

The Office of Town Counsel

Memorandum

To: Alison Steinfeld, Planning Director

From: Jonathan Simpson, Associate Town Counsel

Re: 40 Centre Street

Date: August 10, 2016

Cc: Todd Kirrane, Transportation Director

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This responds to your request for an opinion pertaining to the memorandum submitted to the Zoning Board of Appeals by the Transportation Board on June 20, 2016 regarding the 40 Centre Street 40B Application. The specific issue involved is Comment 2(b) on the memo, which recommends that the ZBA include, as a condition of the Comprehensive Permit a requirement that:

Owner/Tenant Vehicles should be excluded from Town managed Daytime and Overnight Resident Permit Programs.

As is implicit the Transportation Board's memo, the decision as to what, if any, condition to include related to parking is to be made by the ZBA. The Transportation Board's role is solely to make recommendations to the ZBA as to matters that would otherwise fall within their purview.

With respect to this recommendation, we would counsel the ZBA not to include this as a condition of the Comprehensive Permit. As an initial matter, the Transportation Board's regulations, as currently written, require that Daytime Parking Permits be issued to all applicants that can present evidence of residency and vehicle registration. They do not allow the kind of exclusion by address proposed here. In making its decision on a Comprehensive Permit, the ZBA assumes the role of the relevant boards, and it is also bound by these regulations with respect to the Daytime Permit Program.

Moreover, any decision to exclude residents of the proposed 40 Centre Street 40B from participating in either of the parking programs would raise a host of issues, both legal and practical. It is inadvisable for the Transportation Board to apply any such prohibition to an individual project, without any basis in a pre-existing regulation or policy with more universal application. Further, the proposed condition would be imposed on the developer, but would apply only to the future residents of the building, which presents difficulties in enforcement.