

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION
21 CROWN
BOARD OF APPEALS CASE NO. 2015-0057**

Date: April 12, 2016

Re: Application of 21 Crown LLC for a Comprehensive Permit

Location: Assessor's Atlas Map Sheet 6, Block 027, Lots 38 and 39; known and numbered as 0 and 21 Crowninshield Road, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On April 9, 2015, Massachusetts Housing Finance Agency ("MassHousing") issued a Project Eligibility Letter ("PEL") to 21 Crown LLC (the "Applicant").
2. On November 13, 2015, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the "Act"), to construct twenty (20) units of rental housing and eighteen (18) parking spaces (the "Original Project") on approximately 15,556 square feet located on Crowninshield Road in Brookline, Massachusetts (the "Site").
3. On February 19, 2016, the Applicant submitted a revised Comprehensive Permit Application (the "Application") to the Town of Brookline (the "Town") to construct eight (8) units of rental housing and sixteen (16) parking spaces in a townhouse development configured between two buildings (the "Project") on the Site.
4. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application

Comprehensive Permit Plans for 21 Crown dated October 22 and October 27, 2015, revised to March 8, 2016, prepared as follows:

Sheet Numbers and Titles

Site Plans dated October 22, 2015, revised to March 8, 2016, prepared by Everett M. Brooks Company.

Site Plan of Land: Existing Conditions and Proposed Layout

Site Plan of Land: Proposed Utilities and Grading

Site Plan of Land: Details of Drainage Components

["Site Plans"]

Architectural Plans dated October 27, 2015, revised to March 8, 2016, prepared by The MZO Group.

Sheet A-1 – Neighborhood Plan dated March 2, 2016

Sheet A-2 – Major Trees dated March 2, 2016

Sheet A-2a – Fencing Plan dated March 2, 2016, revised to March 3, 2016

Sheet A-3 – Setback Dimensions dated March 8, 2016

Sheet A-4 – Ground Floor and Outdoor Lighting Plan dated March 3, 2016

Sheet A-5 – First Floor Plans dated March 2, 2016

Sheet A-6 – Second Floor Plans dated March 2, 2016
Sheet A-7 – Loft Plans dated March 2, 2016
Sheet A-8 – Typical Unit Plans dated March 2, 2016
Sheet A-9 – Front Elevation dated February 29, 2016
Sheet A-10 – Right Side of Driveway Elevation dated February 29, 2016
Sheet A-10a – Left Side of Driveway Elevation dated February 29, 2016, revised to March 3, 2016
Sheet A-11 – Commonwealth Ave. Elevation dated February 29, 2016
Sheet A-11a – Elevation Facing 25 Crowninshield Road dated February 29, 2016
Sheet A-12 – Back Elevation dated February 29, 2016
Sheet A-13 – Cross Section “A” dated February 29, 2016

[“Architectural Plans”]

Landscape Plans dated October 27, 2015, revised to February 4, 2016, prepared by The MZO Group and Philip Pryor.

Sheet L-1 – Landscape Plan dated February 4, 2016
Landscape and Planting Details dated February 4, 2016

[“Landscape Plans”]

Traffic Impact Assessment dated August 10, 2015, prepared by MDM Transportation Consultants, Inc.

5. The Applicant submitted a Request for Waivers from local bylaws and regulations dated March 8, 2016.
6. The Brookline Board of Appeals (the “Board”), with the consent of the applicant, opened a duly advertised public hearing on February 23, 2016. On March 8, 2016 the Board continued the hearing and heard and/or deliberated on testimony.
7. On March 8, 2016 the Board closed the public hearing.
8. The Board deliberated on the Application at a public meeting held on March 8, 2016 and voted to grant a Comprehensive Permit subject to the conditions listed below.
9. As required by the Act, the Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
10. During the course of the public hearing, the Town staff, boards, commissions and neighbors submitted oral and written testimony with respect to the Project, generally supporting the eight (8) unit townhouse plan with recommended conditions. The Board relied on Town staff’s technical review of the preliminary stormwater management plans and traffic safety.

FINDINGS

1. According to the Commonwealth’s Department of Housing and Community Development Subsidized Housing Inventory (“SHI”), as defined in 760 CMR 56.02, as of November 13, 2015, nine-and-two-tenths percent (9.2 %) of the Town’s total housing stock constituted SHI eligible housing, as defined in 760 CMR 56.02.

2. The Town has an ongoing, active program of promoting low- and moderate-income housing, including inclusionary zoning; financial and technical assistance to non- and for-profit property owners and developers; technical and financial assistance to those seeking to purchase, rent and rehabilitate affordable homes; and other Chapter 40B affordable housing developments.
3. MassHousing has determined that the Original Project was eligible under the New England Fund housing subsidy program, and at least twenty-five percent (25%) of the units will be available to households earning at or below eighty percent (80%) of the Area Median Income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. The Site is zoned S-7 single-family residential.
5. The Site currently features two structures, a single-family dwelling and a detached garage and driveway.
6. On May 20, 2015, the Brookline Planning Board (the "Planning Board") appointed a design review team to work with the Applicant to revise the design.
7. In May 2015, Town Meeting approved Warrant Article 11, recommending the establishment of the Crowninshield Local Historic District ("LHD").
8. On September 21, 2015, the Attorney General approved the establishment of the Crowninshield LHD. The Site is within the Crowninshield LHD. All parcels within the Crowninshield LHD, including the Site, are listed in the State Register of Historic Places.
9. Prior to the establishment of the Crowninshield LHD, the Brookline Preservation Commission deemed both the existing dwelling and the detached garage on the Site architecturally significant.
10. The Brookline Preservation Commission does not allow the demolition of structures in any of the Town's local historic districts.
11. Residents expressed in written and oral comments at the public design review team meetings that the Original Project was too massive and its site configuration, architectural style, and building typology of the mid-rise apartment structure were incongruous with the single-family Crowninshield LHD.
12. In November 2015, the Applicant met with residents to propose conceptual plans for an eight (8) unit townhouse development configured between two buildings on the Site.
13. The Brookline Planning Department received a letter dated November 30, 2015 from Jason Talerman, attorney for concerned residents in the Crowninshield LHD, expressing support for the eight (8) unit townhouse-style concept.
14. On December 1, 2015, the Applicant presented plans for the Project that featured an eight (8) unit townhouse-style development at a public meeting before the Planning Board and design review team. The Applicant confirmed orally that MassHousing does not require a new PEL application for reducing the project from twenty (20) units to eight (8) units, as long as the condition of working with Town to resolve design concerns has been met.
15. On February 4, 2016, the Applicant presented refined architectural and landscaping plans and an electronic 3D model at a public meeting before the Planning Board and the design review team. The

Planning Board voted to support the Project and to recommend additional design changes and conditions related to maintaining design standards, documented in a letter to the Zoning Board of Appeals dated February 5, 2016.

16. On March 3, 2016 in response to the Planning Board's February 5, 2016 recommendations, the Applicant presented updates to the Project. The Planning Board generally agreed that the revised Architectural Plans were satisfactory.
17. The Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.

DECISION

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, grants a Comprehensive Permit to the Applicant for the construction of eight (8) units of rental housing, as shown on the Site Plans, Architectural Plans, and Landscape Plans, subject to all of the conditions listed below.

CONDITIONS

1. The Project shall include no more than eight (8) units of rental housing in no more than two (2) buildings, which buildings are shown on the Site Plans and the Architectural Plans, and no more than eight (8) garaged parking spaces and eight (8) individual driveway parking spaces as shown on the parking layout plan on Sheet A-4 listed under Item 4 under Procedural History.
2. With respect to the Applicant's Request for Waivers from local bylaws and regulations dated March 8, 2016, the Board approves those waivers listed in Exhibit 1. The Project must comply with bylaws and regulations not waived.
3. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the buildings, indicating façade design and rooftop details subject to the review of the Planning Board for consistency with the plans listed under Item 4 under Procedural History. Color, windows, and materials shall be reviewed on Site by the Planning Board within a reasonable timeframe.
4. Prior to the issuance of a Building Permit, the Applicant shall submit final site and landscaping plans indicating: plant types and sizes and an adequate plan for maintaining, and replacing as necessary, the plantings on the Site; location of, height of, and materials for fences, walls, and patios; exterior lighting; location of utilities, mechanicals, parking spaces, and bicycle storage; location of trash, recycling, and snow storage, subject to the review of the Planning Board.
5. Prior to the issuance of a building permit, the Applicant shall submit a lighting plan to the Director of Transportation and Engineering and the Building Commissioner for review and approval. All exterior lighting on the Site shall be installed and maintained so that no direct light or glare shines on any street or any nearby single-family homes and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with local bylaws.
6. Prior to the issuance of a building permit, the Applicant shall meet with the Town Arborist to review the health of the existing street trees and provide either a plan for protecting existing street trees during construction or a plan to replace existing street trees, and plant additional street trees, for the review and approval by the Town Arborist with all costs borne by the Applicant.

7. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater and drainage plan to the Director of Transportation and Engineering for review and approval.
8. Traffic mitigation shall be as follows:
 - (a) The Applicant, in consultation with the Director of Transportation and Engineering, shall install a NO RIGHT TURN sign at the Site's new driveway entrance, with all costs borne by the Applicant.
 - (b) The Applicant, in consultation with the Director of Transportation and Engineering, shall install a NO RIGHT TURN sign in the public way opposite the Site's new driveway entrance, with all costs borne by the Applicant.
 - (c) The Applicant, in consultation with the Director of Transportation and Engineering, shall install a NO RIGHT TURN sign in the public way opposite the existing curb cut on the Passageway indicated on the Site plan between the Site and the parcel id 027-36-37, with all costs borne by the Applicant.
9. Prior to the issuance of a Building Permit, the Applicant shall submit a rubbish/recycling plan and schedule to the Chief of Environmental Health for review and a determination of compliance with Town regulations and that said plan shall include provisions guaranteeing that:
 - (a) all rubbish generated from the Project will be handled and disposed of weekly by the property owner in compliance with all applicable regulations;
 - (b) the schedule for the property owner's rubbish and recycling pick-up demonstrating compliance with Town bylaws;
 - (c) rubbish receptacles and compactors and recycling containers shall not be stored in the Crowninshield front yard setback or in the public way at any time;
 - (d) service vehicles at no time shall park in the public way.
10. Prior to the issuance of a Building Permit, the Applicant shall submit a construction management plan to the Building Commissioner and the Director of Transportation and Engineering for review and approval.
11. Prior to the issuance of a building permit, for each building or portion thereof, the Applicant shall comply with the Public Works Department's Site Plan Review Checklist and with the Building Department's Certificate of Occupancy Process. Prior to the issuance of the final Certificate of Occupancy for the Project, the Applicant's registered architect and professional engineer shall certify in writing to the Building Commissioner that the Project complies with the Site Plans and the Architectural Plans, including the modifications required by this Decision.
12. Prior to Commencement of Construction, the Applicant shall provide the Director of Transportation and Engineering with plans showing that no erosion from the Site will cause deposition of soil or sediment upon adjacent properties or public ways. For purposes of this Decision "Commencement of Construction" shall mean that the Applicant has begun clearing and grubbing (removal of stumps and topsoil).

13. Prior to the issuance of the Certificate of Occupancy, the Applicant shall submit as-built plans certified by a registered architect to the Building Commissioner to determine conformance with the approved plans and the Conditions of the Decision.
14. During construction and initial leasing, the Applicant may post on Site no more than one (1) temporary construction and/or development sign for the Project, no greater than twenty square feet (20 sf), with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.
15. After the issuance of the final Certificate of Occupancy, before the Applicant replaces or changes any exterior materials the Applicant shall submit plans showing replacement materials, colors, and window profiles for the review and approval of the Planning Board, if they are other than those indicated on the plans listed under Item 4 of Procedural History.
16. Contemporaneously with sending or within ten (10) days of receiving any and all correspondence with the Massachusetts Historical Commission or the Massachusetts Secretary of Energy & Environmental Affairs concerning the Project, the Applicant shall provide the Board and the Brookline Preservation Commission with copies.

Housing

17. As a condition of any approval hereunder, at least 25% of the units shall be and shall remain affordable and shall be marketed to eligible households whose annual income may not exceed 80% of area median income ("AMI"), adjusted for household size, as determined by the United States Department of Housing and Urban Development (the "Affordable Units"); and subject to approval by the Subsidizing Agency, as defined in 760 CMR 56.02, as the project administrator, the Affordable Units and the remaining units shall be eligible to be included in the Town's SHI.
18. The Affordable Units shall be dispersed throughout the Project and shall have the same bedroom "ratio" or "mix" as the other units in the Project. The specific units in the Project designated as the Affordable Units may change from time to time, provided that there shall be no fewer than two (2) units in the Project which are Affordable Units.
19. Affordable Units shall:
 - a. Be evenly dispersed throughout the project
 - b. Be indistinguishable from the market rate units in external appearance
 - c. Have the same interior finishes as the market rate units
 - d. Contain the same square footage as the average size of the Project's market rate units containing the same number of bedrooms
20. All leases for the units in the Project shall include language stating that tenants may not use living rooms or dining rooms as bedrooms. Lease and occupancy agreements shall be for a term of not less than six (6) months. Nightly rentals shall not be permitted.
21. Floor plans for the affordable units which differ from those of the market rate units will not be approved without the recommendation of the Director of Community Development with input from the Housing Advisory Board.

22. Local Preference: The Applicant shall work with the Director of Community Development to request that no less than 50% of the affordable units be awarded to households with local preference during the initial lottery, defined as a household with member who (a) lives or works in Brookline; (b) is employed by the Town or the Brookline Housing Authority; or (c) has at least one child enrolled in the Brookline public school system.
23. The Director of Community Development must review the affirmative marketing plan for the Affordable Units before it is submitted to the Subsidizing Agency for final approval. The Director of Community Development will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.
24. For the period in which the project is being monitored by the Subsidizing Agency, upon the Town's request, the owner shall share all monitoring reports with the Director of Community Development including annual rent increases and information verifying income eligibility for affordable units.
25. Two units in the Project shall in perpetuity be Affordable Units. After the Subsidizing Agency has given written notice to the Town, as set forth in 760 CMR 56.05(13), that the Subsidy, as defined in 760 CMR 56.02, will expire and prior to the expiration of the Subsidy, the Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town (the "Town Regulatory Agreement"), which the Applicant shall record with the Norfolk County Registry of Deeds. The Town Regulatory Agreement shall require that (i) the Project shall remain a rental project in perpetuity, (ii) there shall be two Affordable Units in perpetuity as set forth in Condition 17, (iii) all of the units shall be eligible for inclusion in the SHI in perpetuity. An outline of the terms of the Town Regulatory Agreement is attached as Exhibit 2.
26. When the Town Regulatory Agreement takes effect, the affordability requirements set forth in this Decision shall be monitored and enforceable by the Town. From and after such time as the Town becomes responsible for monitoring the affordability requirements, the Applicant shall provide the Town with a reasonable fee to cover the costs of such monitoring and enforcement.
27. Subject to the requirements of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement) relative to limited dividends from the Project during the Subsidy Period (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement), the Applicant shall provide a copy to the Board of Selectmen of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by Applicant to the Subsidizing Agency to revalue Applicant's equity in the Project, made by Applicant to the Subsidizing Agency relative to the Applicant's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g. all statements required to be submitted to the Subsidizing Agency as set forth in the Subsidizing Agency's regulatory agreement), contemporaneous with the Applicant's delivery of such documents to the Subsidizing Agency. The Applicant shall be bound by all terms contained in the Subsidizing Agency Agreements, including the terms pertaining to limited dividends and the use of development revenues.
28. The Town will not issue a building permit for the Project without review of final plans by the Director of Community Development and final approval from the Subsidizing Agency.
29. No more than three (3) certificates of occupancy shall be issued by the Building Commissioner for units designated for rent at fair market rents (the "Market Rate Units") until at least one (1) certificate of occupancy is issued for an Affordable Unit. No more than six (6) certificates of occupancy for

market-rate units shall be issued until at least two (2) occupancy permits for Affordable Units are issued.

Fire Safety

30. Prior to the issuance of a building permit, the Fire Chief or his designee shall review and approve the final site plan, including without limitation, to ensure that fences and landscaping do not impede firefighter access to the lower windows in both buildings.
31. Prior to the application for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) all buildings have enhanced NFPA designed sprinkler systems and (b) all buildings in the Project have direct alarm notification to the Fire Department designed in accordance with Building and Fire codes.

Infrastructure

32. The following portions of the Project shall be and shall remain forever private and the Town shall not have, now or ever, any legal responsibility for their operation, maintenance, repair, or replacement:
 - (a) The on-site stormwater management system;
 - (b) All sewer, stormwater and water connection, lines and equipment required, from the public way to the buildings;
 - (c) All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable system.
33. The Applicant shall operate and maintain all of the foregoing in Condition 32 in good working condition and repair at all times at its sole cost.
34. Prior to issuance of a Building Permit, all water, stormwater and sewage facility designs shall be subject to review and approval by the Director of Transportation and Engineering.

Pre-Building Permit Review

35. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:
 - (a) Final site plans and architectural plans have been reviewed by the Planning Board in accordance with Conditions 3 and 4, as well as Condition 15, if applicable.
 - (b) The Director of Transportation and Engineering has reviewed the final site plans in accordance Condition 11, the final stormwater management plans in accordance with Condition 7, the water, stormwater and sewage facility designs in accordance with Condition 34, the erosion control plans in accordance with Condition 12 and the pavement surfaces in accordance with Condition 41 and all other items requiring review by the Director of Transportation and Engineering as listed in these Conditions.
 - (c) It has paid all fees and funded all improvements required pursuant to Condition 8 and, if applicable, Condition 6.

- (d) It has initiated and participated in a pre-construction meeting to discuss the proposed construction schedule with its contractor and the Town, including but not limited to the Building Commissioner, Director of Transportation and Engineering and the Fire Chief.
- (e) All required local, state and federal approvals and permits have been obtained and it has obtained Final Approval from the Subsidizing Agency as provided in 760 CMR 56.05(8)(c)(2) and (3).
- (f) The Building Commissioner has approved the Construction Management Plan (Condition 10).
- (g) The Chief of Environmental Health has reviewed the rubbish plan in accordance with Condition 9.
- (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- (i) The Director of Community Development has reviewed the final plans in accordance with Condition 28.
- (j) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with Condition 30.
- (k) The Town Arborist has reviewed a plan to protect or replace existing street trees and add new street trees in accordance with Condition 6.

Construction

- 36. During construction, the Applicant shall conform with all local, state, and federal laws regarding air quality, noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents in the general area. The Applicant shall provide the Police Department with the name and 24-hour telephone number for the project manager responsible for construction. The hours for operation of construction equipment, deliveries and personnel are limited to: Monday through Saturday (excluding Federal and State holidays): 7:00 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.
- 37. For purposes of this Decision (with the exception of Condition 47 below) "Commencement of Construction" shall mean that the Applicant has begun clearing and grubbing (removal of stumps and topsoil). Prior to Commencement of Construction and subject to approval by the Building Commissioner, the Applicant shall provide a Construction Management Plan that shall include but not be limited to: designation of truck routes (the condition of pavement surfaces of such routes before and after construction to be documented); a survey of existing trees and measures to ensure tree protection during construction; limit of work areas; where construction vehicles, materials and equipment will be stored; parking hours and locations for construction workers' vehicles; location of portable toilets; rodent and insect control plan; dust/airborne particle control; security fencing; trash areas; construction trailer locations; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips.
- 38. The Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than thirty (30) months subject to causes beyond the Applicant's reasonable control. Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11).

39. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.
40. Upon the request of the Director of Engineering and Transportation and the Building Commissioner, the Applicant shall provide written reports during construction outlining the status of the Project.
41. Prior to Commencement of Construction, the Applicant shall provide the Director of Transportation and Engineering with a report and photographs of the condition of pavement surfaces along truck routes before Construction Commencement and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic does not adversely affect the pavement.

General

42. The provisions of this Comprehensive Permit shall be binding upon the heirs, successors and assigns of the Applicant and the obligations shall run with the land.
43. Any reference to Town staff shall include a designee (either another staff member or a consultant) of that person.
44. If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.
45. Upon execution by the members of the Board, the Clerk of the Board is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.
46. Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
47. This Comprehensive Permit shall expire if construction is not commenced within three (3) years from the date this Decision becomes final as provided in 760 CMR 56.05(12)(c), subject to the tolling provisions of 760 CMR 56.05(12)(c). For purposes of this paragraph only, commencement of construction is defined as the construction of the foundation of at least one of the Project's buildings. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).
48. If the Applicant revises any of the Plans, it shall present the revised plans to the Board in accordance with 760 CMR 56.05(11).
49. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
50. All utilities shall be underground.
51. Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
52. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.
53. Subsequent to the end of all applicable appeal periods and prior to the Commencement of Construction, the Applicant shall record this Decision in the Norfolk County Registry of Deeds and

shall provide the Board and the Building Commissioner with a copy of this Decision endorsed with the applicable recording information.

54. There shall be no structures or buildings or paved surfaces on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.

ATTACHED:

Exhibit 1 (Granted Waivers)

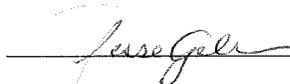
Exhibit 2 (Terms To Be Included in Replacement Town Regulatory Agreement)

Exhibit 3 (Public Hearing Notice – February 4, 2016)

Exhibit 4 (Public Hearing Notice – February 23, 2016)

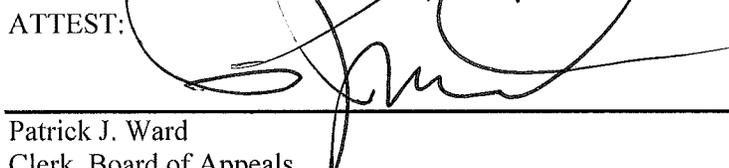
RECORD OF VOTE

The Board of Appeals voted unanimously to grant a Comprehensive Permit subject to the above-stated conditions:

 _____ Jesse Geller, Chairman, Brookline Board of Appeals

Wherefore a Comprehensive Permit, consistent with the conditions of this Decision, is granted to the Applicant.

Filed with the Town Clerk on 4/14/16

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2016 APR 14 P 1:08

Exhibit 1
21 CROWN PROPOSED WAIVER LIST
S-7 ZONING DISTRICT
MARCH 8, 2016

BROOKLINE ZONING BY-LAWS				
Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
§4.07(6) – Table of Use Regulations	Multi-Family Uses	Waiver to allow the property to be used as a multi-family dwelling for town houses, associated amenities and accessory parking.	The Development is a multi-family housing development containing 8 town houses. The Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	A
			Intentionally Omitted	B
§5.09	Design Review	Design Review requirements not applicable under M.G.L. c. 40B, excluding landscaping, stormwater and utility, which shall comply.	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	C
§5.20 & Table §5.01	Maximum Floor Area	Waiver from maximum ratio of gross floor area to lot area. (0.35 in S-7 District)	The Development has 15,556 s.f. lot and the buildings will have 18,144 gross square ft. with a total floor area ratio of approximately 1.17.	D
§5.30-5.32 & Table §5.01	Maximum Height of Buildings	Waiver from maximum building height limitations. (35' ft. in S-7 District)	The height of the Development will be 44.3' at its maxim.	E
			Intentionally Omitted	F
§5.50 & Table §5.01	Minimum Front Yard (Crownshield)	Waiver from 30' minimum front yard requirement.	The Development has two front yards and will have a minimum front yard setback of 6' - 10" to the front porch.	G
§5.50 & Table §5.01	Minimum Front Yard (Passageway)	Waiver from 30' minimum front yard requirement.	The Development has two front yards and will have a minimum front yard setback of 10.1' at the passageway.	H

§5.52	Maximum Fence Height Front Yard (Passageway)	Waiver from the maximum fence/terrace requirement of 6' in the front yard yards	The Development has a maximum 8' fence.	I
§5.60 & Table §5.01	Minimum Side Yard	Waiver from 20' minimum side yard requirement.	The side yard setback for the Development will be 15.9'.	J
§5.62	Maximum Fence Height Side Yard	Waiver from the maximum fence/terrace requirement of 7' in the side yard.	The Development has a maximum 8' fence.	K
§5.70 & Table §5.01	Minimum Rear Yard	Waiver from 40' minimum rear yard requirement.	The Development will have a minimum rear yard setback of 5.7'.	L
§5.74	Maximum Fence Height Rear Yard	Waiver from the rear yard maximum fence/terrace requirement of 7'.	The Development has a maximum of 8'.	M
§6.04.4b	Design of All Off-Street Parking Facilities	Waiver from the 20' driveway width requirement for two-way use.	The Development will have a curb cut of 22' and a minimum driveway width of 18' at the throat of the driveway.	N
			Intentionally Omitted	O
BROOKLINE TOWN BY-LAWS				
Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
§3.17	Department of Public Works – Tree Removal Permit Process	Waiver from the Department of Public Works--tree removal	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	P
			Intentionally Omitted	Q
§5.6.6	Local Historic Districts	Waiver from the Preservation Commission requirements for buildings located in the Crowninshield Local Historic District.	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	R

Exhibit 2

TERMS TO BE INCLUDED IN REPLACEMENT REGULATORY AGREEMENT

1. Subsidizing Agency Regulatory Agreement. Construction and/or permanent financing for the Project will be obtained from MassHousing or another qualified subsidizing agency (the "Subsidizing Agency"). As a component of such financing, the Applicant will be entering into a regulatory agreement and other agreements with respect to the Project which, *inter alia*, will set for the certain restrictions as to low or moderate income housing to be provided as part of the Project as the same may be hereafter extended or amended (the "Subsidizing Agency Agreement").

2. Regulatory Agreements. It is the intention of the Comprehensive Permit that the Project would, in perpetuity and without interruption, be subject to a suitable regulatory agreement consistent with the Comprehensive Permit governing the low or moderate income housing (the "Affordable Units") in the Project. For so long as the Subsidizing Agency Agreements are in effect, the Subsidizing Agency Agreements satisfy in full the requirements set forth in Conditions 25 and 26 for a regulatory agreement. From and immediately after the expiration or termination of the Subsidizing Agency Agreements, an agreement shall be entered containing the terms of this exhibit to satisfy the requirements of Conditions 25 and 26 of the Comprehensive Permit (the "Town Regulatory Agreement").

3. Affordability Requirements. Pursuant to the terms of Condition 17 of the Comprehensive Permit, the Applicant will restrict certain units in the Project (the "Affordable Units") as follows: twenty five percent (25%) of the units in the Project to be occupied and rented by households earning not more than eighty percent (80%) of the AMI. During the Subsidy Period (as defined below), rents for the Affordable Units shall be no greater than those permitted by the Subsidizing Agency Agreements, all in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency. Without derogating from the provisions of Paragraph 4 below relative to the exclusive jurisdiction of the Subsidizing Agency to monitor and enforce the affordability requirements, during the period (hereinafter, the "Subsidy Period") that the Subsidizing Agency Agreements are in force and effect, the Applicant shall provide a copy to the Town, care of the Board of Selectmen, of any statements, reports, notices, or certifications made by the Developer to the Subsidizing Agency (or its monitoring agent) relative to the Applicant's compliance with the affordability requirements in the Subsidizing Agency Agreements contemporaneously with the Applicant's delivery of the documents to the Subsidizing Agency.

From and after the Subsidy Period, the Affordable Units shall continue to be restricted as set forth in the preceding paragraph in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency (or its successor agency) that existed prior to the expiration or termination of the Subsidizing Agency Agreements, all as though the Subsidizing Agency Agreements were still in force and effect. To the extent that the Subsidizing Agency (or its

successory agency) has ceased to promulgate such applicable rules, regulations, and policies, then the Affordable Units shall be determined based on substitute regulations of a federal or state governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by the Applicant and the Town, in order to ensure the continued availability of the Affordable Units for the purposes set forth herein and in the Comprehensive Permit for the entire term of the agreement. Further, if after the Subsidy Period, M.G.L. c.40B (or its successor statute) still provides a mandate for municipalities to provide low or moderate income housing, the Applicant agrees to continue to operate and manage the Project as would permit the Project to be credited toward the Town's Subsidized Housing Inventory for purpose of Chapter 40B.

The Board of Selectmen shall establish reasonable rules and protocols to govern the monitoring of the affordability requirements, including any reporting and notice obligations, and may designate an entity to serve as its monitoring agency to monitor the Applicant's compliance with the affordability requirements. The selection of tenants in the event of unit vacancies shall be governed by the applicable rules of the Subsidizing Agency just prior to the expiration or termination of the Subsidizing Agency Agreements, and in the absence of such rules, by the rules of another subsidizing agency that are reasonably acceptable to the Town and the Applicant.

4. Monitoring and Enforcement. During the Subsidy Period, the Subsidizing Agency shall have exclusive authority and jurisdiction for all monitoring, oversight, and enforcement functions with respect to the Affordable Units, including without limitation, provision of the Affordable Units, monitoring eligibility for tenancy, calculation of affordable rentals and all matters related to limited dividend restrictions.

From and after the Subsidy Period, the Town shall have the right to monitor the Applicant's compliance with the terms of Paragraph 3 above. The Town may retain a monitoring agent (the "Town Monitoring Agent") the reasonable fees for which shall be paid by the Applicant (as provided in Condition 26 of the Comprehensive Permit), to monitor the Applicant's compliance with requirements of the Town Regulatory Agreement. The Applicant agrees to submit to the Town Monitoring Agent all certifications in the same form, and with the same level of detail, as were made the Applicant to the Subsidizing Agency during the Subsidy Period relative to its compliance with the provisions of Paragraph 3 above.

5. Term of Town Regulatory Agreement. The Town Regulatory Agreement and all of the covenants, agreements, and restrictions contained therein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184 § 31 and as that term is used in G.L. c. 184, § 26, 31, 32, and 33. The Town Regulatory Agreement shall be made for the benefit of the Town, and the Town shall be deemed to be the holder of the affordable housing restriction created thereby. The Town has determined that the acquiring of such affordable housing restriction is in the public interest. The term the Town Regulatory Agreement, the rental restrictions, and other requirements provided therein shall remain for so long as the Project exists.

The Town Regulatory Agreement and the covenants, agreements, and restrictions contained herein shall be covenants running with the land, encumbering the Project for the term thereof, and shall be (i) binding upon the Applicant's successors in title, (ii) not merely personal covenants of the Applicant, and (iii) binding on the Applicant, its successors and assigns for the term thereof, and shall inure to the benefit of the parties thereto and their respective successors and assigns. Any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of the Town Regulatory Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privileges of estate shall also be deemed to be satisfied in full. Promptly upon the execution thereof, the Applicant shall cause the Town Regulatory Agreement to be recorded in the Norfolk Registry of Deeds (or, if the Property consists of registered land, to be filed in the Norfolk Registry District of the Land Court). The Applicant shall pay all fees and charges incurred in connection with such recording or filing.



TOWN OF BROOKLINE

BOARD OF APPEALS

Notice of Hearing

Pursuant to M.G.L., C. 40B, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

21 CROWNINSHIELD ROAD – CONSTRUCT EIGHT RESIDENTIAL UNITS DISTRIBUTED BETWEEN TWO FOUR-STORY BUILDINGS WITH A TOTAL OF 16 PARKING SPACES in an S-7, single-family, residential district, on February 4, 2016, at 7:10 PM in 6th Floor Selectmen's Hearing Room (Petitioner/Owner: 21 Crown LLC c/o Robert Basile) Precinct 8

APPLICANT REQUEST FOR A CASE CONTINUANCE

The Board of Appeals will consider a Comprehensive Permit Application (M.G.L. c.40B) and associated waivers from Brookline Zoning By-Law regulations.

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

Jesse Geller, Chair

Christopher Hussey

Jonathan Book

Publish: January 21, 2016 & January 28, 2016



TOWN OF BROOKLINE

BOARD OF APPEALS

Notice of Hearing

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21 CROWNINSHIELD ROAD – CONSTRUCT EIGHT RESIDENTIAL UNITS DISTRIBUTED BETWEEN TWO FOUR-STORY BUILDINGS WITH A TOTAL OF 16 PARKING SPACES in an S-7, single-family, residential district, on February 23, 2016, at 7:00 PM in Town Hall Room 505 (Petitioner/Owner: 21 Crown LLC c/o Robert Basile) *Precinct 8*

The Board of Appeals will consider a Comprehensive Permit Application (M.G.L. c.40B) and associated waivers from Brookline Zoning By-Law regulations.

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*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

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