Engineer would be reviewing our concerns raised on June 20th regarding excavation and stormwater infiltration impacts on the abutting 19 Winchester Street property, specifically, on its foundation.

Relatedly, a major open design issue has been the Developer's plan to infiltrate stormwater underneath the Project's foundation. We have recently learned that the Planning Department and Town Engineer plans to hold closed-door "working group" meetings with the Developer to discuss this and other design issues. While we do not necessarily object to Town engineering staff communicating directly with the Developer's engineering team in order to better understand the technical details of the project, it would be inappropriate for any representative of the Town to "work things out" with the Developer or make any decisions during these working group meetings, even those that may seem totally innocuous, on behalf of the Board. We have seen this "working group" model in action in other communities, often at the suggestion of the Chapter 40B developer, and the tendency for peer reviewing engineers and consultants to slip into "negotiation mode" with an applicant, perhaps with good intentions, but unintentionally making important policy decisions on the design of a project that should be made by the Board. As the Board knows, the role of any staff member or consultant working on behalf of the Board is to collect facts, report them to the Board, and offer opinions and advice.

If the Board authorizes "working group" meetings, we believe that these meetings should either be open to the public, or be open at least to one or two designated representatives of the neighborhood, such as the neighborhood's own consulting engineer (if it retains one) and its attorney. We respectfully request that the Board make this a condition of any working group meeting.

We are also concerned with what may be a stalemate on some of the technical design issues relating to the Project. We have heard that Town staff and boards will not review the solid waste management arrangements (or lack thereof) and the drainage arrangements until after a revised plan is submitted by the Developer. Perhaps review of the waiver list is being deferred until the submission of a revised plan. However, we are concerned that this Developer may not actually submit more detailed plans, or may not submit them for some time, leaving the Board in an impossible position of having to evaluate the adequacy of important project elements without the benefit of technical review. Unlike laws that govern most other land development applications that may come through Brookline boards and officials, Chapter 40B imposes strict time deadlines with draconian consequences. Thus, we don't have the luxury of waiting for the Developer to submit more refined plans; rather, the Board and other Town officials and departments must review what the Developer has filed, and if what has been filed is deficient, request better or more information, and if that information is not forthcoming, report the deficiencies and concerns to the Board. We recognize that this is not particularly efficient, but this is the system that has been imposed upon us by the state, and which we must work under.

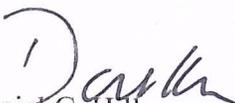
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Again, we sincerely appreciate the Board's diligence and thoughtfulness in reviewing this important application.

Very truly yours,


Daniel C. Hill

Enc.

cc: Applicant
Clients
Brookline Board of Selectmen
Brookline Planning Board