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TOWN CLERK

DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION
209 HARVARD STREET
BOARD OF APPEALS CASE NO. 2021-000058

2021 NOV -2 A 10:17

Date:

Re: Application of 209 HARVARD DEVELOPMENT, LLC for a Comprehensive Permit

I. Location: Assessor's Atlas Map Sheet 32, Block 156, Lot 12, known and numbered as 209 Harvard Street, Brookline, Massachusetts

II. PROCEDURAL HISTORY

1. On May 19, 2020, Massachusetts Housing Partnership ("MHP") issued a Project Eligibility Letter ("PEL") to 209 Harvard Development, LLC (the "Applicant").
2. On July 30, 2020, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the "Act"), to construct 44 units of rental housing, with between 61-63 grade and below grade combined parking spaces in a six story building on an approximately 12,088 square foot portion at the rear of a 24,644 square foot lot of land (where there is presently a medical office building fronting on Harvard Street) located at 209 Harvard Street in Brookline, Massachusetts (the "Original Project"). The entire 24,644 square foot lot is hereafter referred to as the "Lot" and the 12,088 square foot portion at the rear of the Lot is hereafter referred to as the "40B Locus."
3. During the Zoning Board of Appeals process, by vote of the Board on March 9, 2021, the Board approved the Applicant's request to withdraw the Original Project, without prejudice.
4. On March 9, 2021, the Applicant filed a new application for a Comprehensive Permit, to construct 44 units of rental housing but also include 1,900 square feet of retail space and substantial façade improvements. During the public hearing process, the parking spaces were also reduced to provide for 53 parking spaces. This is now the "Project".
5. The materials submitted by the Applicant in its application and during the public hearing include:
 - a. Comprehensive Permit Application
 - b. Comprehensive Permit Plans for the Project dated May 15, 2020 and revised February 12, 2021, March 30, 2021, July 9, 2021, July 27, 2021, August 13, 2021, prepared as follows:
 - c. Sheet Numbers and Titles (August 13, 2021 plans)

- 1) Cover sheet
- 2) Site Context

- 3-5) Aerial Views from NE, SE, SW
- 6) Site Plan Dimensions
- 7) Proposed Public Way Improvements
- 8) Conceptual Landscape and Lighting Plan
- 9) Lower level Plan
- 10) Ground Level Plan
- 11) 2nd Level Plan
- 12) 3rd-5th Level Typical Plan
- 13) Upper (6th) Level Plan
- 14) Roof Plan
- 15) Typical Unit Plans
- 16-22) Renderings
- 23-26) Elevations
- 27-28) Site Sections
- 29) Example Materials - Exterior
- 30) Trash Management Plan
- 31-39) Shadow Study Drawings

[Collectively, the "Site Plans and Architectural Plans"]

The drawings are stamped by James P. Batchelor, Arrowstreet.

Other documents submitted as matter of public record, include but are not limited to:

- Transportation Access Plan, Vanasse & Associates, Inc. (February 2, 2021, March 18, 2021)
- Memorandum Regarding MV Crash Data, Vanasse & Associates, Inc. (April 6, 2021, June 22, 2021)
- Shared Parking Analysis, Vanasse & Associates, Inc. (April 26, 2021)
- Preliminary Foundation Memorandum, McPhail Associates, LLC (June 18, 2021)
- Trash Management Plan Narrative, Arrowstreet (June 3, 2021, July 9, 2021, August 13, 2021)
- Preliminary Construction Management Plan, Kaplan Construction (June 3, 2021)
- Code Summary, Hastings Consulting (April 20, 2021)
- Fire Department Review package, Arrowstreet (June 29, 2021)
- Harvard St at Marion St Intersection Improvements, Town of Brookline Transportation and Engineering Division (8/23/2021)
- Transportation Board 209 Harvard Street 40B Letter, Town of Brookline Transportation Board (June 22, 2021)
- Transportation Administrator - June 21 Issue 7 Memo and attachments, Town of Brookline Transportation Administrator (June 21, 2021)
- Parking Peer Review Memorandum, Walker Consultants through Environmental Partners Group (June 14, 2021)
- Response to Walker Consultants peer review dated June 14, 2021 and appendix, Vanasse & Associates, Inc. (July 21, 2021)
- Traffic Peer Review, Environmental Partners Group (June 14, 2021)
- Response to Environmental Partners peer review dated June 14, 2021 and appendix, Vanasse & Associates, Inc. (July 21, 2021)
- Memorandum Regarding Infectious Invalidity, Freeman Law Group (November 2, 2020)

- Letter to Zoning Board of Appeals, Economic Development Advisory Board (January 7, 2021)
 - Letter to Zoning Board of Appeals, Residents of 11 / 15 / 17 / 25 / 33 Stearns Road (January 12, 2021)
 - Letter to Zoning Board of Appeals, Danesh (August 20, 2021)
 - Planning Board Recommendation, Town of Brookline Planning Board, (12/22/2020)
 - Emails from Beech Tree Place Condominium, (October 16, 2020, November 9, 2020)
 - Letter to Massachusetts Housing Partnership from Brookline Select Board (January, 2020)
 - Email to Zoning Board of Appeals from Chris Dempsey (October 18, 2020)
 - Email to Zoning Board of Appeals from Andrea Ricotta (October 21, 2020)
 - Email to Zoning Board of Appeals from Lisa Cunningham (October 21, 2020)
 - Email to Zoning Board of Appeals from Al Raine (October 21, 2020)
 - Email to Zoning Board of Appeals from Michael Zoorob (October 19, 2020)
 - Preliminary Design Peer Review, Davis Square Architects - Clifford Boehmer (January 7, 2021)
 - Letter to Zoning Board of Appeals, United Parish in Brookline (January 11, 2021)
6. The Applicant submitted a request for waivers from local by-laws and regulations dated March 9, 2021, and amended July 27, 2021.
 7. The Brookline Zoning Board of Appeals (the "Board" or the "ZBA"), with the consent of the Applicant, opened a duly advertised public hearing for the Original Project on October 21, 2020 and the hearing was continued from date to date as announced thereafter. The ZBA then opened a duly advertised public hearing for the Project on March 30, 2021. The ZBA voted on March 30, 2021 to take all of the material received by the ZBA (including but not limited to all testimony and letters and comments from any party, staff reports, peer review reports and ZBA minutes) for the Original Project and to include and incorporate all of that material into the public record for the Project. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: March 30, 2021, April 27, 2021, May 18, 2021, June 22, 2021, July 27, 2021, August 24, 2021, and September 21, 2021. All continuances beyond 180 days from the application date were with the Applicant's written consent.
 8. The Board conducted a duly noticed site visit on October 29, 2020.
 9. On September 21, 2021 the Board closed the public hearing.
 10. The Board deliberated on the Application at a public hearing held on September 21, 2021 and voted to grant a Comprehensive Permit subject to the conditions listed below.
 11. 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.
 12. During the course of the public hearing, the staff, boards, commissions, and local residents of the Town of Brookline ("Town") submitted oral and written testimony with respect to the Original Project and the Project. The Board considered the technical review of Town department heads, an independent site and building design peer reviewer, an independent

traffic and parking peer reviewer, site and building design, preliminary utility plans, and other issues of local concern.

13. The following consultants and independent peer reviewers assisted the Board in its review of the application:

Traffic

James Fitzgerald, P.E.

Environmental Partners Group, Inc., Quincy, Massachusetts

Parking

Arthur Stadig, P.E.

Walker Parking Consultants, Boston, Massachusetts

Site and Building Design

Clifford Boehmer, AIA, President

Davis Square Architects, Somerville, Massachusetts

14. During the course of the public hearing, Town staff and boards, peer reviewers, and local residents submitted extensive oral and written testimony with respect to the Original Project and the Project on issues of height, scale, feasibility of the parking plan, safety, traffic, and site circulation.

III. FINDINGS

1. According to the Commonwealth of Massachusetts's Department of Housing and Community Development Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of March 19, 2021, 9.9% of the Town's total housing stock constituted SHI-eligible housing, as defined in 760 CMR 56.02. At the hearing on March 30, 2021, by majority vote, the Board voted to find that as of March 19, 2021 the Town had not met any of the Safe Harbors under M.G.L. c. 40B, s. 20 or 760 CMR 56.03.
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. In the PEL, MHP determined that the Original Project was eligible under its Permanent Rental Financing Program, and that at least twenty five percent (25%) of the units would be available to households earning at or below eighty percent (80%) of the Area Median Income ("AMI"), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. On March 9, 2021, the Applicant submitted the Project, which proposes that at least twenty five percent (25%) of the units would be available to households earning at or below eighty percent (80%) of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban and Development.

5. The Lot is on a large lot at the intersection of Marion Street and Harvard Street. It is zoned as both a L-1.0 (Local Business District) and M-1.5 (Multi Family Residential District).
6. Harvard Street extends from the Boston-Brookline municipal line to the area known as Brookline Village and consists primarily of three to four story residential structures and commercial structures that are mostly one-story. The Site is bordered by a multifamily district, a local business district and a Two-family district.
7. The Lot currently is used as a medical office building and open air parking lot.
8. Various Special Permits and Modifications were previously issued by this Board to allow the existing medical office building. They are: 11/16/70, 1668, 1668A, 2260, 2260A, 2260B and 2016-0022.
9. Based on Woodridge Realty Trust v. Ipswich Board of Appeals, HAC Docket No. 00-04, Cloverleaf Apartments, LLC v. Natick Board of Appeals, HAC Docket No. 01-21, and Sandwich Housing Partners, II v. Sandwich Board of Appeals, HAC Docket No. 07-02, the Board has the authority to modify the above-listed Special Permits and Modifications in order to allow the current use of the office building to continue, together with the façade improvements and retail or café space as proposed in the Application for the Project, as a separate use from the proposed 40B residential apartments to be located on the 40B Locus, which as provided in the Purchase and Sale Agreement between the Owner of the Lot and the Applicant will be conveyed to the Applicant via either a deed of air rights, a long-term ground lease, or a condominium form of ownership. This addresses the question of "infectious invalidity" and the Board finds that any concerns regarding infectious invalidity are outweighed by the local and regional need for affordable housing.
10. The site is located in the Coolidge Corner neighborhood of Brookline and is a highly walkable area with a public bus route that travels Harvard Street and within walking distance (less than 1.1 miles) of three public rapid transit lines (Green Line B, C and D branches). The Site is within 100 feet of a blue bike station, and upon completion of the project will be abutting a blue bike station.
11. The Planning Board, independent design peer reviewer Clifford Boehmer, and local residents expressed in written and oral form comments during the public hearings.
12. Neighbors expressed concerns that: the Original Project was too large for the site, would cause shadowing and limit sight lines, posed construction impacts and would cause excessive noise. These comments and others are included in the public record.
13. In response to comments, the Applicant revised the plans to draw the building away from the closest neighbors and reduce massing on the upper levels adjacent to the closest neighbors, among other changes reflected in the final plans for the Project.
14. At the July 27, 2021 public hearing, the Applicant presented a final set of conceptual plans for the Project.

15. On July 27, 2021 the Applicant submitted an amended request for waivers from local regulations.
16. The Board heard the concerns of Town staff, boards, commissions, and residents and weighed them against local needs. The Board finds that the Project, as conditioned below, is Consistent with Local Needs, as that term is used in 760 CMR 56.02, as required by the Act.
17. The Board finds that the conditions imposed in this Decision are necessary in order to address Local Concerns, as that term is defined in 760 CMR 56.02. The Board finds that such conditions will not render the Project uneconomic. To the extent that such conditions may render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
18. The Board finds that granting certain waivers from local bylaws and regulations is acceptable even though granting any waivers may have an adverse impact on Local Concerns. Nevertheless, the Board finds that the Local Concerns affected thereby do not outweigh the regional need for affordable housing, especially given the changes the Applicant has agreed to make, specifically the redesign of the building and improvements to the site layout in direct response to concerns of the Board and other parties in interest.
19. The Board acknowledges concerns raised by abutters and other interested parties. The Board finds that despite these concerns, the Project addresses local and regional housing needs.
20. The Board finds that many of the concerns expressed by abutters and other interested parties during the public hearing process involve pre-existing conditions on Harvard Street and the surrounding area that are not directly related to or exacerbated by the Project.
21. The Applicant has had the opportunity to review the following Conditions and has no objections.

IV. 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 44 units of rental housing, no more than 1,600 square feet of commercial space, and no fewer than 53 parking spaces as shown on the approved Site and Architectural Plans dated August 13, 2021, subject to all of the conditions listed below.

V. CONDITIONS

Retail

1. Any use of the Project's Permitted Storefront Use space which includes the preparation or sale of food or beverages shall conform to all building and health codes, including fire codes, sanitary codes, codes related to garbage disposal and codes relating to adequate ventilation.

Utilities

2. All utilities from the public way to the site shall be underground with a potential exception for internet services.

3. Prior to the construction of the foundation of the Project's building ("Commencement of Construction"), the Applicant shall provide proof that utility companies shall permit existing utilities to be eliminated or relocated underground and that the Town shall not be financially responsible for the relocation of said utilities underground.

Offsite Mitigation

4. In addition to the on-site traffic, loading, and parking conditions elsewhere in this approval, simultaneously upon the issuance of the Building Permit, the Applicant shall contribute to the Town \$140,790.00 ("Contribution") for the Town's design and construction of the scope of work outlined in the "Harvard St. at Marion St. Intersection Improvements" estimate dated August 23, 2021 as approved by the Transportation Administrator. The Contribution shall be deemed to include, but not be limited to, reimbursement for the Town's design and construction of: curb extensions, corner ramps, curbing, striping, pavement markings for the crosswalks and installation of the loading zone signage (LOADING ZONE/TOW AWAY ZONE), installation of 2 crosswalk rapid flash beacons "RFB", 4 bike racks on the public way for the general public, the costs to construct and restore the adjacent sidewalks on Harvard Street to Town of Brookline standards and a new bench at the Rte. 66 stop in front of Audi Mobil (standard steel and wood bench, no enclosure or electricity). The Contribution does not include, at the request of the Town, funds dedicated to the relocation of the Blue Bikes station on Marion Street to the location shown in the Plans and the cost for the installation of the required build-out and curbing for the Blue Bikes station which will be performed by the Town at the Town's cost and expense. \$22,575.00 of the Contribution shall be designated for the reimbursement to the Town for 5 years of potential lost meter revenue for from the removal of the two metered parking spaces. Payment in full of the Contribution by the applicant to the Town shall be the applicant's sole responsibility related to the above referenced Offsite Mitigation. However, if the Applicant has paid the Contribution, and the funds are not used within two years after the building permit is issued, or if all the funding is not used and the associated scope of work is completed, the Applicant shall be refunded the balance of the Contribution.

Units/Leasing

5. The Project shall include no more than 44 units of rental housing in one building as shown on the Site and Architectural Plans, approximately 1600 square feet of retail in the existing office building on the Lot, and no fewer than 56 parking spaces, four of which are accessible parking spaces as shown on the parking layout plan.
6. 11 of the 44 units shall be available to households earning at or below eighty (80) percent of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
7. The total maximum number of bedrooms shall be 57 consisting of 36 studio apartments, three 2 bedroom apartments, 5 three bedroom apartments.
8. As a condition of any approval hereunder, at least 25% of the units shall be and shall remain affordable in perpetuity and shall be marketed to eligible households whose annual income may not exceed 80% of 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 units priced at market rates (the "Market Rate Units") shall be eligible to be included in the Town's SHI, subject to the approval of DHCD.

9. Affordable Units shall be evenly dispersed throughout the Project and shall have approximately the same bedroom "ratio" or "mix" as the Market Rate Units in the Project subject to the approval of the Subsidizing Agency: 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 25% Affordable Units, at least one of which shall have three bedrooms, as provided in the subsidizing agency regulatory agreement.
10. Affordable Units shall: 1) Be indistinguishable from the Market Rate Units in external appearance, 2) Have comparable interior finishes as the Market Rate Units, and 3) Contain approximately the same square footage as the average size of the Project's Market Rate Units containing the same number of bedrooms.
11. Lease and occupancy agreements shall be for terms of not less than six (6) months with the exception of extensions. No more than two such extensions of an existing lease for a period of less than six (6) months shall be permitted. Nightly rentals shall not be permitted. Airbnb and similar short term lodging services shall not be permitted.
12. Local Preference: The Applicant shall work with the Assistant Director for Community Planning to request that no less than 25% of the Affordable Units be awarded to households with local preference during the initial lottery, subject to the approval of the Subsidizing Agency.
13. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within sixty (60) days of a written request by the Applicant, its Lottery Agent, the Subsidizing Agency or DHCD, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.
14. A second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in EXHIBIT 2) shall be approved by Town Counsel, executed and recorded prior to expiration of the initial Regulatory Agreement and in effect for the period after the expiration of affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent to continue such restrictions. Such agreement shall be consistent with the terms of this Decision and with customary terms of the Town's Regulatory Agreements.
15. The Owner shall retain the town or a consultant designated by the Town as the Monitoring Agent for the Project for a period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with any applicable Regulatory Agreement during this period shall be borne by the Owner.
16. The Town will not issue a Building Permit for the Project without final approval from the Subsidizing Agency.
17. No more than three Certificates of Occupancy will be issued by the Building Commissioner for Market Rate Units until at least one Certificate of Occupancy is issued for an Affordable Unit.

Parking/Loading (on site)

18. Parking in the building shall be shared between the residential and commercial building as described in the parking management plan. The parking for the residential units shall be unbundled, meaning not included in the rent.
19. The loading zone on Harvard Street, as described within this decision, shall not be for the exclusive use of 209 Harvard Street tenants.
20. There shall be a parking attendant on site during regular business hours, Monday through Friday, excluding holidays.
21. The Applicant shall ensure that the Harvard Street driveway apron is at the same level as the sidewalk elevation and that the material for the driveway apron is the same as that of the sidewalk.
22. The applicant shall be responsible for removing snow from the loading zone area on Harvard St.
23. Prior to the issuance of a Building Permit, the Applicant shall submit a final rubbish/recycling plan and schedule to the Chief of Environmental Health for review and a determination of compliance with Town regulations. Said plan shall include provisions guaranteeing that all rubbish and recycling generated from the Project's housing units and retail space at 209 Harvard Street shall be handled and disposed of in compliance with all applicable regulations by a private waste management services provider contracted by the Applicant, as described in the Waste Management Plan submitted by the Applicant. The Applicant shall not be required to install trash and recycling compactors as part of the original build-out of the building, but shall construct the Trash Room to allow for their installation at a later date. If the Department of Public Health, upon its continued supervision and inspection of the Project, determines that the operation of the Trash Room is insufficient for the existing use and is therefore causing a public health/sanitary code violation, the applicant and its successors and assigns may be required to install said compactors.
24. The Applicant shall inform the Public Health Department when the Project's residential units are ninety (90) percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance with this Decision.
25. The trash truck should be of an appropriate size to fit in the driveway, while still keeping one lane of the driveway open for use by residents.
26. The applicant shall install an audible and visual warning system for pedestrians on the sidewalk.
27. Prior to the issuance of a Building Permit, the Applicant shall submit a final Transportation Access Plan ("TAP") for reducing the number of vehicular trips to and from the Project, to be prepared in accordance with the Transportation Access Plan Guidelines of the Town (Sec. 5.09.3.c.6 of the Town Zoning By-law), and subject to the review and approval of the Director of Engineering and Transportation. Mitigation in the TAP shall include: providing twelve secure and covered bicycle racks on the property, publicizing public transit options to the site in marketing materials, having at least 2 EV parking spaces and all remaining spaces EV Ready in compliance with the Town's Transportation Access Guidelines.

Design/Construction

28. There shall be no blasting during the construction of the Project.
29. Applicant shall pay for the Town's cost of police and fire details during construction of the Project, in accordance with the Town's standard practices.
30. Applicant shall provide a Construction Management Plan that shall include, but not be limited to: designation of truck routes; protection of street trees along the property line where this can be accomplished and appropriate; 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; soil removal; security fencing; trash areas; construction trailer locations; vibration monitoring and mitigation; the timetable for excavation and overall earthwork operation; delineation of pedestrian pathways, and the number of necessary truck trips. For purposes of this Decision, "Commencement of Construction" shall mean: the initial disturbance of soils or surface materials associated with clearing, grading, or excavating activities or other construction activities; the placement of or mobilization for construction activities, including but not limited to placing materials, machinery, supplies or construction equipment on the Site and removal or disconnection of utilities or water or sewer lines; or any alteration, demolition, repair or improvements to a building or structure. During construction, the Applicant shall conform to all local, state, and federal laws regarding removal of contaminated soil, if any; underground tanks; air quality; noise; vibration; dust; and blocking of any roads and shall at all times use reasonable means to minimize inconvenience to residents and businesses 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 Friday (excluding Federal and State holidays) from 7:00 am to 5:00 pm; and Saturday from 8:30 am to 5:00 pm. Any demolition of the existing structure requires prior approval and signoffs from the Town Building, Public Health, Fire, DPW and Planning Departments.

31. 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 except 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).
32. Upon the request of the Director of Engineering and Transportation and/or the Building Commissioner, the Applicant shall provide written reports to them during construction outlining the status of the Project.
33. The Applicant/General Contractor shall meet with the Brookline Fire Department prior to the delivery of the various life safety submittals.
34. The NFPA 241 Plan developed specifically for this project shall be recommended for acceptance by one of the three third-party firms approved by the Brookline Fire Department. The Developer/General Contractor shall contract with the same third party firm for monthly inspections to ensure adherence to the 241 Plan, reports of which shall be made available to the Brookline Fire Department upon request.
35. The Developer/General Contractor shall submit to an approved Third Party review firm a full set of Tier I engineered life safety plans. These plans shall be recommended for acceptance to the Brookline Fire Department prior to approval. The issuance of the building permit is contingent on having approved plans. Prior to the installation of the life safety systems, Tier 2 Shop drawings shall also be recommended for acceptance prior to a building permit being issued.
36. Prior to Commencement of Construction, the Applicant shall provide the Director of Transportation and Engineering with a pre-construction report with video and/or still photographs of the condition of pavement surfaces along truck routes within .5 miles of the Project before Construction and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic has not adversely affected the pavement. The Applicant shall be

- responsible for the cost to repair any and all damage caused by the truck access to the Project during construction.
37. Prior to Commencement of Construction, the Applicant shall provide the Building Commissioner with a pre-construction report with video and/or still photographs of the condition of structures of properties (interior and exterior) within 100 feet of the site (subject to approval of the property owner/tenant) and then again prior to issuance of a Certificate of Occupancy to ensure that construction of the project has not adversely affected the structures. With the written consent of the abutting property owner(s), the Applicant shall install crack monitoring equipment on structures, and retaining walls, within 40 feet of the Project where designated by Applicant's Structural Engineer. The Applicant shall be responsible for the cost to repair any and all damage directly caused by the construction of the Project.
 38. 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 as-built Project complies with the approved Site Plans and the Architectural Plans in all material respects, including the modifications required by this Decision.
 39. Prior to construction, Applicant shall retain a Geotechnical and/or Structural Engineer to perform a subsurface exploration program and foundation design study and provide a Foundation Engineering Report ("FER"). In the event the FER recommends a vibration monitoring system, Applicant shall install same as recommended.
 40. During construction and initial leasing, the Applicant may post on Site no more than one (1) temporary 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.

Modifications of Prior ZBA Action

41. Subject to compliance with this Decision, the previous Variances/Special Permits/relief from the Zoning By-law issued by this Board, as previously modified, for the existing office building on the Lot are hereby modified as necessary as per the Findings and Conditions in this Decision in order to allow the current use of the office building to continue, together with the façade improvements and permitted storefront space as proposed in the Application for the Project, as a separate use from the proposed 40B residential apartments to be located on the 40B Locus.

Legal/Permit Review

42. With respect to the Applicant's request for waivers from local by-laws and regulations dated February 16, 2021 as updated on July 27, 2021 and August 24, 2021, attached to this Decision as Exhibit 1, the Board approves those waivers. The Project must comply with all by-laws and regulations not waived.
43. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans, materials, and elevations for the building, indicating facade design, materials, colors, window details and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the Site Plan and Architectural Plan submitted August 24, 2021 to the Board. Color, windows, and materials shall be reviewed and approved by the Assistant Director of Regulatory Planning.
44. Prior to the issuance of a Building Permit, the Applicant shall submit final site and landscaping plans indicating: plant types and sizes, 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 covered and secure bicycle storage; location of trash, recycling, and a snow removal plan with storage of snow not permitted on the site, subject to the review and approval of the Assistant Director for Regulatory Planning.

45. Prior to Commencement of Construction, the Applicant shall submit: 1) a "Closure Assessment" in connection with the underground storage tanks, if any, in conformance with 310 CMR 80.43, and other relevant MassDEP guidance and regulations; and 2) a report characterizing the soil generated for off-site disposal and management of soil in conformance with MassDEP guidance and regulations. If volatile organic compounds or volatile petroleum hydrocarbon fractions are detected during either of the above in a manner triggering reporting subject to 310 CMR 40.0300 et. seq., the Town may hire a Licensed Site Professional, with costs borne by the Applicant, to make a recommendation for appropriate vapor barrier and/or vapor mitigation measures, subject to the approval of the Building Commissioner, Director of Health, and Director of Engineering and Transportation.
46. Prior to the issuance of a Building Permit, the Applicant shall submit a lighting plan to the Building Commissioner for review and approval. All new exterior lighting on the Site shall be installed and maintained so that no new direct light or glare shines on any street or any adjacent building. Headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with local by-laws.
47. Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of the existing nearby street trees. The Applicant shall provide a plan for protecting existing street trees during construction for the review and approval by the Town Arborist, with all costs borne by the Applicant and shall not remove any street trees, either before or after construction, without the authorization of the Town Arborist. The Applicant shall use best efforts to preserve and protect the street tree on Harvard Street.
48. Within reasonable time upon issuance of the Comprehensive Permit, Applicant shall submit to the Director of Transportation and Engineering a preliminary storm water management, sewage and drainage plan, which matches the approved Site Plan and Architectural Plan and make its Civil Engineer available to the Director of Transportation and Engineering for working sessions and coordination.
49. Prior to the issuance of a Building Permit, the Applicant shall submit a final storm water management, sewage and drainage plan, and an erosion control plan to the Director of Transportation and Engineering for review and approval.
50. The Applicant shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with any applicable Regulatory Agreement during this period shall be borne by the Applicant.
51. The Town will not issue a Building Permit for the Project without final approval from the Subsidizing Agency.
52. The Town will not issue a Building permit for the Project without review of final plans by the Assistant Director for Community Planning and verification that they comply with this Decision and are consistent in all material respects with the Site Plans and Architectural Plans and final approval from the Subsidizing Agency.
53. The provisions of this Comprehensive Permit decision shall be binding upon the heirs, successors and assigns of the Applicant and the obligations shall run with the land.

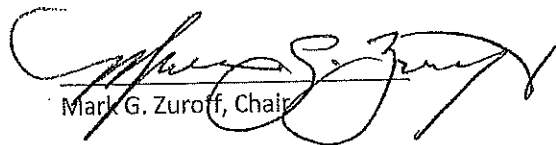
54. Any reference to Town staff shall be read to include a designee (either other staff member(s) or a consultant) of that person or of the head of the respective Town department or division.
55. If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.
56. This Comprehensive Permit shall expire if Commencement of Construction is not achieved 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). The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).
57. If the Applicant revises any of the Site and Architectural Plans, it shall present the revised plans to the Board in accordance with 760 CMR 56.05(11). Insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.
58. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
59. Prior to 30 days subsequent to the end of all applicable appeal periods, 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.

VI. ATTACHED:

- Exhibit 1: Granted Waivers
- Exhibit 2: Terms To Be Included in Replacement Town Regulatory Agreement
- Exhibit 3: Public Hearing Notice Published in the Brookline TAB on February 18, 2021 and February 25, 2021

VII. RECORD OF VOTE ON 209 HARVARD STREET COMPREHENSIVE PERMIT

The Board of Appeals voted (3-0) a Comprehensive Permit subject to the above-stated conditions:


Mark G. Zuroff, Chair

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

Unanimous Decision of
The Board of Appeals

Filing Date: 11/2/2021

A True Copy

ATTEST

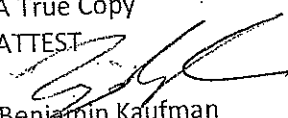

Benjamin Kaufman
Clerk, Board of Appeals

Exhibit 1 REQUESTED ZONING WAIVERS

VOTED: Pursuant to 760 CMR 56.05(10), this Comprehensive Permit shall be a master permit which shall subsume all local permits and approvals normally issued by Local Boards, Commissions and Departments.

VOTED: To grant the following waivers from local bylaws and regulations:

BROOKLINE ZONING BY-LAWS				
Waiver Number	Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver
A	Sections 5.06 and 5.09	Special District Regs (Coolidge Corner) & Design Review	Design Review requirements under M.G.L. x. 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
B	Section 5.20 & Table §5.01	Maximum Floor Area	Waiver from maximum ratio of gross floor area to lot area. (M1.5 = 1.5; L1.0 = 1.00)	The Project is on a 24,644 square foot lot. The FAR for the combined site as proposed is 2.85. If the Project was a standalone building in the M portion of the lot, the FAR would be 3.18.
C	Section 5.04	Residential Building on Rear of a Lot	The Applicant is seeking a waiver to permit a residential building on the rear lot of a permitted main building.	The Project will not have independently provided buildings with compliant front, side and rear yards and lot area. The distance between each building will be less than twice the required rear yard depth and the rear building will not have independent frontage.
D	Section 5.07, Section 5.60 & Table 5.01	Minimum Side Yard (Left - North)	Applicant seeks a waiver from the side yard requirements.	Side Yard Setback required in M1.5 portion of the lot is 29.7'. The proposed is between 9.75' and 11'. The L1.0 portion of the lot is permitted by prior special permit.

E	Section 5.07, Section 5.60 & Table 5.01	Minimum Side Yard (Right - South)	Applicant seeks a waiver from the side yard requirements.	Side Yard Setback required in M1.5 portion of the lot is 29.7'. The proposed is between 7.75' and 11.5'. The L1.0 portion of the lot is permitted by prior special permit.
F	Section 5.07, Section 5.70 & Table 5.01	Minimum Rear Yard	Applicant seeks a waiver from the rear yard requirement.	30 ft rear yard setback is required. The Project's rear yard is 10.75'.
G	Section 5.07, Section 5.91 & Table 5.01	Minimum Usable Open Space	The Applicant seeks a waiver for Usable Open Space requirement.	The Project will add 1,972 sf of usable open space where the existing lot had 0 sf.
H	Section 5.07, Section 5.90 & Table 5.01	Minimum Landscaped Open Space	The Applicant seeks a waiver for Landscaped Open Space requirement.	The Project will consist of 4,813 sf of landscaped open space, an increase of 3,582 sf.
I	Section 5.30-5.31 & Table 5.01	Maximum Height	Applicant seeks waiver from the maximum building height limitations. (M1.5 = 45')	The proposed height is 66.5' in the M1.5 district. The L1.0 portion of the lot is permitted by prior special permit.
J	Section 6.00(1)	New Structure not in compliance with Section 6.04	Applicant seeks waiver from this section.	The new structure would require 52 parking spaces in the M1.5 district for the residential structure. The proposal calls for 32 parking spaces, to be provided to the residential structure as described in Section 11 of this application.
K	Section 6.02, Section 6.03 & Table 6.02	Off Street Parking Requirement	Applicant seeks a waiver from the required off street parking spaces.	The new structure would require 52 parking spaces in the M1.5 district, 32 parking spaces to be provided to the residential structure as described in Section 11 of this application. The existing medical office building is permitted by prior special permit.

L	Sections 6.04 & 6.06	Off Street Parking Regulations	Applicant seeks a waiver from the required design criteria for parking facilities and lighting.	The off-street parking design may require waivers for aisle, stall, driveway, garage entrance and exit dimensions, pedestrian and vehicular impact mitigation and lighting regulations.
M	Section 4.07 & Table 4.07, Use 6D	Size of Units	Applicant seeks a waiver from the required square footage of residential units.	Several units will be less than 500 square feet.
N	Section 6.07	Design and layout of Off Street Loading Facilities	Applicant seeks a waiver for the required design criteria for off street loading facilities.	The off street loading design may require waivers for access and maneuverability for loading, delivery and pickup vehicles.
O	Brookline's Stormwater Management Bylaw (Article 8.26)	Private Tree Removal and soil removal	Applicant seeks a waiver for the required application and permitting for the removal of private trees and soil removal for the excavation	The Applicant will be removing trees on the property as shown by the Landscape Plan and excavating
P	Section 4.08 Affordable Housing Unit Size	Affordable Units must be of a particular size.	Applicant seeks a waiver for the required size of units.	The Project incorporates studio units less than 500 sf.
Q	Section 5.51 Front Yard Setback	A front yard setback is required.	Applicant seeks a waiver for the front yard setback.	The addition, the façade alterations and permitted storefront use will require front yard setback relief.
R	Sections 7.00, 7.02, 7.03, 7.04, 7.06, 7.08, 7.09	Design Review is Required for Signage and Façade Alterations	Applicant seeks a waiver of the sign regulations subject to review of the Assistant Director of Regulatory Planning (excluding storefront retail signage).	The requested façade improvements incorporate new signage depicted in the plans to be reviewed and approved by the Assistant Director of Regulatory Planning.

REQUESTED MODIFICATIONS FROM EXISTING ZBA RELIEF GRANTED

Special Permit Relief: Continue all relief granted that allows the current medical building use and to amend that relief to allow the Project to be added at the property and allow the new FAR and any other necessary relief.

Prior decisions of reference include, but may not be limited to: 11/16/70, 1668, 1668A, 2260, 2260A, 2260B and 2016-0022

The Board does not grant the waiver request on building permit and related construction-related fees: all customary Town building permit fees and construction-related fees shall be paid by the Applicant.

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 Massachusetts Housing Partnership 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 forth 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 will, 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 9, 14, 15 and 50 of the Comprehensive Permit for a regulatory agreement. From and immediately after the expiration or termination of the Subsidizing Agency Agreements, the Town shall enter into an agreement containing the terms of this exhibit to satisfy the requirements of Conditions 14 and 50 of the Comprehensive Permit (the "Town Regulatory Agreement").
3. Affordability Requirements. Pursuant to the terms of Condition 8 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 fifty percent (50%) 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 Select Board, 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 successor 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 purposes of Chapter 40B.

The Select Board 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.

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 38 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 by the Applicant to the Subsidizing Agency during the Subsidy Period relative to its compliance with the provisions of Paragraph 3 above.

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 of the Town Regulatory Agreement, the rental restrictions, and other requirements provided therein shall remain effective 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 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.

Notwithstanding anything to the contrary contained herein, this Agreement shall in no way be construed to give authority to the Town to limit or restrict the dividend or profit of the Applicant, and the Town agrees that the authority and responsibility for such limitations or restrictions, if any, belong solely to the Subsidizing Agency.

EXHIBIT 3

Town of Brookline
Massachusetts

Town Hall, 3rd Floor
333 Washington Street

Board of Appeals



ZONING BOARD OF APPEALS

NOTICE OF VIRTUAL PUBLIC HEARING

Tuesday, March 9, 2021, at 7 pm

Register for this meeting by following this link: <https://bit.ly/2NYwfly>

After registering, you will receive a confirmation email containing information about joining the meeting. Note that registration is only needed to receive information on how to join the meeting, and does not preclude an individual's ability to attend anonymously. Options are available to join the meeting by phone.

209 Harvard Street

The Brookline Zoning Board of Appeals will hold a public hearing on a new 2021 application for a Comprehensive Permit submitted to the Town of Brookline by 209 Harvard Development LLC, in accordance with M.G.L. c. 40B, for 209 Harvard Street, Brookline, MA. The new application proposes to construct 44 housing units, including 36 studios; three, two bedroom units; and five, three bedroom units; with eleven of these units (25%) designated as affordable, together with retail space and new façade elements to the existing building. The new application is substantially similar to the project proposed in the 2020 application for a Comprehensive Permit submitted to the Town of Brookline by 209 Harvard Development LLC for 209 Harvard Street, Brookline, MA, but with the addition of the retail space and new façade elements to the existing building.

The Board will also hold the continued public hearing on said 2020 application as previously scheduled, for the purpose of addressing the applicant's potential request to withdraw the 2020 application without prejudice. **(Precinct 7)**

A detailed agenda may be found on the monthly Town Calendar at <https://www.brooklinema.gov/>.

The hearing may be continued to a date/time certain with no further abutter or TAB notice.

Project plans and application are available on the Brookline Town website at:

<http://www.brooklinema.gov/1731/209-Harvard-Street>

Please direct any questions or comments for the Board of Appeals to: **Polly Selkoe, Assistant Director for Regulatory Planning** pselkoe@brooklinema.gov.

PUBLISH: February 18 and 25.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services, or activities. Individuals, whom are in need of auxiliary aids for effective communication in Town programs and services, may make their needs known to Lloyd Gellineau, at (617) 730-2326. Those who need effective communication services should dial 711 and ask the operator to dial the relevant Town Department.