



BOARD OF APPEALS
Jesse Geller, Chairperson

*Town of Brookline
Massachusetts*

Town Clerk Stamp Received ^^^

**BOARD OF APPEALS DECISION
MODIFICATION TO BOARD OF APPEALS CASE NO. 2016-0032
COMPREHENSIVE PERMIT
40 CENTRE STREET**

TOWN CLERK'S OFFICE
DEC 14 2022 10:51:10

Date: December 14, 2022

Location: Assessor's Atlas Map Sheet 16, Block 083, Lot 03 known and numbered as **40 Centre Street**, Brookline, Massachusetts

PROCEDURAL HISTORY

1. The Board of Appeals (the "Board") granted a Comprehensive Permit on February 8, 2017, to construct a 6-story building with 40 residential rental units and 24 parking spaces with stackers on the ground floor. ("2017 Decision").
2. In 2017 abutters appealed the Board Decision (the "Abutters").
3. In August 2020 the Brookline Preservation Commission issued an extension for the demolition permit to two years beyond the end of litigation.
4. In 2022 the Appellate Court sustained a judgment of the trial court in favor of Forty Centre Street LLC (the "Applicant"). The Abutters filed an application for Further Appellate Review with the Supreme Judicial Court.
5. On June 27, 2022, the Applicant submitted a Notice of Project Change, pursuant to 760 CMR 56, proposing to reduce 24 parking spaces with stackers to 16 parking spaces without stackers.
6. On August 4, 2022, the Board held a public meeting beyond the 20-day statutory deadline with the Applicant's permission, and determined that the proposed Project Change is Substantial pursuant to 760 CMR 56.07(04).
7. In an email dated September 13, 2022, to Senior Planner Maria Morelli, Assistant Town Counsel Jonathan Simpson confirmed that the Supreme Judicial Court denied the Abutters' application for Further Appellate Review and that litigation is concluded.

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8. The Board opened a duly advertised public hearing on October 24, 2022, with the written permission of the Applicant to open the hearing beyond the 30-day statutory deadline. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: October 24, 2022 (continued), November 9, 2022 (continued), and November 14, 2022.
9. The materials submitted by the Applicant in its Project Change Letter and during the public hearing include the November 14, 2022, presentation to the Board.
10. During the course of the public hearing, Town staff, and local residents submitted oral and written testimony with respect to the Project Change.
11. On November 14, 2022, the Board closed the hearing.
12. The Board deliberated on the Project Change at a public hearing held on November 14, 2022, and voted to grant a Modified Comprehensive Permit subject to the conditions listed below, which supplement, modify, or amend the existing Conditions of the Comprehensive Permit.

SUPPLEMENTAL FINDINGS

1. For the initial Comprehensive Permit the peer reviewer recommended a ratio of 0.67 parking spaces per dwelling unit for the proposed bedroom mix, and 0.77 with visitor parking included. The Board approved a ratio of 0.625.
2. The Applicant now proposes a parking ratio of 0.4.
3. The site is in the heart of Coolidge Corner near the MBTA C-line train and within the Transit Parking Overlay District.
4. Fall 2021 Town Meeting passed Warrant Article 23, which the Attorney General approved and which would allow the Board to reduce or eliminate required parking requirements if one or more criteria are met, including fossil-fuel-free construction and new residential units constructed.
5. The 2017 Decision granted a waiver from parking requirements.
6. The Applicant proposes the following improving in conjunction with the proposed Project Change:
 - a. Fossil-fuel-free construction;
 - b. No change in the number residential units;

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- c. An increase in the percentage of affordable units from 20% at 50% AMI to 25% at 80% AMI. AMI means American Median Income as determined by the United States Department of Housing and Urban Development.
 - d. Conduit for the future installation of rooftop solar panels;
 - e. An increase in the number of long-term bicycle parking spaces from 22 to 44;
 - f. Electric Vehicle (EV) charging service equipment (EVSE) installed in 9 parking spaces and EVSE infrastructure in 7 parking spaces;
 - g. A reduction of the slope of the garage entrance drive ramp, from 10% to 4.5%.
 - h. The updated building section presented to the Board showed that the reduced garage slope would reduce the height of the building to 66 feet-4 inches and would not increase the waiver for a building height of 67 feet-4 inches granted in 2017.
7. The 2017 Decision granted a waiver requiring that 10% of total parking spaces be reserved for visitors and tradespeople.
 8. The subject site abuts two public parking lots and a private parking lot whose owner rents parking spaces to nearby residents.
 9. In her report to the Board, Ms. Morelli stated: The Town has strict on-street regulations that prohibit parking for longer than two hours. Residents who desire long-term parking will not have the option of parking on public streets as they would in Boston, reducing the impact on the public way. By providing a lower parking ratio for the Project, the applicant restricts the pool of potential tenants to those who do not prioritize this amenity—a risk to the developer not the Town. The lower parking ratio reduces the Project's proposed traffic volumes in this congested area, which staff believes further lowers the impact on the surrounding neighborhood. Staff considers the compensatory changes, as listed under Finding Item 6, as substantively improving impact on environmental and public health as well as reducing any potential impact on traffic safety.
 10. The Board acknowledges the concerns raised by members of the community and other interested parties who testified both in support of and in opposition to the Proposed Change.
 11. The Board finds that the conditions imposed in this Decision are necessary to address Local Concerns as that term is defined in 750 CMR 56.02. The Board finds that these conditions will not render the Project uneconomic.
 12. The Applicant has had the opportunity to review the conditions and has no objections.

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DECISION

At a duly noticed public hearing held on November 14, 2022, the Board considered the request of the Applicant and voted 3-0 to approve the requested Project Change as Substantial pursuant to 760 CMR 56, subject to the following Conditions, which supplement, modify, or amend the existing Conditions in the Comprehensive Permit (“Modified Decision 2022”).

NEW AND MODIFIED CONDITIONS AND WAIVERS

1. New Conditions are as specified under **Schedule 1 (2022)**:
2. Modified Conditions are as specified under **Schedule 2 (2022)**:
3. Waiver N is modified as follows:

Brookline Zoning By-Law	Requirement	Request Waiver	Details of Proposal Requiring Waiver	Waiver Number
Table 6.02	Parking Spaces	A-Waiver from 2.0/2.3 spaces/unit totaling 82 spaces B-Waiver from Article 19 totaling 33 cars Ratio 0.825	Total 25 spaces (includes stackable units) Ratio 0.625 <u>Total 16 spaces no parking stackers.</u> Ratio 0.40	N

4. Except as noted herein, the terms of the Comprehensive Permit shall remain in full force and effect.

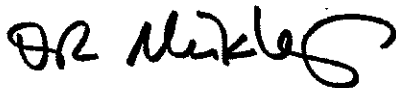
Attachments:

- Schedule 1 (2022): New Conditions
- Schedule 2 (2022): Modified Conditions with Exhibits
- Schedule 3 (2022): Proposed Garage Plan and Proposed Building Section
- Schedule 4: Notice of Hearing

RECORD OF VOTE

The following members of the Board vote to approve the foregoing as a Substantial change to the Development and the Comprehensive Permit subject to the above-stated conditions:

Signed December 14, 2022



(signature)

By:
Randolph Meiklejohn, Acting Chair
Lark Palermo
Neil Wishinsky
[Schedules 1, 2, 3, and 4 follow]

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SCHEDULE 1 (2022): NEW CONDITIONS

1. Prior to the issuance of a Building Permit, the Applicant shall submit plans stamped and signed by a registered architect or certified construction professional providing evidence for the review and approval of the Building Commissioner that:
 - a. The building is designed to be have fossil-fuel free heating and cooling systems (with the exception of domestic hot water and back-up generator) and
 - b. Conduit is designed to accommodate the future installation of photovoltaic (solar) panels on the roof to generate renewable energy.
2. The number of bicycle parking spaces shall be 44 and located in the Project's garage. Prior to the issuance of a Building Permit, the Applicant shall submit plans for the review and approval of the Building Commissioner indicating that the slope of the garage entrance drive ramp is no greater than 5%.
3. Nine vehicular parking spaces shall be installed with Level 2 EV charging equipment as defined by the Massachusetts Electrical Code. Seven vehicular parking spaces shall be EV Ready Spaces C or EV Ready Spaces as defined in Warrant Article 18 passed by Spring 2022 Town Meeting. Prior to the issuance of a Building Permit, the Applicant shall submit plans stamped by an electrical engineer that
 - a. meet the Building Department's requirements for plan submissions for EV Ready Spaces C/EV Ready Spaces and
 - b. include an electrical service load calculation.

SCHEDULE 2 (2022): Modified Conditions with Exhibits

1. The Project shall include no more than forty (40) units of rental housing in a structure (the "Structure") no taller than six (6) stories and no fewer than ~~twenty-five (25)~~ **sixteen (16)** parking spaces in the garage located on the ground level, which are shown on the Site Plans and the Architectural Plans in Item 4 under Procedural History, are permitted. No more than the twenty-five (25) percent of the total parking spaces maximum are permitted to be compact spaces, as allowed under the Town Zoning By-Law as of this date.
2. No fewer than five (5) parking spaces shall be available at no cost to the occupants of the Affordable Units in perpetuity, subject to the approval of the Subsidizing Agency.
3. The total maximum number of bedrooms shall be **revised as follows:**

Unit Type	Number of Units		Total Bedrooms per Unit Type	
	Original	Revised	Original	Revised
Studio	16	<u>10</u>	16	<u>10</u>
One Bedroom	7	<u>15</u>	7	<u>15</u>
One-Bedroom with Den*	7	<u>0</u>	14	<u>0</u>
Two-Bedroom	5	<u>11</u>	10	<u>22</u>
Three-Bedroom	5	<u>4</u>	15	<u>12</u>
TOTAL	40	40	62	<u>59</u>

* A room at least 100 sf is considered a bedroom pursuant to Zoning By-Law Section 6.02, Paragraph 1, Table of Off-Street Parking Requirements.

4. With respect to the Applicant's Request for Waivers from local bylaws and regulations dated December 19, 2016, the Board approves those waivers listed in Exhibit 1. The Project must comply with bylaws and regulations not waived.
5. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the building, indicating façade design and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the plans listed under Item 4 under Procedural History and **Schedule 3**. Color, windows, and materials shall be reviewed and approved on Site by the Assistant Director for Regulatory Planning within a reasonable timeframe.
6. ~~After the last Certificate of Occupancy is issued, and at least once per year, the Applicant shall submit proof to the Building Commissioner that the parking system is operational and has been maintained in accordance with pertinent State regulations governing elevators, and that training for safe operation of the parking system has been provided to occupants of the Project. **Condition 6 related to parking stackers is no longer applicable and is deleted.**~~
7. 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 and approval of the Assistant Director for Regulatory Planning.

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8. Prior to the issuance of a Building Permit, the Applicant shall submit a lighting plan to the Director of Engineering and Transportation 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 homes and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with local bylaws.
9. Prior to the Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of the existing street trees and provide a plan for protecting existing street trees during construction, and planting additional street trees, for the review and approval by the Town Arborist with all costs related to the performance thereunder borne by the Applicant. Any proposed removal of street trees shall be subject to M.G.L. c.87, "the Shade Tree Act."
10. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan to the Director of Engineering and Transportation for review and approval.
11. Prior to approval of the site plan by the Director of Engineering and Transportation in accordance with Condition 17, the Applicant shall undertake field investigations to verify assumptions used in the design of the infiltration system and submit a report certified by a registered civil engineer to the Director of Engineering and Transportation detailing soil permeability, soil texture, and depth to seasonal high ground water.
12. Traffic mitigation shall be as follows:
 - (a) The Applicant, in consultation with the Director of Engineering and Transportation, shall install a STOP sign and a stop line consisting of concrete pavers at the Site's driveway exit with all costs for the performance thereunder borne by the Applicant.
 - (b) The Applicant, in consultation with the Director of Engineering and Transportation, shall install a NO PARKING THIS SIDE sign in the public way on Centre Street toward Beacon Street near the Site with all costs for the performance thereunder borne by the Applicant.
 - (c) The Applicant shall ensure that the 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.
 - (d) The Applicant shall contribute \$5,000 toward the final cost to install an audible pedestrian signal at the traffic signal located at the Centre Street and Williams Street intersection. Prior to the issuance of a Building Permit, the Applicant shall deposit \$5,000 into a segregated Town account to be used by the Town. If the funds are not used within three (3) years from the date of deposit for this audible pedestrian signal, the funds shall be returned to the Applicant.
13. 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) a rubbish compactor shall be installed in the rubbish storage room and no fewer than two (2) receptacles, each of which is sized no smaller than two-cubic-yards, shall be provided for the rubbish generated by the Project. The rubbish/recycling plan shall show where receptacles will

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be stored and where a third receptacle, if required, would be stored for compliance with State Sanitary Code;

- (b) no fewer than two (2) receptacles, each of which is sized no smaller than two-cubic-yards, shall be provided to dispose of recyclables generated by the Project. The rubbish/recycling plan shall show where receptacles will be stored and where additional receptacles, if required, would be stored for compliance with State Sanitary Code;
 - (c) the rubbish/recycling storage room shall be maintained in compliance with State Sanitary Code and Fire Code requirements;
 - (d) the rubbish/recycling storage room shall be sized to accommodate no fewer than four (4) receptacles each of which is sized no smaller than two-cubic yards;
 - (e) noise-reducing sheet rock (i.e. quiet rock) or similar material shall be installed if a dwelling unit is located above the rubbish storage room to reduce noise impact;
 - (f) the Applicant shall inform the Public Health Department when the Project is ninety (90) percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance;
 - (g) all rubbish generated by Project shall be disposed of twice weekly by a private waste management service contracted by the Applicant in compliance with all applicable regulations; the Chief of Environmental Health shall review and approve a request for a third pick-up day;
 - (h) all recycling generated by Project shall be disposed of twice weekly by a private waste management service contracted by the Applicant in compliance with all applicable regulations;
 - (i) the schedule for the Applicant's rubbish and recycling pick-up demonstrating compliance with Town bylaws;
 - (j) rubbish and recycling receptacles shall not be stored in the public way at any time;
 - (k) rubbish and recycling receptacles shall not be stored in the front yard from 8:00 AM to 11 PM on weekdays and weekends.
14. Plantings within five (5) feet of the either side of the driveway and within the first six (6) feet of the front yard shall be no higher than three (3) feet for optimal driver visibility.
15. When fifty (50) percent of the Certificates of Occupancy are issued, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law.
16. Prior to the issuance of a Building Permit, the Applicant shall submit a construction management plan to the Building Commissioner and the Director of Engineering and Transportation for review and approval.

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17. Prior to the issuance of a Building Permit for the building, or a 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, as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.
18. 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.
19. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation 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 the initial disturbance of soils 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 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.
20. Prior to Commencement of Construction, the Applicant shall conduct a pre-construction survey of the above and below grade structures of properties sharing a lot line with the Site, subject to the abutters' or authorized parties' permission granting the Applicant access to their properties. Any damage to structures due to construction of the Project shall be the financial responsibility of the Applicant to repair.
21. There shall be no blasting during construction at the Site.
22. Prior to the issuance of the first 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 this Decision.
23. During construction and initial leasing, the Applicant may post on the Site no more than one (1) temporary sign for the Project, no greater than twenty (20) square feet, with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.
24. 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 Assistant Director for Regulatory Planning, if they are other than those indicated on the plans listed under Conditions 5 and 7.
25. 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.
26. Prior to the issuance of a Building Permit, the Applicant shall submit a 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

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Zoning Bylaw, and which shall be subject to the review and approval of the Director of Engineering and Transportation. Mitigation measures in the TAP shall include the Applicant (i) providing fifty (50) percent subsidies for its employees' public transit costs; (ii) providing on-site sale of MBTA passes; (iii) providing no fewer than twenty-two (22) racks for secure bicycle storage and (iv) publicizing transit options.

Housing

27. As a condition of any approval hereunder, at least ~~20%~~ 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 ~~50%~~ 80% of area median income ("AMI"), adjusted for household size, as determined by the United States Department of Housing and Urban Development. Subject to approval by the Subsidizing Agency (as defined in 760 CMR 56.02) as the project administrator, the Affordable Units and the units designated for rent at fair market rates (the "Market Rate Units") shall be eligible to be included in the Town's SHI.
28. The Affordable Units shall be dispersed throughout the Project and shall have 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 ~~eight (8)~~ ten (10) Affordable Units.
29. 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
30. All leases for the units in the Project shall include language stating that tenants may not use dens, 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.
31. Prior to the issuance of a Certificate of Occupancy by the Building Commissioner, the Director of Planning and Community Development will review and approve the distribution of units between Affordable and Market Rate Units to ensure that the floor plans and amenities of the Affordable Units relative to the Market Rate Units are consistent with the conditions of Subsidizing Agency's approval of the Project.
32. Local Preference: The Applicant shall work with the Assistant Director for Community Planning to request that no less than 70% of the Affordable Units be awarded to households with local preference during the initial lottery, as defined by the Town.
33. The Assistant Director for Community Planning must review the affirmative marketing plan for the Affordable Units before it is submitted to the Subsidizing Agency for final approval. The Assistant

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Director for Community Planning will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.

34. 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 Assistant Director for Community Planning including annual rent increases and information verifying income eligibility for Affordable Units.
35. ~~Eight (8)~~ Ten (10) units in the Project shall in perpetuity be Affordable Units. Prior to the issuance of any building permit, a Regulatory Agreement, which shall include monitoring provisions if such provisions are not provided in a separate Monitoring Services Agreement, shall be executed by both the Applicant and the Subsidizing Agency, in form and content as approved by the Subsidizing Agency as Subsidizing Agency, and recorded with the Registry of Deeds by the Applicant against the Property, provided, however, that if a lender or governmental funding agency for the Project requires the issuance of building permits prior to any construction loan closing, then the building permits may be issued, subject to the Building Commissioner's satisfaction with compliance with all other applicable legal requirements for issuance, and released to the construction lender's closing attorney, who may then release them to the Applicant upon the execution and recording of the Regulatory Agreement. Such restrictions shall take priority over all financing documents related to the Project and shall survive foreclosure. The Applicant/Owner shall provide copies of monitoring reports to the Town.
36. Moreover, a second Regulatory Agreement and Monitoring Services Agreement (the terms to be included are provided in Exhibit 2) shall be prepared prior to expiration of the initial Regulatory Agreement, approved by the Town Attorney, executed and recorded for the period after the expiration of the term of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said second Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent, which shall continue the affordability restrictions imposed by the Subsidizing Agency. Such agreement shall be consistent with the terms of this Decision and with the customary terms of Town regulatory agreements relating to affordable housing. The Applicant shall retain the Town or a consultant designated by the Town as the Monitoring Agent for this development for the period after the expiration of the term of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.
37. 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), 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

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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.

38. The Town will not issue a Building Permit for the Project without review of final plans by the Assistant Director for Community Planning and final approval from the Subsidizing Agency.
39. No more than four (4) Certificates of Occupancy shall be issued by the Building Commissioner for Market Rate Units until at least one (1) Certificate of Occupancy is issued for an Affordable Unit. No more than twenty-eight (28) Certificates of Occupancy for Market Rate Units shall be issued until at least seven (7) occupancy permits for Affordable Units are issued.

Fire Safety

40. Prior to the issuance of a Building Permit, the Fire Chief or his designee shall review and approve the final site plan.
41. Prior to the issuance of a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) the building has enhanced NFPA-13 (or latest versions of the NFPA code) designed sprinkler systems and (b) the building has direct alarm notification to the Fire Department designed in accordance with the latest version of Building and Fire Codes.

Infrastructure

42. 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 building;
 - (c) All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable system.
43. The Applicant shall operate and maintain all of the foregoing in Condition 42 in good working condition and repair at all times at its sole cost.
44. 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 Engineering and Transportation.

Pre-Building Permit Review

45. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:

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- (a) Final site plans, architectural plans, and landscaping plans have been reviewed and approved by the Assistant Director for Regulatory Planning in accordance with Conditions 5 and 7.
- (b) The Director of Engineering and Transportation has reviewed and approved the final site and lighting plans in accordance with Condition 8 and 17; the final stormwater management and drainage plans in accordance with Condition 10; the water, stormwater and sewage facility designs in accordance with Condition 44; the erosion control plans in accordance with Condition 19; and the report on the condition of pavement surfaces in accordance with Condition 51 and all other items requiring review, verification, or approval by or to the satisfaction of the Director of Engineering and Transportation as listed in these Conditions.
- (c) It has paid all fees and funded all improvements required pursuant to Condition 12 and, if applicable, Condition 9.
- (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 Engineering and Transportation, 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 16).
- (g) The Chief of Environmental Health has reviewed and approved the rubbish/recycling plan in accordance with Condition 13.
- (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- (i) The Assistant Director for Community Planning has reviewed the final plans in accordance with Condition 38.
- (j) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with Condition 40.
- (k) The Town Arborist has reviewed a plan to protect existing street trees or add new street trees in accordance with Condition 9.

Construction

46. During construction, the Applicant shall comply with all local, state, and federal laws regarding air quality, noise, vibration, dust, and blocking of any roads. The Applicant shall conduct construction in a safe manner and shall provide protection for the public. 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 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 noise or traffic

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complaints during these hours will be investigated by the appropriate Town agencies and departments.

47. 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 on the Site and the public way 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.
48. The Applicant shall make all 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).
49. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.
50. 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.
51. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation 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

52. 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.
53. Any reference to Town staff shall be read to include a designee (either other staff members or a consultant) of that person or of the head of the respective Town department or division.
54. 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.
55. 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.
56. Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
57. 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

EXECUTION VERSION

construction is defined as the construction of the foundation of the Project's building. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).

58. 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).
59. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
60. All utilities shall be underground.
61. Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
62. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.
63. Prior to thirty (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.
64. 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.
65. Prior to the issuance of a demolition permit, the Applicant, in consultation with and to the satisfaction of the Preservation Planners in the Department of Planning and Community Development, shall provide the following architectural and engineering documentation (prepared by a qualified preservation specialist or architectural historian), in accordance with Standard I of the U.S. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, pursuant to 48 FR 44716: (a) a full set of measured drawings depicting existing or historic conditions; (b) photographs (large-format negatives of exterior and interior views and photocopies with large format negatives of select existing drawings or historic views where available); and (c) written data narrating the history and description of the existing structure, with all costs related to the performance thereunder borne by the Applicant. The final products and materials shall be stored in Town archives, managed by the preservation planning staff, and available to the public for viewing upon request.

ATTACHED TO THE 2017 DECISION:

Exhibit 1 (Granted Waivers)

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

Exhibit 3 (Public Hearing Notice – May 12, 2016 and May 19, 2016)

[Pages 15A-15G follow]

**EXHIBIT 1: 40 CENTRE STREET
PROPOSED WAIVER LIST
M1.0 Zoning District
Approved by Zoning Board of Appeals December 19, 2016**

Brookline Zoning By-Law Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
§4.07 – Table of Use Regulations	Multi-Family Uses	Waiver to allow the property to be used as a multi-family dwelling, not requiring a special permit	The Development is a multi-family housing development containing 40 units. 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
§5.09	Design Review Waivers requested EXCEPT for the following sections: 5.09.3.c.2 existing conditions plan 5.09.3.c.3 drawing of proposal 5.09.4.f Stormwater drainage 5.09.4.g Utility service 5.09.4.h Advertising features 5.09.4.j safety and security 5.09.4.m energy efficiency	Design Review requirements not applicable under M.G.L. c. 40B.	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
Table §5.01 Section 5.20 Section 5.22	Maximum Floor Area Exceptions to Maximum Floor Area Ratio (FAR) Regulations For Residential Units	Waiver from maximum ratio of gross floor area to lot area (1.0 in M-1.0 District)	The Building is 45,482 sf minus 6,099 sf of garage space for a total of 39,383 sf. The lot size 10,889 sf. The FAR is 39,383/10,889. FAR 3.62	D

Table §5.01 Section 5.30 Section 5.31	Maximum Height of Buildings	Waiver from maximum building height limitations (40' in M-1.0 District)	Using Method 5.30A. The midpoint of the street frontage is 67.52 Base level of the Building 68.52 Actual building height of the will be 67'4" feet at its maximum measured by midpoint of street frontage.	E
Table 5.01 Section 5.60	Minimum Side Yard	Waiver from 10'+L/10' (24')	The proposed side yard is 5.1' on the east side and 6.1' on the west side	G
Table 5.01 Section 5.50 Section 5.51	Minimum Front Yard	Waiver 15'	The proposed front yard 5'	H
Table 5.01 Section 5.70	Minimum Rear Yard	Waiver from 30'	The proposed rear yard is 5.2'	I
Table 5.01	Maximum Building Stories	Waiver from 4 stories	6 stories are proposed	J
Section 5.54 (2)	Exceptions for Alignment	20'	5' front setback	K
Table 5.01 Section 5.90	Minimum Open Space (landscaped)	Waiver from 10%	2,154sf/ 39,383sf= 5.5%	L
Table 5.01 Section 5.91	Minimum Open Space (usable)	Waiver from 20%	0%	M
Table 6.02	Parking Spaces	A - Waiver from 2.0/2.3 spaces/unit Totaling 82 spaces	Total 25 spaces (includes stackable units)	N [JG+CH support; KP does not support]
Continued below				

Waiver N
modified in
2022 Modified
Decision
Page 2 of 3

			B - Waiver from Article 19 Totaling 33 cars Ratio 0.825	Total 25 spaces including up to 8 stackers Ratio 0.625	
Section 6.02	required parking be designated and marked for use by visitors and trades people		Waiver from 10% percent	0%.	O
Section 6.04(4c)	Maximum driveway curb cut 20'		Waiver to 21'	21' curb cut	P

Note: Any jumps in Waiver numbers means request was withdrawn or denied.

EXHIBIT 2 – 40 Centre

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 forth 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 shall satisfy in full the requirements set forth in Conditions 35 and 36 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 35 and 36 of the Comprehensive Permit (the “Town Regulatory Agreement”).

3. Affordability Requirements. Pursuant to the terms of Condition 27 of the Comprehensive Permit, the Applicant will restrict certain units in the Project (the “Affordable Units”) as follows: twenty percent (20%) of the units in the Project to be occupied and rented by households earning not more than fifty percent (50%) of the Area Median Income (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 Applicant 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 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 36 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.

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 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.



EXHIBIT 3

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:

40 CENTRE ST – CONSTRUCT A 6-STORY BUILDING TO INCLUDE 45 RESIDENTIAL UNITS AND 17 GARAGE PARKING SPACES AT THE GROUND LEVEL, in an M-1.0, Apartment House, zoning district, on May 23, 2016, at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Roth Family LLC) Precinct 9

The Applicant is currently proposing to replace the existing two-story brick structure located at 40 Centre Street with a six-story building to include:

- 45 total residential units ranging from studio to three-bedroom apartments (9 affordable and 36 market rate – all rental)
- 17 off-street parking spaces located in a structured parking area at the ground level of the building

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: May 12, 2016 & May 19, 2016

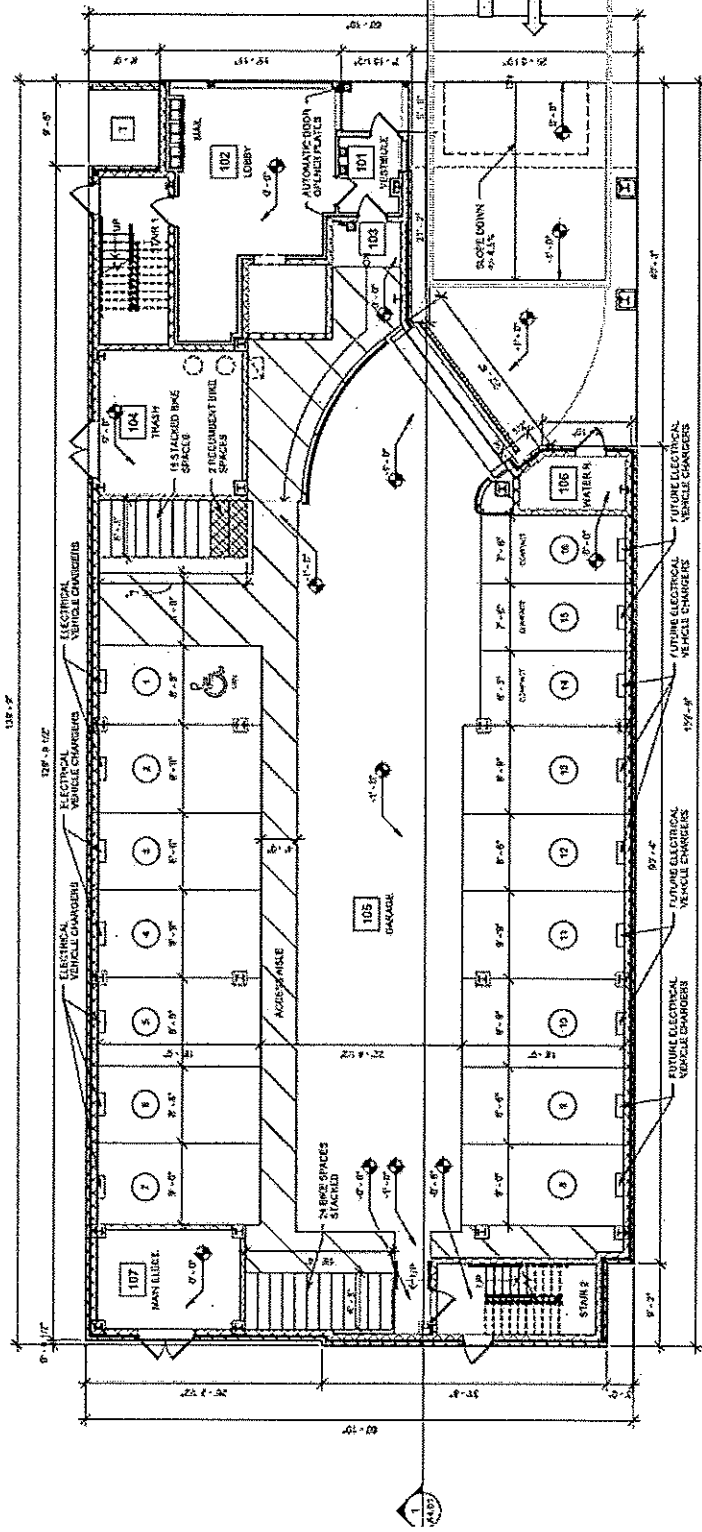
**SCHEDULE 3:
Proposed Garage Plan and Proposed Building Section**

[plans follows and are posted at
<https://www.brooklinema.gov/DocumentCenter/View/37087/ZBA-presentation---40-Centre-st-modification-114-2022>]

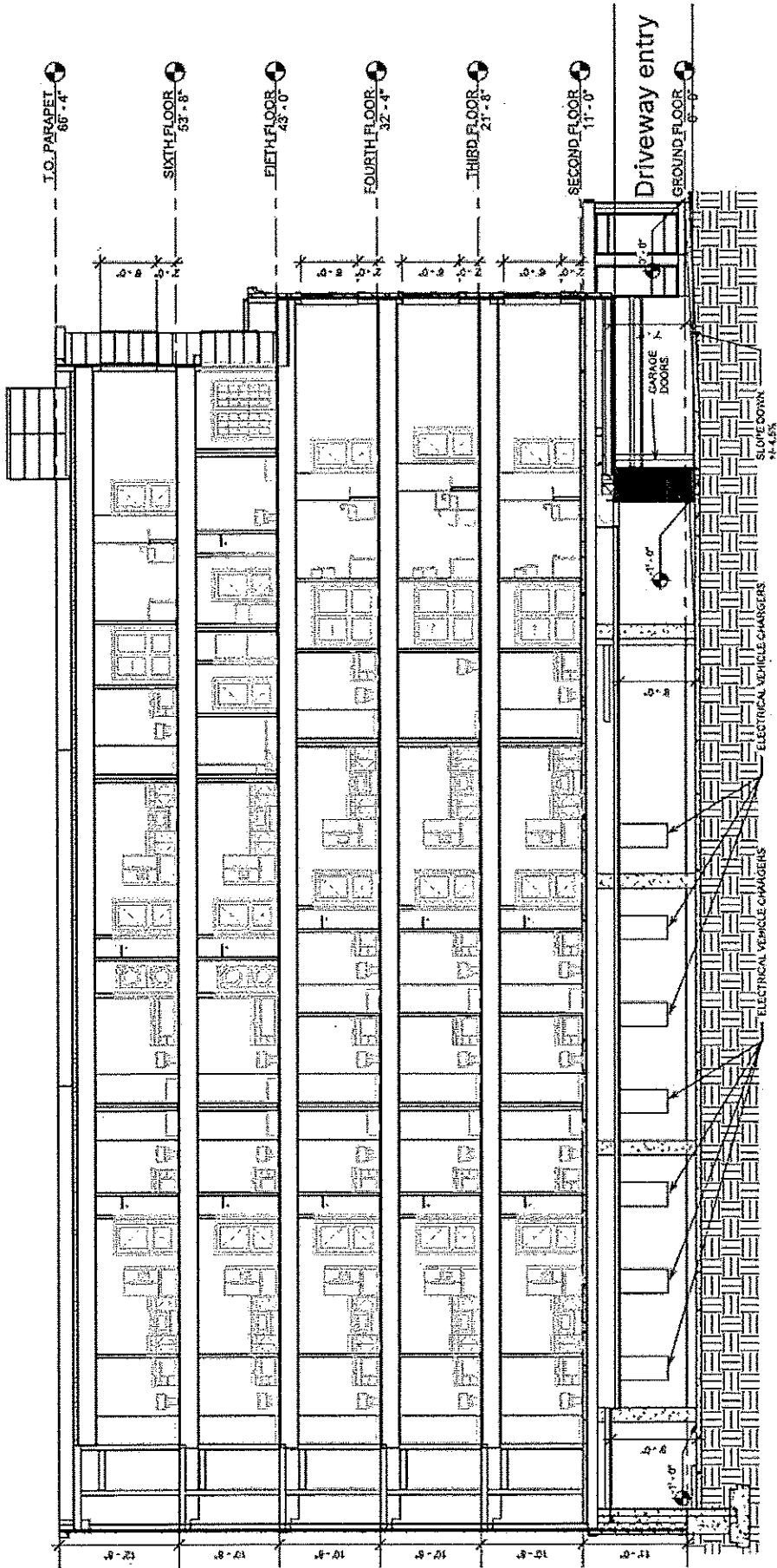
[Drawings follow]

Proposed Garage Plan

② SECOND FLOOR
18' x 13'



Proposed Building Section



SCHEDULE 4: NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on

Monday, October 24 2022 at 7:00pm

Registration Link: <https://bit.ly/3SQ4oRD>

The Zoning Board of Appeals will open a public opening hearing on an application submitted by 40 Centre Street LLC to modify a Comprehensive Permit (M.G.L.c.40B) granted in 2017 for an apartment building with 40 residential rental units

Petitioner: 40 Centre Street LLC Address: 40 Centre Street

Zoning: M-1.0 Precinct: 9

Description of Proposed Change: Reduce parking spaces from 24 to 16

AGENDA

Applicant Presentation

Testimony

Public Comment

Administrative Business

Plans and submissions may be viewed online at <https://www.brooklinema.gov/1302/40-Centre-Street-40B>

Interested persons may provide comments at the public hearing or by submitting written comments by email to mmorelli@brooklinema.gov

Assistive Listening Devices are available upon request: <https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

1 - Filed with Town Clerk December 14, 2022 (Town Clerk Stamp)

A handwritten signature in black ink, appearing to be 'D. J. [unclear]', written over a horizontal dashed line.

2 - Twenty-Day Appeals Period Concluded (Town Clerk Stamp)

APPLICANT

When twenty-day appeals period ends, provide Planning Department with evidence that 2022 Decision was filed with the Registry of Deeds.