

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION  
40 CENTRE  
BOARD OF APPEALS CASE NO. 2016-0032**

Reviewed by TC and JB  
Check all x-refs

Date: DATE

Re: Application of ROTH FAMILY LLC for a Comprehensive Permit

Location: Assessor’s Atlas Map Sheet 16, Block 083, Lots 03; known and numbered as  
40 Centre Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On March 16, 2016, Massachusetts Housing Finance Agency (“MassHousing”) issued a Project Eligibility Letter (“PEL”) to ROTH FAMILY LLC (the “Applicant”).
2. On April 26, 2016, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the “Act”), to construct forty-five (45) units of rental housing and seventeen (17) parking spaces (the “Original Project”) on approximately 10,889 square feet located on Centre Street in Brookline, Massachusetts (the “Site”).
3. On November 21, 2016, the Applicant submitted a revised Comprehensive Permit Application (the “Application”) to the Town of Brookline (the “Town”) to construct forty (40) units of rental housing, and twenty-five (25) parking spaces (the “Project”).
4. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application

Comprehensive Permit Plans for 40 Centre dated April 25, 2016, and revised to November 21, 2016, prepared as follows:

Sheet Numbers and Titles

**Site Plans dated April 18, 2016, prepared and stamped by professional land surveyor Bert E. Corey, J.F. Hennessey Co. revised to November 10, 2016 and prepared and stamped by professional land surveyor Michael A. Clifford, J.F. Hennessey Co.**

Existing Conditions Plan dated December 2015

Site Feasibility Plan dated November 10, 2016

[“Site Plans”]

**Architectural and Plantings Plans dated April 11, 2016 revised to November 21, 2016, prepared by Cube3 Studio stamped by registered architect John H. Harding.**

Sheet A-101	Ground Floor Plan with Stormwater Management System location
Sheet A-102	Second Floor Plan
Sheet A-103	Third Floor Plan
Sheet A-104	Fourth Floor Plan
Sheet A-105	Fifth Floor Plan
Sheet A-106	Sixth Floor Plan

Sheet A-107	Roof Plan
Sheet A-201	Elevation – Northeast (Front)
Sheet A-202	Elevation – Northwest (Right)
Sheet A-203	Elevation – Southwest (Back)
Sheet A-204	Elevation – Southeast (Left)

[“Architectural Plans”]

Landscape Plans dated May 3, 2016, prepared by Ryan Associates.

[“Landscape Plans”]

**Traffic Impact Assessment dated April 15, 2016, prepared Giles Ham, Vanasse & Associates, and supplemented by a study dated October 14, 2016 and prepared by Daniel Mills, MDM Transportation Consultants.**

[“Traffic Impact Assessment”]

**Stormwater Narrative** dated November 10, 2016 and prepared by Schofield Brothers LLC.

[“Stormwater Plans”]

5. The Applicant submitted a Request for Waivers from local bylaws and regulations dated November 28, 2016.
6. The Brookline Board of Appeals (the “Board”), with the consent of the applicant, opened a duly advertised public hearing on May 23, 2016. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: June 2, 2016, June 20, 2016, August 1, 2016, August 15, 2016, September 1, 2016, September 12, 2016, September 27, 2016, October 5, 2016, (continued), October 26, 2016, November 21, 2016, November 28, 2016, December 13, 2016, December 19, 2016, and January 3, 2017. All continuances beyond 180 days from May 23, 2016 were with the Applicant’s written consent.
7. The Board conducted a duly noticed site visit on June 9, 2016.
8. On ~~December 19, 2016~~ January 3, 2017 the Board closed the public hearing.
9. *[placeholder for Board deliberation during public MEETINGS]*
10. The Board deliberated on the Application at a public *hearing/meeting* held on DATE 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 Town staff, boards, commissions, and local residents submitted oral and written testimony with respect to the Project. The Board considered the technical review of Town department heads and independent traffic and parking peer reviews in regard to public health and safety, environmental health, preliminary stormwater management plans, and other issues of local concern.

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

Engineering, Traffic, and Parking  
James Fitzgerald, P.E.  
Environmental Partners Group, Inc.  
Quincy, Massachusetts

Arthur G. Stadig, P.E.  
Managing Principal  
Walker Parking Consultants  
Boston, Massachusetts

Site and Building Design  
Clifford Boehmer, AIA, President  
Davis Square Architects  
Somerville, Massachusetts

Mass Housing Partnership Fund  
Chapter 40B Advisor  
Judith Barrett, Planner  
RKG Associates  
Boston, Massachusetts

#### GOVERNING LAW

1. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD"), 760 CMR 56.00 et seq. (the "Regulations").
2. The Act promotes regional distribution of low or moderate income housing by preventing individual cities and towns from using zoning to block construction of such housing. Toward these ends, the purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10 percent of the total number of year-round housing units reported in the latest decennial census; or (b) a town has low or moderate income housing which is on sites comprising 1.5 percent or more of the town's total land area zoned for residential, commercial, or industrial use; or (c) if the application results in the commencement of low and moderate income housing construction on sites comprising more than .3 percent of such total area or 10 acres, whichever is larger, in one year.
3. The Regulations expand the conditions for satisfying the statute to include various "safe harbor" opportunities, such as certification of progress under an approved Housing Production Plan (HPP), where "progress" means achieving a minimum annual low- or moderate-income housing production threshold established by DHCD (in Brookline, at least 131 new low- or moderate-income units); or increasing the number of low- or moderate-income units by at least 2 percent of the community's year-round housing units (in Brookline, this would mean a minimum of 562 new low- or moderate-income units in a single calendar year).
4. The Board's decision on a comprehensive permit must balance the regional need for low- or moderate-income housing against the Town's long-range planning goals and local requirements and regulations to

the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the Town as a whole.

## FINDINGS

1. The Town of Brookline does not meet the statutory minima set forth in G.L. c. 40B § 20 or 760 CMR 56.03(3):
2. According to the Commonwealth’s Department of Housing and Community Development (DHCD) Subsidized Housing Inventory (“SHI”), as defined in 760 CMR 56.02, as of May 23, 2016, ~~eight-and-sixth-tenths percent (8.6 %)~~ of the Town’s total housing stock constituted SHI eligible housing, as defined in 760 CMR 56.02. Thus, the Town does not meet the 10 percent statutory minimum.
  - a. The Board has received no evidence that existing affordable housing units are on sites which comprise less than 1.5 percent of the total land area of the Town which is zoned for residential, commercial or industrial use (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof). Accordingly, the Board did not exercise the provisions of 760 CMR 56.03(8), which require the Board to provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, together with the grounds that have been met.
  - b. The granting of this comprehensive permit will not result in the commencement of construction of low or moderate income housing units on a site comprising more than three tenths of one percent of land area in the Town of Norfolk or ten acres, whichever is larger, zoned for residential, commercial or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof) in any one calendar year.
  - c. The Town does not qualify for any of the “safe harbor” provisions under 524 CMR 56.03. Most specifically, the Town of Brookline did not have a DHCD-approved Housing Production Plan as of ~~April 26, 2016~~ May 23, 2016, so there was no Housing Production Plan eligible for certification at that time.
- 2.3. 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.
- 3.4. MassHousing ~~has~~ determined that the project submitted in the Project Eligibility Application was eligible under the New England Fund housing subsidy program, and at least twenty-five (25) percent of the forty-five (45) units would be available to households earning at or below eighty (80) percent of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
- 4.5. The Applicant submitted a comprehensive permit application changing the unit mix and proposing that at least twenty (20) percent of the forty-five (45) units would be available to households earning at or

below fifty (50) percent of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.

~~5-6.~~ Katherine Lacy, 40B Specialist, MassHousing submitted a letter dated May 27, 2016, to Robert Engler, SEB Consultants, the Applicant’s 40B consultant, confirming that a new Project Eligibility Letter is not required as a result of the change in unit mix.

~~6-7.~~ The Site is within the M-1.0 (multi-family) zoning district as defined in the Brookline Zoning By-Law amended June 2, 2014, located on Centre Street, which spans and abuts different zoning districts of varying densities, building typologies, and building heights: F-1.0 (three-family), G-1.75 (CC) (General Business District Coolidge Corner Overlay District), M-1.5 and M-2.0 (multi-family).

~~7-8.~~ The Site is located within that section of Centre Street that extends from the location of the Site to the Williams Street intersection on which the front yard setback modal pattern ranges from approximately 22 feet on the southeast-bound side to approximately 27 feet on northwest-bound side from 30 Centre Street to the Fuller Street-Centre Street intersection.

~~8-9.~~ The Site abuts a private surface parking lot to the northwest and a municipal surface parking lot to the northeast, three-and-a-half story row-houses to the southeast, a nine-story apartment building to the southwest, and two-and-a-half story single family homes to the north.

~~9-10.~~ The Site currently features one two-story structure, designed in 1921, with a ground floor medical office space and a rental housing unit on the second floor, a driveway, and eight (8) surface parking spaces at the rear.

~~10-11.~~ In August 2015, the Brookline Preservation Commission (the “Preservation Commission”) reviewed the Applicant’s demolition review application and deemed the structure at 40 Centre Street architecturally significant pursuant to the Town Demolition By-Law Section 5.3, and imposed a one-year stay of demolition.

~~11-12.~~ As part of the public hearing process, Associate Town Counsel Jonathan Simpson submitted a letter dated June 10, 2016, to the Board summarizing his conversation with Ryan Maciej of the Massachusetts Historical Commission (the “MHC”) in February 2016. Mr. Maciej explained that the normal course of action is for the subsidizing agency to submit the Project Notification Form (the “PNF”) to MHC once a project has received a comprehensive permit and the agency is prepared to issue its final decision on financing. The PNF includes details about the project, including plans and elevations, intended to allow MHC to determine what, if any, adverse effect the project will have on the relevant State Register properties.

~~12-13.~~ The Planning Board in written testimony to the ZBA dated June 3, 2016 recommended that the following elements of the Project’s design be addressed: height, front and rear yard setbacks, garage entrance design, parking ratio, and building articulation and materials.

~~13-14.~~ At the September 1, 2016 and September 27, 2016 public hearings, after consideration of the testimony provided by independent traffic peer reviewer James Fitzgerald, P.E., the Board deemed the Applicant’s Traffic Impact Assessment insufficient as submitted and requested that a full traffic study be submitted. The Applicant submitted a new traffic study dated October 14, 2016.

~~14-15.~~ As part of the public hearing, on November 21, 2016, the Applicant presented a formally amended plan that included architectural drawings, shadow studies, and renderings with surrounding context for the Project, which includes forty (40) rental housing units in six (6) stories and twenty-five (25) ground-

level garaged parking spaces, at least eight (8) of which are elevated above seventeen (17) ground level parking spaces as part of an unattended, semi-automated stacked parking system as configured on Sheet A101 of the plans listed in Item 4 under Procedural History.

~~15.~~16. The Board heard the concerns of Town staff, boards, commissions, and local residents and weighed them against local needs. The Board determined that the Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.

17. The Board finds that the conditions imposed in this Decision are necessary in order to address Local Concerns. 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 by-laws 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 Project 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, and in response to recommendations from the Board's peer review consultants and the Town's professional staff.

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 Centre Street and the surrounding area that are not directly related to or caused by the Project.

~~16.~~21. The Applicant has had the opportunity to review the following conditions and the Board's action on the requested waivers from local rules, and has no objections.

## 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 forty (40) units of rental housing and no fewer than 25 parking spaces, as shown on the Site Plans and Architectural Plans, subject to all of the conditions listed below.

## CONDITIONS

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) parking spaces in the garage located on the ground level of which no fewer than four (4) compact parking spaces, 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. ~~which is shown on the Site Plans and the Architectural Plans in Item 4 under Procedural History.~~
2. At least eight (8) of the twenty-five (25) parking spaces shall be elevated in an unattended, semi-automated parking system in accordance with pertinent State regulations.

3. No fewer than five (5) parking spaces shall be available at no cost to the occupants of the affordable units, subject to the approval of the subsidizing agency.
4. The total maximum number of bedrooms shall be

Unit Type	Number of Units	Total Bedrooms per Unit Type
Studio	16	16
One Bedroom	7	7
One-Bedroom with Den*	7	14
Two-Bedroom	5	10
Three-Bedroom	5	15
		TOTAL 62

\* 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.

5. With respect to the Applicant’s Request for Waivers from local bylaws and regulations dated December 13, 2016, the Board approves those waivers listed in Exhibit 1. The Project must comply with bylaws and regulations not waived.
6. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the buildings, indicating façade design and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the plans listed under Item 4 under Procedural History. Color, windows, and materials shall be reviewed and approved on Site by the Assistant Director for Regulatory Planning within a reasonable timeframe.
7. 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.
8. 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.
9. 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.
10. Prior to the issuance of a building permit 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 borne related to the performance thereunder by the Applicant. Any proposed removal of street trees shall be subject to M.G.L. c.87 “the Shade Tree Acts.”

11. 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.
12. Prior to approval of the site plan by the Director of Engineering and Transportation in accordance with Condition 18, 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.
13. 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 new driveway exit with all costs 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.
  - (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.
14. 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; a plan that shows where receptacles would be stored and where a third receptacle would be stored if required for compliance with State Sanitary Housing Code;
  - (b) no fewer than two (2) receptacles each of which is sized no smaller than two-cubic-yards shall be provided for the recycling generated by the Project; a plan that show where receptacles would be stored and where additional receptacles would be stored if required for compliance with State Sanitary Housing Code;
  - (c) the rubbish/recycling storage room shall be maintained in compliance with State Sanitary Housing 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 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.

15. Plantings within five feet of the either side of the driveway and within the first six feet of the front yard shall be no higher than three (3) feet for optimal driver visibility.

16. 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.

17. 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.

18. Prior to the issuance of a Bbuilding Permit, for ~~each~~the building or portion thereof, the Applicant shall comply with the Public Works Department's Site Plan Review Checklist and with the Building Department's Certificate of Occupancy Process, as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.

19. 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.

20. 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; any alteration, repair or improvements to a building or structure.

~~20.~~21. Prior to Commencement of Construction, the Applicant shall conduct a pre-construction survey of the above and below grade structures among properties sharing a lot line with the Site, subject to the abutters' permission to grant the Applicant access to their properties. Any damage to structures within this area due to construction of the Project shall be the financial responsibility of the Applicant to repair.

~~21.~~22. There shall be no blasting during construction at the Site.

- ~~22~~23. 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 the Decision.
- ~~23~~24. 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 (20) square feet ~~(20-sf)~~, with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.
- ~~24~~25. 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 6 and 8.
- ~~25~~26. 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~~27. 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 Zoning Bylaw, and which shall be subject to the review ~~of the review~~ and approval of the Director of Engineering and Transportation. Mitigation measures s 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~~28. As a condition of any approval hereunder, at least 20% of the units shall be and shall remain affordable and shall be marketed to eligible households whose annual income may not exceed 50% of area median income (“AMI”), adjusted for household size, as determined by the United States Department of Housing and Urban Development (the “Affordable Units”); and subject to approval by the Subsidizing Agency, as defined in 760 CMR 56.02, as the project administrator, the Affordable Units and the remaining units shall be eligible to be included in the Town’s SHI.
- ~~28~~29. The Affordable Units shall be dispersed throughout the Project and shall have the same bedroom “ratio” or “mix” as the ~~other~~ 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) units in the Project which are Affordable Units.
- ~~29~~30. 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~~31. 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~~32. 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 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~~33. Local Preference: The Applicant shall work with the Director of Community Development to request that no less than 70% of the affordable units be awarded to households with local preference during the initial lottery, defined as a household with member who (a) lives or works in Brookline; (b) is employed by the Town or the Brookline Housing Authority; or (c) has at least one child enrolled in the Brookline public school system, subject to the approval of the Subsidizing Agency.

~~33~~34. The Director of Community Development must review the affirmative marketing plan for the Affordable Units before it is submitted to the Subsidizing Agency for final approval. The Director of Community Development will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.

~~34~~35. For the period in which the ~~P~~project is being monitored by the Subsidizing Agency, upon the Town's request, the owner shall share all monitoring reports with the Director of Community Development including annual rent increases and information verifying income eligibility for affordable units.

~~35~~36. Eight (8) units in the Project shall in perpetuity be Affordable Units. After the Subsidizing Agency has given written notice to the Town, as set forth in 760 CMR 56.05(13), that the Subsidy, as defined in 760 CMR 56.02, will expire and prior to the expiration of the Subsidy, the Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town (the "Town Regulatory Agreement"), which the Applicant shall record with the Norfolk County Registry of Deeds. The Town Regulatory Agreement shall require that (i) the Project shall remain a rental project in perpetuity, (ii) there shall be eight (8) Affordable Units in perpetuity as set forth in Condition 28, (iii) all of the units shall be eligible for inclusion in the SHI in perpetuity. An outline of the terms of the Town Regulatory Agreement is attached as Exhibit 2.

~~36~~37. When the Town Regulatory Agreement takes effect, the affordability requirements set forth in this Decision shall be monitored and enforceable by the Town. From and after such time as the Town becomes responsible for monitoring the affordability requirements, the Applicant shall provide the Town with a reasonable fee to cover the costs of such monitoring and enforcement.

~~37~~38. Subject to the requirements of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement) relative to limited dividends from the Project during the Subsidy Period (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement), the Applicant shall provide a copy to the Board of Selectmen of any and all certifications, statements,

reports, appraisals, and notices, including but not limited to requests by Applicant to the Subsidizing Agency to revalue Applicant's equity in the Project, made by Applicant to the Subsidizing Agency relative to the Applicant's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g. all statements required to be submitted to the Subsidizing Agency as set forth in the Subsidizing Agency's regulatory agreement), contemporaneous with the Applicant's delivery of such documents to the Subsidizing Agency. The Applicant shall be bound by all terms contained in the Subsidizing Agency Agreements, including the terms pertaining to limited dividends and the use of development revenues.

~~38.39.~~ The Town will not issue a building permit for the Project without review of final plans by the Director of Community Development and final approval from the Subsidizing Agency.

~~39.40.~~ No more than four (4) certificates of occupancy shall be issued by the Building Commissioner for units designated for rent at fair market rents (the "Market Rate Units") until at least one (1) certificate of occupancy is issued for an Affordable Unit. No more than 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

~~40.41.~~ Prior to the issuance of a ~~B~~building ~~P~~permit, the Fire Chief or his designee shall review and approve the final site plan, including without limitation, to ensure that fences and landscaping do not impede firefighter access to the lower windows.

~~41.42.~~ Prior to the ~~application-issuance~~ for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) the building ~~have~~has enhanced NFPA-13 (or latest versions of the NFPA code) designed sprinkler systems and (b) the building in the Project have direct alarm notification to the Fire Department designed in accordance with the latest version of Building and Fire codes.

#### Infrastructure

~~42.43.~~ 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.

~~43.44.~~ The Applicant shall operate and maintain all of the foregoing in Condition 43 in good working condition and repair at all times at its sole cost.

~~44.45.~~ 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

~~45.46.~~ Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:

- (a) Final site plans and architectural plans have been reviewed and approved by the Assistant Director for Regulatory Planning in accordance with Conditions 6 and 8.
- (b) The Director of Engineering and Transportation has reviewed and approved the final site and lighting plans in accordance with Condition 9 and 18, the final stormwater management and drainage plans in accordance with Condition 11, the water, stormwater and sewage facility designs in accordance with Condition 45, the erosion control plans in accordance with Condition 20, and the report on the condition of pavement surfaces in accordance with Condition 52 and all other items requiring review, verification, or approval by or to the satisfaction of ~~by~~ 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 13 and, if applicable, Condition 10.
- (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 17).
- (g) The Chief of Environmental Health has reviewed and approved the rubbish/recycling plan in accordance with Condition 14.
- (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- (i) The Director of Community Development has reviewed the final plans in accordance with Condition 39.
- (j) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with Condition 41.
- (k) The Town Arborist has reviewed a plan to protect existing street trees or add new street trees in accordance with Condition 10.

#### Construction

~~46.47.~~ During construction, the Applicant shall conform with all local, state, and federal laws regarding air quality, noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents in the general area. The Applicant shall provide the Police Department with the name and 24-hour telephone number for the project manager responsible for construction. The hours for operation of construction equipment, deliveries and personnel are limited to: Monday through 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 complaints during these hours will be investigated by the appropriate Town agencies and departments.

~~47-48.~~ 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.

~~48-49.~~ 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).

~~49-50.~~ The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.

~~50-51.~~ 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.

~~51-52.~~ 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

~~52-53.~~ 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.

~~53-54.~~ 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

~~54-55.~~ 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.

~~55-56.~~ 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.

~~56-57.~~ Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.

~~57-58.~~ This Comprehensive Permit shall expire if construction is not commenced within three (3) years from the date this Decision becomes final as provided in 760 CMR 56.05(12)(c), subject to the tolling provisions of 760 CMR 56.05(12)(c). For purposes of this paragraph only, commencement of construction is defined as the construction of the foundation of 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).

~~58-59.~~ 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).

~~59-60.~~ This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).

~~60-61.~~ All utilities shall be underground.

~~61-62.~~ Applicant shall pay for the Town’s cost of police and fire details for the Project, in accordance with the Town’s standard practices.

~~62-63.~~ All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.

~~63-64.~~ 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.

~~64-65.~~ There shall be no structures or buildings or paved surfaces on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.

ATTACHED:

Exhibit 1 (Granted Waivers)

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

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

RECORD OF VOTE

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

\_\_\_\_\_ Jesse Geller, Chairman, Brookline Board of Appeals

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

Filed with the Town Clerk on \_\_\_\_\_.

ATTEST:

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Patrick J. Ward  
Clerk, Board of Appeals

