 1   Volume X

 2   Pages 1-80

 3

 4   Brookline Zoning Board of Appeals Hearing

 5   40 Centre Street Comprehensive Permit Application

 6   Roth Family, LLC

 7   November 28, 2016, at 7:00 p.m.

 8   Brookline Town Hall

 9   333 Washington Street, 6th Floor

10   Brookline, Massachusetts 02445

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15   Reporter: Kristen C. Krakofsky

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 1   APPEARANCES

 2 Board Members:

 3 Jesse Geller, Chairman

 4 Christopher Hussey

 5 Kate Poverman

 6 Steven Chiumenti

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 8 Town Staff:

 9 Alison Steinfeld, Planning Director

10 Maria Morelli, Senior Planner

11 Peter Ditto, P.E., Director of Engineering and

12 Transportation

13 Daniel Bennett, Building Commissioner

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15 Applicant:

16 Bob Engler, President, SEB

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 1   THE FOLLOWING WAS TRANSCRIBED FROM VIDEO:

 2   MR. GELLER: So tonight's hearing -- this

 3 is the continued hearing on 40 Centre Street. For

 4 the record, again, my name is Jesse Geller. To my

 5 immediate left is Chris Hussey, to Mr Hussey's left

 6 is Steve Chiumenti, and to my right is Kate Poverman.

 7   As people will recall, at the last hearing,

 8 the board had a discussion. On some things the

 9 board agreed, on other things the board did not

10 agree, but the upshot of the discussion was that the

11 board unanimously did not believe that there was a

12 basis on which to deny the 40B application.

13   The board also unanimously believed that

14 this application was ripe for conditioning, and we

15 had some discussion about height, we had some

16 discussion about parking. There was disagreement,

17 but there was a majority opinion -- frankly,

18 Mr. Hussey and myself -- both about height and about

19 parking. And I think the agreement, again, by two

20 of the members was that the height -- that it's a

21 large building but that the height is permitted.

22 Or, in particular, that our finding was that under

23 40B, the height in and of itself is not -- does not

24 create any kind of a safety, health, or other concern

 1 that we're permitted to look at under 40B.

 2   We also had a discussion about parking, and

 3 Ms. Poverman, to her credit, stuck to her guns and

 4 believes that an appropriate ratio for parking was

 5 one space per unit. Correct?

 6   MS. POVERMAN: Yes.

 7   MR. GELLER: Mr. Hussey and I did not agree

 8 with that, given the location of this project and

 9 what is available and in reliance on peer review

10 that we've obtained.

11   So the hearing for tonight is going to

12 start with a review of the applicant's request for

13 waivers. A request for waivers is where the

14 applicant looks at our local ordinances, including

15 the zoning bylaw, and says, we don't want this to

16 apply to the project that we have submitted.

17   And in the board's reviewing those requests

18 for waivers, we look for assistance. We look for

19 assistance from the building commissioner, and I see

20 Peter Ditto is also here, the department of

21 engineering and transportation, and they will assist

22 us in reviewing these requests. I think it's mostly

23 Mr. Bennett. I don't want to scare Mr. Ditto. He's

24 here for alternative reasons.

 1   So people are aware, the next hearing is

 2 December 13th, 7:00 p.m. And assuming we get

 3 through the waivers, which we should this evening,

 4 we will then begin a discussion on conditions.

 5 Okay?

 6   The hearing, as people will remember, is

 7 subject to strict statutory time limits, and we

 8 have, barring a further extension, which the

 9 applicant is not compelled to give, as everybody

10 will remember -- and we haven't requested it, quite

11 frankly -- the hearing will close based on the time

12 frame, December 21st. Okay?

13   We did get an updated report from Cliff

14 Boehmer. As people will remember, Cliff Boehmer was

15 the ZBA's peer reviewer over design, and

16 Mr. Boehmer -- I don't know whether this has been

17 posted yet. It came in late today. We can have --

18 it certainly will be posted for everyone to see.

19 But the summary of it is that he reviewed the front

20 facade where the developer -- the initial request

21 was that there be an even depth on the fifth and

22 sixth floors, and the developer, in the alternative,

23 proposed pushing one side of it -- I believe it was

24 back 7 feet and the other side was 4 feet.

1   And Mr. Boehmer's response was, "My opinion

2 is that the modified proposal is an enhancement to

3 the floor plan, and also includes massing of the

4 structure as seen from street level."

5   So he does not take issue with what the

6 developer has proposed, which is not a consistent

7 setback in the front, two different depths.

8   Mr. Boehmer also responded to the question

9 concerning the handicap access from the garage to

10 the vestibule. If people remember, within the

11 garage there is handicap parking and then there

12 is -- I don't know whether they're going to create

13 some kind of a design, a painted element showing a

14 path or how they will indicate it, but it rolls

15 within the parking lot -- I don't know how many

16 feet -- but over to the vestibule entryway in the

17 garage.

18   And Mr. Boehmer's -- there was some

19 question about safety, and Mr. Boehmer's comment on

20 that is that, "My opinion is that the path that is

21 indicated in the parking structure is a suitable

22 accessible route that connects compliant, accessible

23 parking to the entry vestibule. And he also sites

24 Massachusetts Architectural Board rules and

 1 regulations and ADA requirements in support of what

 2 he is saying. He does suggest that the striped area

 3 between the spaces and the vestibule be expanded,

 4 that is a painted area, to at least 3 feet.

 5   He, in particular, notes that "Beyond

 6 strict code compliance, I do not consider this

 7 particular situation to be particularly hazardous to

 8 people with mobility issues."

 9   And that's essentially the content of his

10 updated information.

11   MS. STEINFELD: Could I just ask -- I

12 understand the developer isn't here tonight, but

13 it's possible that that report by Mr. Boehmer

14 exceeded the amount of money we had available.

15 Could the board request the developer's

16 representative to convey a request that he pay

17 for --

18   MR. GELLER: Yes. Developer's

19 representative, we are asking you to convey a

20 request that your client, the applicant, pay the

21 additional fee to the design peer reviewer. And I

22 don't know -- if any. I don't know what it is.

23   MS. STEINFELD: Thank you.

24   MR. GELLER: One outstanding issue is we

 1 are anticipating comments from the police

 2 department. As people will recall, we did have

 3 comments from the fire department essentially

 4 telling us that there is no safety issue and they

 5 believe that their trucks and their emergency

 6 vehicles have full access to all sides of the

 7 building, which is most critical.

 8   And, Maria, do we have any sense of when we

 9 might have --

10   MS. MORELLI: We will have that next --

11 this week. Definitely before the next hearing.

12   MR. GELLER: Perfect. Thank you.

13   Mr. Engler, you're here to speak on behalf

14 of the developer, because I don't see anybody else

15 here. You're left alone. You've got a bullseye.

16   Okay. If you would review the waiver

17 requests for the board, and then we can consider

18 them.

19   MR. ENGLER: Good evening, Mr. Chairman,

20 members of the board, members of the public. Bob

21 Engler, representative for the developer, to talk

22 about the waivers.

23   I would like to make a couple of

24 preliminary comments. The waivers -- and I go

 1 through this all the time. In fact, I had a waiver

 2 discussion at 8:00 a.m. this morning for two hours,

 3 so here I am at 8:00 p.m. doing the same thing. The

 4 waivers tie into the plans. It's very hard to --

 5 either they tie into the plans in terms of physical

 6 attributes to the plans, or they're procedural

 7 issues about what 40B is supposed to convey versus

 8 special permits or variances and other things. It's

 9 either one or the other.

10   And basically, unless you find otherwise,

11 the waivers are supposed to be very consistent with

12 our plans. In other words, you need the waivers to

13 build the plans. So to say you approve our plans

14 but you don't approve the waivers would be rather

15 inconsistent, unless there's something missing here

16 that we don't really need, and you can tell me.

17   I think there's a couple questions that

18 will come up tonight, and Peter had mentioned some

19 of them, and we'll talk about that, and there's

20 another one we'll talk about. But let me just start

21 by going through what we think we need to build the

22 project or to have it approved by you under the

23 rules and regulations and guidelines of Chapter 40B.

24   The first one is the table of use

1 regulations. It's kind of fundamental that we're

2 not allowed to build this building that we've

3 proposed in this zone except under Chapter 40B. It

4 doesn't comply with the underlying zoning or any

5 special permit, so we need a waiver to allow

6 ourselves to build this building.

7   Under Section 4.08, we're asking for a

8 waiver to allow the affordable housing requirements

9 that govern and work with 40B. In other words, 40B

10 has their own affordability requirements separate

11 from the town's requirements. They have a local

12 bylaw on affordability if you're coming in for a

13 special permit or maybe inclusionary bylaw, whatever

14 the town has. We're saying we need to follow what

15 40B asks for. And I don't know if they're really

16 that different, but basically we're trying to tie

17 into 40B.

18   The third waiver is 5.09, the design

19 review. The design review requirements come in when

20 you're doing a special permit, and the town

21 obviously has a procedure for that. The

22 comprehensive permit, as everybody knows -- or

23 should because we've said it enough times -- it's

24 one-stop shopping from the zoning board representing

 1 all local boards in terms of permit-granting

 2 authority.

 3   So the purpose of 40B is to streamline all

 4 the permits from different local entities, make sure

 5 the zoning board handles all that, and that would

 6 include design review of the planning board, which

 7 isn't required.

 8   Now, the planning board can weigh in, as

 9 they have written letters, but the decision-making

10 authority rests here and that's why we're seeking a

11 procedural waiver under 5.09.

12   Then we get to the actual physical and

13 dimensional waivers from Table 5.01, 5.20, 5.22.

14 The minimum floor area, there's a waiver of 1.10 in

15 the M district, that is, the floor area has to equal

16 the same size as the lot size, the total floor area.

17 And we obviously, with our 40-unit plan, can't live

18 with that, and so we're seeking a waiver of the FAR

19 because our FAR is 3.62. Based on the formula,

20 that's the square footage of the building.

21   And there are exceptions to the maximum

22 floor area ratio from regulations for residential

23 units, which are also all part of 5.2, and 5.22, all

24 tying into the FAR, which, no surprise, we need it

1 for the building that you see in the plans.

2   Going to the next waiver, the maximum

3 height of the buildings is 40 feet in this district,

4 and we all know that six stories is not 40 feet.

5   Bob Roth did a different calculation and

6 found that the building is actually a foot above the

7 street level. So when you're actually taking off

8 the height of the building measured at the midpoint

9 of the street frontage, it's not measuring, as we

10 had said, 67.52, but 68.52 because we already are a

11 foot higher than the street. So the actual building

12 height of the building will be 67.4, but not

13 measured -- what's he saying here? It's either 67

14 or 68.52, and that's higher than the 40-foot

15 limitation in the district, so we're asking for a

16 waiver to get our building built.

17   Section 5.34, special permit or variances

18 to allow yard and setback dimensions as shown on the

19 plan. And to do that under the local bylaw would be

20 15 feet -- would be the maximum to allow yard and

21 setback dimensions, and we're having only 5 feet for

22 the yard and setback dimensions, as you've seen on

23 the plan. I don't know why that's different from

24 the minimum side yard, which is a waiver from

1 10 feet plus the length of the building divided by

2 10 feet, which would be 24 feet. And we're

3 proposing 5.1 inch on the east side and 6 feet,

4 1 inch on the west side, again consistent with the

5 plans that you have.

6   Same thing with the front yard, which is

7 15 feet in this zone, and 5 feet is our proposal for

8 the plans in Section 5.50, 5.51.

9   The minimum rear yard is the next one,

10 which is a waiver from the 30-foot requirement to

11 5.2, 5 feet 2 inches for the rear yard, based on our

12 plans.

13   Table 5.01 is the maximum building stories,

14 which are four stories and we have six stories, so

15 we're asking for a waiver from that.

16   And then there was an exception for

17 alignment of 20 feet, and we have a 5-foot front

18 setback, so I'm not quite clear on how the alignment

19 of 20 foot works. But it doesn't work in our case,

20 so we're asking for a waiver.

21   Table 5.01 and Section 5.90 asks for a

22 minimum open space, a landscaped open space of

23 10 percent. Our landscaped open space, as

24 calculated on the plan, is 5.5 percent, so we need a

 1 waiver of the landscaped open space.

 2   The next section is the minimum open space

 3 which is usable, meaning it's not the landscaped

 4 area and it's not hardscaped. It's usable open

 5 space. There's a 20 percent requirement in this

 6 zone, and we don't have any minimal open space, so

 7 we have to ask for a waiver for that.

 8   Table 6.02 is the parking spaces. The

 9 waiver is for two spaces per unit, which would be 82

10 spaces, or 80 spaces plus 2 others, I guess. And we

11 have 25 spaces, as we discussed a week ago. It

12 stackable units, so we can't make that 2-unit

13 requirement. We had a long discussion about that

14 and what was -- the demand study and what your

15 consultants talked about and came up with 25 spaces.

16   Also, a waiver in the similar vein from the

17 parking ratio. Instead of having .825, we need a

18 ratio of .625 to get those 25 spaces with the 8

19 stackers into that situation.

20   Section 6.02 says you have to have parking

21 designated and marked for use by visitors and

22 tradespeople, and that's a 10 percent requirement.

23 We don't have anything designated for tradespeople

24 and visitors. We feel they can park in the

 1 neighborhood when they visit, and so we're asking

 2 for a waiver from that because all our parking

 3 spaces will be for the residents.

 4   Section 6.04 is for maximum driveway curb

 5 cut of 20 feet, and we have 21 feet, so we're 1 foot

 6 over that for the maximum curb cut, which I think

 7 has been discussed and accepted, but we need a

 8 waiver for that.

 9   Oh, I'm sorry. Yup, we're up there.

10   The next one is difficult. It's the

11 compact cars, which you allow 25 percent.

12   Now, let me explain why Bob is asking for

13 such a huge waiver. He went over it with me today.

14 He visited East Boston, as he mentioned to you last

15 week, and found a semiautomatic stacking system that

16 he liked. He's been in contact with the providers

17 of those stackers and the specs that go with them,

18 and it isn't at all clear that the height of our

19 garage, by an inch or two, may not allow full-sized

20 cars to be stacked. It would allow the compact cars

21 to be stacked because they're actually shorter.

22 We're not clear about that until we do the final

23 working drawings when all those dimensions are

24 known, so he's asking for a waiver on the

 1 eventuality that we need compact cars in those

 2 stackers.

 3   Now, if you ask me, quite honestly, why he

 4 has the 72 percent, I don't know, because we do have

 5 a plan that shows compact cars on the ground. And

 6 if you that take that plan and add 16 stackers

 7 spaces to it, I don't think you come up with 72

 8 percent of all the spaces. But we didn't have a

 9 chance to really go into that, so I'm just going to

10 put that out there and say let's see what we come up

11 with more specifically, and the next time give you a

12 more detailed explanation of how many stackers we

13 might need.

14   We certainly will not have an answer as to

15 the detailed engineering of the stackers in the

16 garage until we get down to working drawings, and

17 you might suggest something conditioned on the

18 building permit that has those drawings and provides

19 the need for the waiver. I'm okay with that, if

20 there's some appropriate language that deals with

21 that because I don't know what we're going to need.

22   The next series of waivers, I think there's

23 been some -- maybe my misunderstanding with Peter

24 Ditto. Because I read his memo that came in late

 1 today, and what we're trying to look for is waiving

 2 administrative requirements that belong to the

 3 zoning board, not to other permit-granting boards in

 4 town.

 5   Peter was suggesting -- and he can speak

 6 for himself -- but he was suggesting in his memo not

 7 to waive that because there's monitoring and

 8 enforcement provisions that tie to state law that we

 9 shouldn't waive. We are not trying to waive

10 monitoring and enforcement provisions. We're trying

11 to waive permit provisions that rest with you, not

12 with other boards. And to the degree that those

13 other boards, whether it's the public works or

14 transportation that has to monitor the activities or

15 the noise -- I met with the building department

16 today about the noise factor. When they get

17 detailed working drawings and specifications, they

18 will indicate whether they need something on the

19 roof to attenuate the noise. That's all fine with

20 us. We're not seeking any waivers from any of that.

21   So what we're asking for waivers for is to

22 the extent the administrative process is

23 inconsistent or imposes restrictions that are not

24 part of the relief granted by you, by the zoning

 1 board. And that's really all. Now, maybe we didn't

 2 say it right and maybe those sections need to be

 3 clarified, and I'm open to further discussion about

 4 those if we're wrong, and Peter can explain them if

 5 we are. But those are the kinds of waivers and

 6 procedures we're looking for in those sections.

 7   In terms of the demolition of a building or

 8 the street construction and installation of

 9 utilities, we don't want to waive the actual

10 monitoring and review of the construction. We're

11 just saying that the plans should be the permitted

12 set to build the streets, but, you know, the

13 monitoring and the review by the town should still

14 go on as it would anyway.

15   So I don't think we're inconsistent, or I

16 don't think we have a different point of view. But

17 he's saying, don't waive them, and we're saying,

18 well, part of it may be waived. We can talk more

19 about that. But those are the kinds of things that

20 we were looking at.

21   Same thing with stormwater management.

22 We're not trying to waive state review or review of

23 the state requirement as to how they function and

24 how they're monitored, just how the design works.

 1 Which he's already said, so far, so good. He needs

 2 to see final design, but he certainly will review

 3 that and we're all okay with that. So maybe there

 4 needs to be some language clarification on some of

 5 these to get that done. That's the way I would look

 6 at it, and I'm happy to answer any questions.

 7   MR. GELLER: Anybody have questions at this

 8 point?

 9   MR. HUSSEY: No.

10   MS. MORELLI: The last page.

11   MR. GELLER: That's the very language I

12 told them not to do.

13   MR. ENGLER: Well, I did it as a lump. I

14 can go through each one of them. You want me to go

15 through the last page?

16   MS. MORELLI: No. That is a catchall.

17   MR. ENGLER: Starting with which, the

18 department of public works?

19   MS. MORELLI: The last page.

20   MR. ENGLER: Oh, we crossed it out. Will

21 you cross it out? We understand that's not a type

22 of blanket waiver. We're not looking for blanket

23 waivers. We're not looking for some hypothetical

24 thing. So it's -- I thought you meant the page that

 1 was before that, but, no, we don't want that last

 2 sentence in there.

 3   MR. GELLER: Okay.

 4   Building Commissioner Bennett, I'm sure,

 5 will address some of these. But I would note that

 6 some of the sections that you're referring to, it

 7 seems to me, are inapplicable in this instance, and

 8 I'm sure Mr. Bennett will explain why. I, in

 9 particular, would note Section 5.43 really is not

10 applicable here.

11   MR. ENGLER: 5.43?

12   MR. GELLER: 5.43.

13   MR. ENGLER: Okay.

14   MR. GELLER: I want to call on Building

15 Commissioner Bennett to come forward and give us his

16 review of the request.

17   MR. BENNETT: Good evening. Dan Bennett,

18 Building Commissioner. I did have a chance to

19 review the requested waivers. I do have some

20 comments. I did prepare them in a memo to the

21 board. And some of the requests in their initial --

22 in their proposed waiver list were not specific

23 enough, so I can either address it in a further memo

24 or identify them tonight, whatever you think would

 1 work best.

 2   But in looking at the list, and I did

 3 review this for consistency in the bylaw, what the

 4 interpretations were in -- the same as how we, you

 5 know, typically interpret it on a day-to-day basis.

 6 For the most part, they were all in line. 5.43,

 7 which you just mentioned, I think I had noted that

 8 as required to build. That's something I did think

 9 about. You know, that has to do with special

10 permits and variances, which we're not really

11 granting.

12   MR. GELLER: Right. It's 40A, special

13 permits from side yard or dimensional.

14   MR. BENNETT: Right. So some of the --

15 going through the specific list, I did identify a

16 few areas that I don't think waivers are requested,

17 specifically 5.09, and I identified them as not

18 being requested or not -- for the board not to

19 review them. Because a couple of them they've

20 already submitted, so they've got existing

21 conditions plans. So there's no reason to waive, I

22 don't believe, that section of 5.09.3.C.2, a

23 submitted existing conditions plan, which they have.

24   MR. GELLER: So are you saying that there

 1 are specific sections of 5.09 that they should have

 2 to comply with, and otherwise 5.09 should be waived?

 3 Or are you saying 5.09 should not be waived at all?

 4   MR. BENNETT: I'm saying that there are

 5 seven provisions of 5.09 that I believe should not

 6 be waived.

 7   MR. GELLER: Should not be waived, but

 8 otherwise it should not apply?

 9   MR. BENNETT: Correct.

10   MR. GELLER: And let me anticipate what

11 their question is going to be. Because the way 5.09

12 is drafted, there's a recommending body; right? The

13 planning board make recommendations on those

14 characteristics that the ZBA then looks at, and they

15 can either say, yes, we agree or, no, we don't

16 agree. And just to cut to the chase with

17 Mr. Engler's comment, he doesn't want another body,

18 okay -- he doesn't want the planning board to have a

19 say here because that's inconsistent with 40B. So

20 you're not suggesting that, I assume.

21   MR. BENNETT: No. So 5.09, there's a

22 recommendation process. The planning board meets,

23 they develop a recommendation, they give it to the

24 board, the board then goes forward -- in your normal

 1 40A process.

 2   In this instance, a majority of 5.09 would

 3 be waived with the exception of these seven items.

 4 And a few of them, the reason I'm requesting they

 5 not be waived is because they are complying with it

 6 currently.

 7   They will be providing the landscape plan.

 8 The stormwater drainage is something that Peter and,

 9 I think, the applicant have discussed about not

10 waiving. There's a safety and security provision.

11 I don't think this board wants to waive any type of

12 criteria that would enhance or at least provide

13 safety and security for the project. There's energy

14 efficiencies. That goes with the design. And the

15 town of Brookline is a Stretch Code community, so

16 that would go above and beyond. The utility

17 service, you're required to do all new development

18 underground, so I don't think the board wants to

19 waive that type of thing.

20   So those are the little details, but it's

21 things that they've already indicated on the plan

22 that they're complying with, and I would recommend

23 not granting a waiver.

24   MR. GELLER: Thank you.

 1   MR. ENGLER: Did we ask for a waiver for

 2 those things?

 3   MR. BENNETT: You asked to waive the entire

 4 section of 5.09, so I've identified those seven

 5 details there.

 6   MR. ENGLER: I agree with you.

 7   MR. HUSSEY: Mr. Bennett?

 8   MR. BENNETT: Yes.

 9   MR. HUSSEY: In your memo, do you elaborate

10 on which particular seven provisions --

11   MR. GELLER: These, Chris.

12   MR. HUSSEY: Okay.

13   MR. BENNETT: Yeah, it's on top of page 2.

14   MR. GELLER: And I actually would -- I

15 agree.

16   MR. BENNETT: With respect to the compact

17 spaces, I put "not applicable" because the document

18 that I was looking at, they showed 4 compact -- they

19 showed 25 spaces; 20 of them are the racking system,

20 4 of them are compact, and 1 is handicap, so they're

21 below the 25 percent on the plan that I reviewed.

22   However, this board wants to proceed and to

23 try to review what the specifications of those

24 stacker systems are, and how that would play into

 1 the parking requirement is something that could

 2 either be handled in a condition or something that

 3 we could do a plan review, but it is something that

 4 this board would have to, you know, consider if they

 5 want to go above that 25 percent number.

 6   I did -- I don't know if I noted it in my

 7 memo, but they didn't cite the specific section for

 8 that, and I will get another memo to you

 9 specifically. So they kind of tell you just the

10 heading, and I would go down further into the

11 subsections and cite those as well.

12   MS. MORELLI: It is cited in their memo,

13 the compact spaces.

14   MR. GELLER: 6.032.

15   MS. STEINFELD: It's in your memo, third

16 line up.

17   MR. BENNETT: Right. The compact cars.

18 They have a 6.03.2E, but it's actually 6.04.2E, so

19 those are the types of things --

20   MR. GELLER: Dan, are you taking these

21 chronologically in the order in which the request --

22 alphabetically?

23   MR. BENNETT: Yes.

24   MR. GELLER: So you don't have -- I just

 1 want to make sure, the things that you're not

 2 mentioning, are you saying you're fine with those?

 3   MR. BENNETT: Yeah. Anything that I wrote

 4 "required to build" is -- similar to how the

 5 applicant stated at the beginning, these waivers are

 6 required to construct the project as they have

 7 proposed. So I'm not getting into detail on the

 8 front yard waivers, on the side, or the height.

 9 That's part of the whole package.

10   MR. GELLER: In terms of their methodology

11 of measurement of height --

12   MR. BENNETT: I did speak with Mr. Roth

13 with regard to that, and he's using A, which

14 essentially says that you go from the street lot

15 line.

16   MR. GELLER: Right.

17   MR. BENNETT: And if you use that, he's

18 essentially a foot -- he's adding a foot to the

19 height of the building.

20   If he was to use B, then you would be using

21 the height around the building, so he's actually

22 adding height, so it's a more conservative waiver

23 approach than if you were to --

24   MR. GELLER: And you agree with that

 1 methodology?

 2   MR. BENNETT: Yes.

 3   MR. GELLER: He has done his math

 4 correctly?

 5   MR. BENNETT: Yes.

 6   The big area that I have a concern on is

 7 the -- is R and S. That's the enforcement arm of

 8 the building department with respect to zoning. And

 9 I know there are some sentences and some references

10 there that might -- you know, it's 40A strong

11 because it's specific. It talks about our bylaw.

12 And at the same time, we have a 40B application

13 here.

14   But I would be against striking those

15 enforcement provisions because that's how -- there

16 are provisions of this bylaw that are going to apply

17 here that we would want to be able to still enforce,

18 you know, moving forward. And a blanket waiver of

19 9.00, 1, 2, and 3, and then I think there was one

20 other I would not be in favor of.

21   The 9.05 section, that's fine. That is the

22 criteria that the board used to determine if they're

23 going to grant a special permit or variance.

24   MR. GELLER: Is it relevant, though?

 1   MR. BENNETT: Yeah.

 2   MR. GELLER: That's like section 5.43.

 3   MR. BENNETT: Any special permit or

 4 variance provisions in here would not be applicable

 5 because it's a 40B application.

 6   MR. GELLER: Right.

 7   MR. BENNETT: That was it, in a nutshell,

 8 if there's any other questions I could answer.

 9   They did do both parking counts. We have

10 two parking bylaws that, essentially, we're

11 enforcing right now. But the town meeting, they

12 adopted Article 19, so we have the current parking

13 and we have a proposed one. They're actually

14 working in sync. If the board was going to waive

15 it, I would suggest they waive from both. And the

16 applicant has provided that information.

17   MR. GELLER: And, Dan, V, W, and X, are

18 those outside your scope or within your scope?

19   MS. MORELLI: That would be DPW.

20   MR. BENNETT: Yeah.

21   MR. GELLER: Okay. And you don't have a

22 comment about them one way or another?

23   MR. BENNETT: Demolition, that's typically

24 the -- we send that over to preservation. That's --

 1 typically, that's the demolition delay.

 2   MR. GELLER: Right.

 3   MR. BENNETT: I think we're past -- I'm not

 4 sure if we're past the year from when they initially

 5 filed that or not.

 6   Street construction and stormwater are both

 7 DPW.

 8   MR. GELLER: Okay.

 9   MR. BENNETT: And U would be DPW as well.

10   MR. GELLER: Anybody else have questions?

11   MS. POVERMAN: I know we had requested a

12 while ago that the applicant demonstrate that the

13 building complies with all the plans relative to

14 building codes, something along those lines. Has

15 that been produced ever, and is that relevant at

16 this point?

17   MR. ENGLER: Those are working drawing

18 conditions. At the end of all the working

19 drawings, your building inspector checks if it meets

20 all codes. That's a requirement. So not at the

21 conceptual level.

22   MR. BENNETT: I did put a memo to the board

23 earlier. I put it to the board for all the

24 comprehensive permits that are in front of them

 1 because there are a number of buildings that are in

 2 close proximity to the property lines. It's not the

 3 typical type of construction that we get here, so I

 4 did ask if the board could request some sort of a

 5 preliminary code analysis.

 6   And most of that is just for the exterior

 7 of the building, so your window openings, your

 8 window materials, or your building materials. You

 9 want to make sure that if it's within 3 feet of the

10 lot line, that you comply with the ratings and the

11 opening requirements -- or 5 feet, you know, the

12 same types of things. So the closer you are to the

13 property line, the less -- or the more fire

14 resistant materials you have to use and the less

15 percentage of openings you can have per floor.

16   So one of the requests that I did do in a

17 memo probably two or three months ago was, so that

18 we don't get too far along or the board approves a

19 design or some sort of materials or opening -- what

20 I wouldn't want to happen is that they go through

21 this entire process, come to our office, and then we

22 say, you can't do these openings, you can't do this

23 material, and then have anyone have to come back to

24 the board for a minor modification or possibly a

 1 major modification.

 2   MS. POVERMAN: So have you gotten that

 3 analysis?

 4   MR. BENNETT: No.

 5   MS. POVERMAN: Then why don't we get that

 6 done so that we don't arrive at precisely that

 7 situation. We're kind of nearing the end of the

 8 line.

 9   MR. ENGLER: And that's our risk.

10   MS. POVERMAN: It's our time as well. We

11 don't want our time wasted, so it's not just your

12 risk.

13   MR. ENGLER: It's not your risk. It's not

14 your risk at all.

15   MS. POVERMAN: Yes, it is our risk because

16 we would have to come back and be faced with the

17 time of going through the modification again, so

18 it's not just your time.

19   MR. ENGLER: An hour of your time a year

20 from now? I'd rather a year -- I think we even

21 asked Peter Bartash to do that and look at it.

22 That's a code issue that you're saying we have to

23 live with. And I appreciate what you're saying,

24 which is don't come and show me something that

 1 doesn't work, I'm going to tell you this doesn't

 2 comply, and you'll have to come back. And that's

 3 our risk. And if we screw up, we have to come back

 4 here. I don't think we will. I think we

 5 understand -- (inaudible) -- so providing the code

 6 at this stage of things, yes, it would be nice,

 7 but --

 8   MR. GELLER: Dan, what have we done in the

 9 past with other projects?

10   MR. BENNETT: This is the first time it's

11 come up. But the number of 40Bs that are in front

12 of us right now, I have the concern that, you know,

13 these designs, we're kind of going forward with the

14 zoning board process. And not that any of the

15 applicants weren't looking at the code issues, they

16 are. I just wanted something to kind of give me a

17 level of comfort that if they were to proceed, that

18 we would be okay.

19   And it wouldn't be an entire code analysis,

20 so I'm not looking at egress and occupants. It's

21 just pretty much the exterior envelope of the

22 building and the openings that -- the proximity of

23 the property lines, that they are compliant or at

24 least -- you know, from everything they've done so

 1 far. They don't have to do full-blown construction

 2 drawings, but there is -- I think there's probably

 3 enough information that any architect or designer

 4 would be able to provide something simple that we

 5 could rely on.

 6   MR. ENGLER: We'll have that.

 7   MR. GELLER: Thank you. Maria, will you

 8 make a note of that?

 9   MS. MORELLI: Yes.

10   MR. GELLER: Thank you.

11   You also raised section -- there is raised,

12 as one of the waivers, Section 5.54(2), which is

13 exceptions for alignment.

14   MR. BENNETT: Yes. That's just front yard

15 setbacks. So the bylaw says that if you have two

16 buildings within 150 feet on each side and they're

17 further from the lot lines than required, set back,

18 they have to do an average alignment, so that is

19 something that they should get a waiver for.

20   MR. HUSSEY: I've got a couple of

21 questions. The first one, A, is asking for an

22 allowance to allow the property to be used as a

23 multifamily. It's an M zone; isn't it? So

24 automatically, a multifamily can be allowed in

 1 there; right?

 2   MR. BENNETT: By a special permit, so not

 3 as of right.

 4   MR. HUSSEY: I see. Okay. Gotcha.

 5   MR. BENNETT: There is one other thing. If

 6 you go -- on Table 5.01, they didn't cite it but I

 7 can address it. There's a provision under M -- in

 8 the M-1. This would be "any other dwelling

 9 structure." The first dwelling unit, you need 3,000

10 square feet; for each additional dwelling unit, you

11 need 1,000 square feet. So the as-of-right

12 provision of that would -- mathematically would work

13 out to eight units, so they would need a waiver from

14 5.01 -- Table 5.01 for that lot area -- our minimum

15 lot size provisions as well. And that's something I

16 will address further if the board would like.

17   MR. GELLER: Okay. Any other questions?

18   (No audible response.)

19   MR. GELLER: Thank you.

20   MR. BENNETT: Thank you.

21   MR. ENGLER: I understand the parking space

22 waiver requirement, but as you know -- or I think

23 I'm right, that we have no requirement to meet what

24 was passed by town meeting on the lower parking

 1 ratio. Anything that was passed -- any regulation

 2 that comes subsequent to our application filing,

 3 we're not required to meet. So while it might be

 4 useful information, I don't see why you'd put it in

 5 there and say it's a waiver from a regulation that

 6 came after we filed for our comp. permit. So I just

 7 want to make that point. It's not a big deal. It

 8 doesn't affect anything, but I think that's correct.

 9   MR. GELLER: Okay.

10   Mr. Ditto.

11   MR. DITTO: Good evening. My name is Peter

12 Ditto, director of engineering and transportation.

13   I denied three waiver requests, and the

14 first one was a waiver from the department of public

15 works, site approval process. Now, to me, that's

16 cut and dry. That's something that we --

17   MR. GELLER: This is Waiver U for those

18 who -- I don't know if we can put this up so people

19 can see it. Be a lot easier for them.

20   MR. DITTO: So I guess I'm not really sure

21 where the applicant's coming from. I wouldn't

22 hesitate to sit down with him and find out what his

23 concerns are and what my concerns are, because I

24 really don't see how I can waive the plan approval

 1 process. If there's something within that plan

 2 approval process that, you know, is troublesome, I'm

 3 certainly happy to listen to it.

 4   They also -- the tree removal, I believe

 5 there is a statute on how you remove a street tree,

 6 and Mr. Brady can certainly chime in on that.

 7   And for the construction- and

 8 maintenance-related parking permits, we have a

 9 parking permit program in town specifically for

10 construction projects, and it works quite well. We

11 ask the contractor -- the developer to give us a

12 schedule and what his needs are on a monthly basis,

13 and we find a space for him to park, and they're

14 renewed every month. And that works quite well both

15 for the neighborhood and for the contractor working

16 in that neighborhood.

17   Town Bylaw Section 7.3.2, the developer is

18 requesting a waiver of the street construction

19 permit bylaw. When we issue a street construction

20 permit, we issue it to a licensed contractor who is

21 insured and bonded. This process assures that we're

22 getting quality work as well as notification that

23 inspections have to take place at a certain point in

24 time, as well as the requirement for the police

 1 department if there are any details required.

 2   Last but not least is a waiver of the

 3 procedures under the Town Bylaw Section 8.26, I

 4 believe it is, stormwater management. We were

 5 issued what's called a "NPDES permit." I think the

 6 first one was issued eight years ago, and now the

 7 second rendition was released, I want to say a month

 8 or two ago.

 9   But a NPDES permit is a National Pollution

10 Discharge Elimination System, and it's a federal

11 permit that is issued to the town, and it ranges

12 from a whole host of things. But one thing that

13 we're looking at is the quality of stormwater

14 runoff -- quality and quantity. So this, by federal

15 statute, can't be waived, as far as I'm concerned.

16 Could be wrong, but we've never not done any project

17 without going by the book with our stormwater

18 management policy.

19   MR. GELLER: Questions?

20   MS. POVERMAN: Actually, one question I had

21 related to the stormwater management calculations

22 that you have been expecting that you referred to in

23 your memo. You said that your -- the calculations

24 that you are supposed to get have to be modified to

 1 reflect the location of the infiltration system,

 2 which was changed to be put in the driveway in front

 3 of the building and the sidewalk, which is a change

 4 that was made many, many months ago. And I'm just

 5 curious --

 6   And, Mr. Engler, perhaps you can answer as

 7 to why that hasn't been provided yet, since we now

 8 are two weeks away from the end of the hearing, and

 9 this is a critically important safety issue.

10   MR. DITTO: Those calculations provided, at

11 least the ones given to me on the original site --

12 which is fine. There was nothing wrong with those.

13 However with this new system going, the number of

14 infiltration units is going to vary, so we need to

15 know exactly what's the capacity of those units and

16 at what point in time will they overflow into the

17 town's drainage system. It's not -- it's

18 cookie-cutter type of calculations, not very

19 difficult.

20   MR. ENGLER: We'll do it. I didn't know we

21 had to do it until I saw this memo. And we'll do

22 it.

23   MS. POVERMAN: And when will you do it?

24   MR. ENGLER: I have to talk to my engineer.

 1 Right away. As soon as we can.

 2   MS. POVERMAN: Okay. If the chairman's

 3 satisfied with that, I'm satisfied with that.

 4   MR. GELLER: Obviously, given the number of

 5 hearings we have left, we would need it for the

 6 13th.

 7   MS. POVERMAN: That's all the questions I

 8 have. Thank you.

 9   MR. GELLER: Thank you.

10   Okay. So let's take these in the order of

11 appearance and walk through them. Some of them we

12 can dispense quicker than others.

13   So A -- what I will do is I'll read off the

14 waiver letter, and if people would jump in, or if

15 they want to simply say fine, we'll then move on

16 down the list.

17   So A, which is a waiver under Section 4.07,

18 multifamily uses, I think there's logic to it. You

19 know, that seems to be what's going on here.

20   MS. POVERMAN: I agree.

21   MR. HUSSEY: I agree.

22   MR. GELLER: B, affordable housing

23 requirements, I think that's the nature of what is

24 going on. This is -- they're providing affordable

 1 housing under 40B rather than the requirements of

 2 40A.

 3   MS. POVERMAN: I agree.

 4   MR. HUSSEY: I agree.

 5   MR. GELLER: Section 5.09, I understand

 6 Mr. Engler's comment. I believe the focus of his

 7 comment is real about the fact that the purpose of

 8 40B -- not the purpose of 40B, but the function of

 9 40B is to give to a single body, the ZBA,

10 decision-making authority. His objection, I

11 believe --

12   And, Mr. Engler, you can jump in if you

13 disagree.

14   But his objection under Section 5.09 is to

15 the extent that it grants to any third-party body

16 the decision-making authority that's granted to the

17 ZBA under 40B. I don't take issue with that

18 component. However -- and I think he's agreed with

19 that when Mr. Bennett was speaking about it.

20   Mr. Bennett has raised seven exceptions

21 that should not be waived. They are Section

22 5.09.3.C.2, which is an existing conditions plan;

23 5.09.3.C.3, which is a drawing of the proposal;

24 5.09.4.F, which is stormwater drainage; 5.09.4.G,

 1 which is utility service; 5.09.4.H, advertising

 2 features; 5.09.4.J, safety and security; and

 3 5.09.4.M, which is energy efficiency.

 4   And my feeling is that I'm all right with

 5 the waiver in the context of the ask, with the

 6 exception of the seven items that Mr. Bennett has

 7 raised.

 8   MS. POVERMAN: Here's the concern I have.

 9 I haven't gone through 5.09 sufficiently to --

10   MR. GELLER: Then go through them. We

11 won't vote on it, then.

12   MS. POVERMAN: Okay. Let me just say what

13 my concern is.

14   MR. GELLER: Okay.

15   MS. POVERMAN: Under the design review

16 guidelines of 40B, we do have the power to comment

17 on materials used -- the ZBA does -- materials used

18 and the aesthetics of buildings. So I don't want,

19 for example, there to be changes made in the future

20 that are made without our knowing or whatever, and

21 for it to be said that we do not have the power or

22 ability to have viewed that.

23   MR. GELLER: In-house, the ZBA.

24   MS. POVERMAN: Right, ZBA.

1   So I don't want to waive that.

2   MR. GELLER: Okay.

3   MS. POVERMAN: And this was very clear on

4   the 21 Crowninshield case where very tight control

5   was -- and coordination was maintained with the

6   community, but it was nothing that was not spelled

7   out by the statutes and the ability. But it was

8   very clear there that -- as to the steps that had to

9   be taken. But for that reason, I don't want to

10 waive 5.09.

11   MR. ENGLER: I think there's some

12 confusion. I don't have any problem with the

13 planning board and other boards -- (inaudible) -- as

14 long as we're not going to them, as used to be the

15 case, where they had separate review power. So the

16 degree that they input to you and the degree that

17 you put into your permit design issues or outline

18 spec in the plans, so that any changes have to come

19 back to you that don't meet those specs that we give

20 you.

21   And invariably a contractor's going to

22 come, the developer's going to come back and need

23 change, because it's just preliminary. So if you

24 say the windows have to be modern windows and decks

 1 and we come back with -- that's a bad example.

 2 (Inaudible) -- doesn't matter. But the size of the

 3 windows or something on the materials, it's in

 4 there. And I don't think you should go overboard

 5 with designing the project for us. That's not your

 6 role.

 7   But to take what we have, which is the

 8 design -- the building design and the specification

 9 list -- we haven't given you specifications -- then

10 that goes in the permit. And any changes when you

11 do the final drawings have to come back. The

12 building inspector's job is to say, are we

13 consistent with what you approve and do we meet

14 code? He can bring in the planning board and

15 everybody else to comment on that, and we have to

16 comply.

17   So we don't have -- I don't think we have a

18 problem with what you're saying, and most of those

19 seven exceptions really apply to the final drawings

20 and not the stage we're in right now. So I don't

21 have any problem with those.

22   MR. GELLER: Let me suggest that on the

23 Section 5.09 requested waiver, that you take a look

24 at Section 5.09 and that there's some wordsmithing

 1 that needs to take place.

 2   MS. POVERMAN: Yeah. I just can't agree to

 3 a waiver right now. I can look at it.

 4   MR. GELLER: Okay. Anybody else have

 5 anything on that?

 6   MR. HUSSEY: No. I think that makes sense.

 7   MR. GELLER: You sure, Steve?

 8   MR. CHIUMENTI: Yeah.

 9   MR. GELLER: Okay.

10   Next one, D, "maximum floor area,

11 exceptions to maximum floor area ratio, regulations

12 for residential units." I think we've talked about

13 that, and that is what's going on.

14   MS. POVERMAN: Unfortunately, yup.

15   MR. GELLER: E, which is "maximum height of

16 buildings," again, same comment. I was specific

17 with Building Commissioner Bennett, asking him

18 whether the methodology is correct. He has

19 confirmed that it is and that, in fact, it was

20 conservatively measured.

21   So I think your comment stands.

22   MS. POVERMAN: Which one?

23   MR. GELLER: Unfortunately, it is.

24   MS. POVERMAN: Yeah. Okay.

1   MR. GELLER: Anybody else?

2   MR. HUSSEY: No.

3   MR. GELLER: 5.43, as mentioned before, I

4 think it simply does not apply in this instance.

5   MR. HUSSEY: I agree.

6   MS. POVERMAN: Yup.

7   MR. GELLER: G, H, and I are similar

8 requests, they're dimensional requests, and that is

9 consistent with their proposal.

10   MS. POVERMAN: Yup.

11   MR. GELLER: Okay. Maximum building

12 stories, again, it's consistent with their proposal

13 and consistent with E.

14   Jump in if you want to.

15   MR. HUSSEY: No.

16   MR. GELLER: Okay.

17   K, "exceptions for alignment," as

18 Mr. Bennett explained, there is a provision in our

19 bylaw about abutting buildings, neighboring

20 structures, and alignment to the street if they're

21 at various depths.

22   MS. POVERMAN: I didn't fully understand

23 that, but I think it's a technicality that is not

24 really --

 1   MR. GELLER: Right.

 2   MS. MORELLI: Could I just point out, if

 3 you want, the modal pattern on that street is

 4 between 22 and 27 feet for the front yard setback on

 5 both sides of the street.

 6   MR. GELLER: This goes to, I think, the

 7 first or second hearing where we were talking about

 8 the consistent front yard setback.

 9   MS. POVERMAN: Okay.

10   MR. GELLER: Minimum open space, again,

11 same comments as above. Minimum open space --

12   MS. POVERMAN: This is something I actually

13 regret. Not that we can do much now, but I don't

14 think we ever really discussed at all adequately the

15 lack of usable open space in this project.

16   MR. HUSSEY: That's true. I was wondering

17 about a roof deck. Is that allowed?

18   MR. GELLER: Well, you know, as much as

19 you'd like -- remember, usable open space has a

20 definition. And as much as you like to say that

21 they should have usable open space and you're

22 willing to grant them a building of this size and

23 therefore you're left with only usable space on the

24 roof, my concern is that you are, in that fashion,

 1 extending the height of the use. And, frankly, I'm

 2 not sure the neighbors will want to have people on

 3 the roof of this building looking down on them.

 4   MR. HUSSEY: I agree.

 5   MS. POVERMAN: But I think one of the

 6 questions that you have to look at under 40B, in

 7 looking at the case law, again, is what the

 8 amenities are offered to the people in the building.

 9 And there is very little in terms of amenities that

10 is offered to people in the building.

11   And in terms of usable open space, you

12 know, one of the things -- the problems we've all

13 had with this project is that, as Mr. Chiumenti has

14 always said, it is just too intense a use of the

15 space, of the piece of land. It is using up every

16 single inch of land. And that's something which has

17 always been so offensive about this project.

18 Putting a building within 5 feet of the setbacks

19 is -- in a noninfill situation, is unconscionable.

20 And if it weren't for 40B, we would never allow it.

21 And it is something which is -- sticks in the craw.

22   (Multiple parties speaking.)

23   MR. GELLER: -- under section 5.43.

24   MS. POVERMAN: That's right.

1   MR. GELLER: And it is unlikely we would

2 grant that relief.

3   MS. POVERMAN: That's right. And it is --

4 as a neighbor in the neighborhood, it is something

5 which I find appalling to be finding myself having

6 to approve under the law.

7   UNIDENTIFIED AUDIENCE MEMBER: Don't.

8   MS. POVERMAN: If I found a legal way to be

9 able to say it was not approvable, I would. But

10 unless my people agree with me that as something

11 that is just too intense a use to be -- then I think

12 that -- I think it is too intense a use.

13   I think there is case law under Hastings

14 Village versus Wellesley which could give us some

15 support, but I think it's a very tough row. I think

16 that for the -- you know, the only thing which would

17 make it better is making it -- and I think, again,

18 we're going to have to deal with the parking issue

19 now that we have 72 percent compact cars, and we'll

20 get to that in a little bit, which makes parking

21 even worse again. It's not an ideal building, to

22 say the least.

23   MR. GELLER: I wouldn't even characterize

24 it that way. I said it at the last hearing. I

 1 don't think it's a nice building. I think it's

 2 overly intensive for the site.

 3   But the operative question is: Under 40B,

 4 what can we do, and what are we allowed to do, and,

 5 frankly, how has it been interpreted under case law

 6 by those who review decisions? And I think you've

 7 answered that question, and you know the answer to

 8 the question. That's the problem. That's why it's

 9 not easy. It's not easy.

10   So, you know, I think everything you've

11 said is spot-on, and that's what we struggle with,

12 and that's why hearings run long.

13   MS. POVERMAN: I agree. I'd like to hear

14 what Steve has to say, because he's pulling his

15 microphone close.

16   MR. CHIUMENTI: You know, we basically

17 disagree on what it is we're doing. And I'm

18 reluctant to get started, since I'm not voting on

19 this project, but -- and you clearly have two votes

20 to proceed.

21   But it isn't enough to say that these

22 zoning rules don't apply. They don't apply

23 literally. But when you read the 40B regs, what

24 they really do -- if you read all of it, not just

 1 the safety part, but you read the site design and

 2 the height and the bulk and the parking and the open

 3 space, they really describe conceptually what it is

 4 that the town has attempted to achieve in its zoning

 5 rules.

 6   And what the 40B regs are saying is you

 7 shouldn't be constrained by this 5-foot setback or

 8 this specific setback. But in discussing open space

 9 and all of the other stuff, what they're saying is

10 that's the sort of thing you should take into

11 consideration without being constrained about the

12 specific limitation.

13   And what we're supposed to do, really, is

14 balance that, balance these -- these are local

15 concerns, the fact that this thing is so big, so

16 grossly oversized, no parking, and so on, and the

17 burden it is to that neighborhood. And balance --

18 basically to reduce the size, to adjust the design

19 so that it doesn't commit such an outrage,

20 basically, to the community and the neighborhood.

21 That's the authority we have.

22   The mere fact that we don't have the

23 authority to apply a specific limitation in that

24 statute doesn't mean it doesn't apply. What it

 1 means is it's the conceptual objective that's in the

 2 regulation that does apply, and they're expecting us

 3 to make a judgment call.

 4   So, I mean, I think to say that, well, we

 5 can't apply the zoning rule, really, basically,

 6 that's just the beginning of it. What we're

 7 supposed to do is apply the values and the

 8 characteristics that are articulated in the regs.

 9 And they don't just say "safety." They go on for

10 two pages. And we -- these boards that I've sat on

11 and listened to don't do that. I think this was

12 more than adequate justification to reduce the size

13 of this project based on their rules. That's what I

14 would say.

15   MR. GELLER: I've got to tell you, Steve, I

16 disagree with you both in terms of your

17 interpretation of the regulations -- and apparently

18 our 40B consultant does as well -- and I would also

19 say that I disagree with you because 40B has

20 existed -- and I regret having to say this -- but

21 40B has existed for 47 years. And, you know, our

22 decision-making, like any decision-making, is

23 constrained both by what's in the regulatory scheme

24 as well as how it's interpreted. And I haven't done

 1 a full audit of appeal decisions, but I'm unaware of

 2 any decisions -- any in 47 years -- that would go as

 3 far as you're proposing.

 4   MR. CHIUMENTI: I'm proposing to take a

 5 floor off this building.

 6   MR. GELLER: I don't know that that helps

 7 either way.

 8   MS. POVERMAN: I know. It's a terrible

 9 situation, and I could go back and forth. I know

10 what the courts have done. I know I would like to

11 take a floor off. I don't think we have the votes

12 for it. I don't think it will affect open space.

13   MR. GELLER: No. Which was the way you

14 started.

15   MS. POVERMAN: Yes. It would reduce the

16 intensity of the use of the building.

17   But, anyway, it is a very difficult law.

18 And I brought up the point about open space, and,

19 yeah, I guess I have to grant that waiver.

20   MR. GELLER: Okay. Parking spaces, which

21 is N, so there's a reduction. And you can recuse

22 yourself on that because, you know, we've heard you.

23 Chris and I believe that the spaces, which include

24 stackable units -- and we'll get into a further

 1 discussion on your topic in a minute -- but that 25

 2 spaces at this location, given proximity, works.

 3   MS. POVERMAN: Right.

 4   MR. GELLER: I don't want to take your

 5 thunder.

 6   MR. HUSSEY: No. That's all right.

 7   MR. GELLER: Section 6.02, that is what's

 8 happening. And that would be true in any scenario,

 9 even if they were providing 1.0. I would say that

10 that's consistent with -- I'm trying to think of

11 structures that are new structures where they set

12 aside a significant number of spaces for

13 tradespersons and guests. My building doesn't have

14 any.

15   Maximum curb cut, I think that the genesis

16 of this was to make the drive safer so that vehicles

17 entering and exiting, there would not be a risk of

18 conflict. I think this is the function of that.

19   MS. POVERMAN: Yup.

20   MR. GELLER: Okay. Next, our favorite,

21 everyone's favorite. So Section 6.03.2.E, and this

22 is their additional request that the parking be

23 largely for compact cars. Let me tell you that I am

24 absolutely not in favor of this.

 1   MS. POVERMAN: Thank you.

 2   MR. GELLER: Not in favor of this, not,

 3 N-O-T.

 4   MS. POVERMAN: Yeah. I don't see -- I

 5 mean, because we all know, I think, the parking's

 6 bad enough, but to have it be 75 percent limited to

 7 compact cars just makes it unusable for many

 8 families.

 9   MR. CHIUMENTI: But isn't he telling you

10 that the devices they're relying on will not

11 accommodate --

12   MR. GELLER: He's telling you that a

13 specific -- he looked at a specific product.

14   MS. POVERMAN: He's going to have to get a

15 different product.

16   MR. GELLER: Right, right. Or structure

17 the building so that it can hold this product, if he

18 wants that product enough.

19   MS. POVERMAN: If he what? I didn't hear

20 you.

21   MR. GELLER: If he wants that product

22 enough -- well, it wouldn't make any sense anyway.

23 Doesn't matter.

24   So I am not in favor of granting the

 1 request. Let me say that.

 2   MS. POVERMAN: Chris, what's your --

 3   MR. HUSSEY: Well, I agree that having so

 4 many compact spaces is going to limit the cars --

 5 some of the cars. These things tend to go in

 6 cycles. Right now, because the gas is going down,

 7 the SUVs and the larger cars are going back -- more

 8 of them are being manufactured and sold right now.

 9 But the stackers is the only way to provide more

10 parking than they had before, so...

11   MR. GELLER: Given what the ZBA agreed to,

12 in reducing the required parking, I think that they

13 should be able to provide the ordinance-required

14 breakout allocation for compact- and regular-sized

15 spaces. I want to be clear on that.

16   R, which is a waiver of Section 9.0, you

17 know, I -- first of all, Building Commissioner

18 Bennett recommends that we not do this.

19   My initial instinct was: Why are those

20 applicable anyway? Because those are the special

21 permit sections, and clearly they're not here for

22 special permits.

23   I think this also applies to S and T.

24 Those are all special permit sections, so I would

 1 not be inclined to grant those. If the nature of

 2 the comment is to the extent that it is granting

 3 third-party bodies final decision-making authority,

 4 I don't think we're in disagreement over that. But

 5 the rest of the request I just don't follow and

 6 wouldn't be inclined to give.

 7   MR. ENGLER: We agree. We weren't sure

 8 what to put in and put in stuff that we weren't

 9 clear about, so taking that out is not a problem.

10   MR. GELLER: Okay. Thank you.

11   MR. HUSSEY: So that's -- R and S are

12 denied?

13   MR. GELLER: That's R, S, and T. 9.05 is

14 the standard by which we grant special permits.

15   MR. HUSSEY: Right, right. Okay.

16   MR. GELLER: Mr. Engler, I believe

17 Mr. Ditto's comment was he'd like to review that,

18 have a conversation.

19   MR. ENGLER: We would like to sit down with

20 him on all of these because a lot of them are fine

21 with us and come in as process. We were saying that

22 shouldn't be a separate permit, but certainly, there

23 should be review and approval of construction

24 activities.

 1   MR. GELLER: Right. From our perspective,

 2 at least from the 40Bs that I have seen, these have

 3 all remained in place. They have not been waived.

 4 And they go to safety. And if I'm sitting in their

 5 seat, this is about construction, and they want to

 6 know that construction vehicles aren't going to be

 7 parked in front of their building.

 8   MR. ENGLER: Yeah. I agree with all that.

 9   MR. GELLER: So U, V, W, and X, we will

10 allow a conversation to take place, but I think that

11 the conclusion of the conversation is going to be

12 you're going to take them off the waiver list.

13   And you've already removed the last one,

14 which I am relieved at.

15   Okay. Anybody have any questions at this

16 time?

17   MS. POVERMAN: What's the status of the

18 auditory screening plan?

19   MR. GELLER: The noise?

20   MS. POVERMAN: Noise screening plan, yes.

21 Using my fancy words.

22   MR. ENGLER: I can speak to that. I met

23 with the building department today, picked up the

24 noise ordinance, trying to understand it. We're not

 1 asking any waivers from it.

 2   What happens is when we issue working

 3 drawings and your detailed specs and submit them to

 4 the building department, they look at what you're

 5 building. They understand from other projects

 6 whether that's going to present a noise problem, and

 7 they'll tell you what you should be doing to, you

 8 know, offset that noise, if there is any. And

 9 they'll even measure it after you build, so you may

10 not even get an occupancy permit until they're

11 satisfied with the background noise being less than

12 10 decibel points or whatever that calculation is.

13   So that all happens at the construction and

14 occupancy stage with the building department, and

15 we're willing to live with all that. We're not

16 going to waive any of that.

17   MS. POVERMAN: I thought we were supposed

18 to get a narrative of how it was going to be

19 handled. I thought that had been requested time and

20 again.

21   MS. MORELLI: I remember at the last

22 hearing that Building Commissioner Bennett did

23 recommend that the applicant provide a narrative to

24 show how they would comply with the noise bylaw.

1 That's under our general bylaw.

2   I do understand that Mr. Engler did speak

3 with the building department today. I just want to

4 ask which member of the building department staff

5 Mr. Engler met with.

6   There's Michael Yanovitch, who's the deputy

7 commissioner. Michael?

8   And I'm just wondering if Commissioner

9 Bennett -- if Commissioner Bennett wishes to add a

10 follow-up, if he requests a narrative now or if he

11 feels that it suffices, since they are not asking

12 for a waiver, to review that at the drawings stage.

13 I think you should consult with Commissioner

14 Bennett.

15   MR. GELLER: Commissioner Bennett?

16   MR. BENNETT: Dan Bennett, building

17 commissioner.

18   I think the applicant's been pretty forward

19 that they do not want a waiver from these provisions

20 of the bylaw. So what we're trying to do is have

21 some sort of a process or specifications or a

22 narrative that would identify or describe the units

23 that they're putting on the roof, or if there's some

24 things in the garage that supplies the entire

 1 building, what it is that they're proposing, the

 2 number of units. Usually in those specifications,

 3 they put the make and the model and you can identify

 4 the sound and the noise levels that could be

 5 emanating from each unit, and then we could then

 6 issue a permit based on that.

 7   In addition, you know, the board could

 8 reinforce a decision by adding a condition that they

 9 will comply, you know, with the noise bylaw. And I

10 think all those things combined, we could get a

11 compliant system.

12   That's not to say in a year or two down the

13 road -- again, I think I indicated that at the last

14 hearing -- if the units aren't maintained properly

15 or some other issue or event happens, that we would

16 then, you know, enforce the provisions of the noise

17 bylaw. And it does happen often, and we do enforce

18 it.

19   MR. GELLER: Okay. So you've obviously

20 noted that. Thank you.

21   Okay. Anything else?

22   MR. HUSSEY: No.

23   MR. GELLER: Okay. Again, our next hearing

24 is December 13th. And in addition to what we

 1 currently have scheduled, which is an initial review

 2 of conditions -- draft conditions -- we have a few

 3 outstanding issues that need to be addressed.

 4   Mr. Engler, you've told us that you'll

 5 provide the code analysis that's been asked for by

 6 Commissioner Bennett, stormwater, drainage; right?

 7   Any other outstanding pieces of

 8 information?

 9   MS. MORELLI: So there's the code analysis,

10 the stormwater calculations, the noise narrative,

11 and I'm going to quickly look at some things I've

12 been tracking, if you don't mind waiting for a

13 second.

14   MR. ENGLER: We're complying with 50

15 ordinances. We don't have to write a narrative of

16 all of the things we've complied with. I don't

17 understand why you need a narrative on something

18 we've said we'd live with your bylaw.

19   So to me it's like, well, you can say

20 you'll live with the curb cut qualifications. Why

21 do we have to have a narrative on how we're doing

22 that? I understand what you're asking for, but I

23 don't understand a narrative. We've already

24 provided what's on the roof, we've provided the

 1 number of units, we've given an outline on what it

 2 is. I don't understand what more I can say in a

 3 narrative, my two sentences. I said we'll meet with

 4 the building department and we'll comply with your

 5 ordinance.

 6   MR. GELLER: Let me suggest that you have

 7 another conversation with Mr. Yanovitch and see what

 8 it is that the building department would like to

 9 see.

10   MS. MORELLI. Okay. There are a few other

11 things I've been tracking, Mr. Geller, if you just

12 want to hear.

13   For trash, one thing that I did discuss

14 with the applicant, Mr. Roth, is considering the

15 size of the trash room and the size of the toters,

16 he should provide how many toters can fit in the

17 trash room.

18   Recall that Dr. Maloney has recommended

19 that there be a condition of an audit at 90 percent

20 occupancy. And if there are more toters than what

21 is proposed in this current plan, we would want some

22 assurance that this wouldn't be lip service, that we

23 actually would be able to see if there could be

24 another toter added or if there would be more

 1 pickups. Right now I think there would be four

 2 pickups: two trash, two recycling, so those are

 3 four pickup days.

 4   The applicant also needs to confirm if the

 5 waste and recycling management consultants will

 6 indeed enter the building. That might have some

 7 bearing on conditions.

 8   Mr. Ditto did review the plans for sight

 9 distance. It was noted in an email to you. I just

10 wanted to make this -- I'll put this on the record

11 for the public's reference, that this is against

12 Section 6.04.4.F. There is an analysis that is done

13 with the building department and the division of

14 engineering regarding the position of a car 6 feet

15 behind the property line. That driver should be

16 able to see a pedestrian 5 feet on either side of

17 the driveway, and Mr. Ditto did confer that there is

18 adequate sight distance.

19   I also pointed out that toters might be in

20 the front yard temporarily. Again, we do want to

21 know if management consultants will be entering the

22 building to preclude the situation of any toters in

23 the front yard. But should there be toters in the

24 front yard, I also pointed that out to Mr. Ditto,

1 should that affect sight visibility.

2   Let's see. I also had pointed out to the

3 applicant that since there is no loading zone on the

4 site, this project actually doesn't trigger that

5 requirement. Nonetheless, there really isn't space

6 necessarily -- or there wasn't any narrative that

7 showed that delivery trucks would be going on-site

8 and doing pickups or drop-offs there. They think it

9 would helpful to know what instructions the

10 applicant would give to delivery or pick-up drivers.

11   And the other thing was that regarding the

12 driveway design, remember there is that inflection

13 point where the curb changes. It's an S curve. And

14 Mr. Stadig of Walker Consultants pointed out that

15 there really isn't enough room at that pinch point

16 for two cars to pass.

17   Mr. Ditto did also concur in his analysis

18 that there would be some overlap. He would

19 recommend a wider driveway, but also did

20 emphatically say that if that design did not change,

21 he would be okay with the current design considering

22 the volume of traffic is really low for a

23 residential project.

24   We are awaiting comments from police

 1 regarding any situation where there might be queuing

 2 on the street, and that's why those instructions to

 3 delivery drivers are important. And keep in mind

 4 that Centre Street does not have any parking on that

 5 side of the street, which is another reason why

 6 instructions to delivery and pickup people would be

 7 important.

 8   And that's it.

 9   MR. GELLER: Thank you.

10   MS. POVERMAN: I don't know where this

11 comes in relevant, but in the documents we received

12 last time where we -- where it was estimated that

13 there would be four deliveries per day for the

14 building: one from FedEx, one from the post office,

15 one -- etc., I found that highly improbable. So I

16 think that -- I mean, I get four deliveries a day to

17 my house, basically.

18   So I think that in terms of analyzing

19 safety by the police in terms of queuing deliveries

20 and directions to delivery drivers, I don't know if

21 there's somebody in the building who's going to be

22 accepting packages or what happens with that, or if

23 doors are going to be buzzed or -- I mean, that all

24 factors into the safety of what happens on the

 1 street when packages are being delivered.

 2   So I feel like I actually need a fuller

 3 idea of what is going to happen there with package

 4 delivery in our next meeting, and I'd like that to

 5 be fleshed out. And, again, I challenge that whole

 6 four-delivery-truck-a-day assumption.

 7   MS. MORELLI: Are you asking the applicant

 8 for a narrative regarding that?

 9   If instructions are given to delivery and

10 pickup people, then it could be that they're not

11 parking on Centre Street. It could be that they're

12 parking across the street or they're going into the

13 actual garage or they're going into the driveway.

14 We just want to know what instructions they would be

15 giving so that we and the police department can

16 review that to ensure that those would be suitable

17 instructions, that those would be effective

18 instructions. Does that make sense? Does that

19 approach make sense?

20   MS. POVERMAN: Well, I guess we've got to

21 ask the applicant to give that information.

22   MS. MORELLI: Exactly. We are asking the

23 applicant to provide the ZBA with instructions they

24 would give to delivery drivers or any pickup

 1 drivers, like the waste and recycling pickup

 2 companies.

 3   MS. POVERMAN: Yes. We need that by the

 4 13th.

 5   MS. MORELLI: Correct.

 6   MR. ENGLER: I haven't heard that from the

 7 board.

 8   I have two comments: One, we don't have

 9 any instruction at this point; two, the loading bay

10 is not required; three, the trucks that park at all

11 the other apartment buildings, have they been asked

12 this, any of the other market-rate apartments have

13 been asked for this set of instructions?

14   I want to see all the instructions that

15 have been provided by the market-rate developments

16 over the last five years as to where their trucks

17 park. I want to see that, because we're not

18 required to do anything more than what's asked for

19 from market-rate developments. I don't believe

20 you've asked that, and I'd like to see it.

21   MS. MORELLI: I think on 420 Harvard, if I

22 may point out, there is a loading zone, but I think

23 that we've also asked that that also be reinforced

24 by giving drivers instructions not to park on Fuller

1 Street.

2   MS. POVERMAN: And usually there are

3 loading docks, like at the 45 Marion; right?

4   MR. ENGLER: We have pictures of trucks

5 parked up and down Centre Street unloading stuff.

6 It's just common practice.

7   All I'm saying is, where has it been asked

8 for by any other apartments? Not 420. That's

9 another 40B. I want to know what's been asked for

10 by market-rate developments that have been built

11 under special permits in terms of instructions to

12 drivers when no parking or loading bays are

13 required. Where do they park on the street? What

14 are the instructions saying? I think that's

15 overboard.

16   MR. CHIUMENTI: Well, I think we would look

17 at buildings that are similarly oversized for the

18 lot, basically.

19   MR. ENGLER: I'm talking about buildings

20 that don't have space to pull in. They don't have

21 to be oversized. They just don't have a loading

22 bay.

23   MS. POVERMAN: But this also depends on

24 when they were built. I mean, buildings further

 1 down on Centre Street were built in the '60s, and

 2 there were different zoning laws.

 3   We can try to get that information, the

 4 last 10, 15 years, but I don't think that it is an

 5 unreasonable request at all that we're making. I

 6 think that it is a safety consideration.

 7   And I think it's especially important in

 8 this instance because one of the things we've been

 9 talking about has been the scarcity of room for

10 parking, for loading, etc. And I have seen the

11 materials that were submitted, the pictures of other

12 loading trucks, but the fact that somebody else

13 violates the law does not mean that your client is

14 allowed to. I mean, do you think --

15   MR. GELLER: I think Brown's going to park

16 where Brown wants to park.

17   MR. HUSSEY: Yeah. That's right. We've

18 been through this at our condominium a lot.

19   MR. GELLER: Right. And your building's

20 right on the street.

21   MR. HUSSEY: Right on Park Street.

22   And the drivers change. They don't get the

23 instructions. I mean, we can put something in as a

24 requirement, but, quite frankly, it's not

1 enforceable.

2   MS. POVERMAN: But there was a discussion

3 about what happens in terms of, like, trying to

4 enforce, like, no parking in front of restaurants

5 or -- there are attempts made to ensure, for

6 example, that the trucks don't park right in front

7 of the driveway.

8   MR. GELLER: Right. There are attempts to

9 create a no-parking zone.

10   MS. POVERMAN: Right. So we want to try to

11 not create an inherently, extremely dangerous

12 situation.

13   MR. GELLER: Well, it's already a

14 no-parking zone, so legally it is a no-parking zone.

15 You can't park on that side of the street.

16   The issue is -- you know, Chris's response

17 and my response is sort of the practical reality of

18 all these delivery companies. I suspect, for

19 instance --

20   19 Winchester, is there parking on your

21 side of the building on Winchester Street?

22   UNIDENTIFIED AUDIENCE MEMBER: In front of

23 our building?

24   MR. GELLER: Yes. There is -- cars are

 1 allowed to park on that side?

 2   (Inaudible.)

 3   MR. GELLER: Okay.

 4   I suspect on many, many buildings where

 5 there's no parking on that side of the street, the

 6 delivery people, they just go anywhere they want,

 7 you know? How many people have seen a delivery

 8 truck with a ticket around its side view mirror?

 9   So I'm not opposed to discussing something

10 as a condition. I'm at a loss -- how do you enforce

11 it, frankly? I don't have the answer to that one.

12 You know, you can say, you must park across the

13 street where there's legal parking, but how are you

14 going to enforce it? So that's the issue. So I'm

15 not disagreeing with you. I just haven't really

16 through it through because I think it's more of a

17 conditions discussion.

18   MS. POVERMAN: Well, going back, I think we

19 should have -- 180 days -- said build a loading

20 dock, but -- next time around.

21   MR. GELLER: Be pretty usual for a building

22 like this to require it.

23   MS. POVERMAN: We've got five more coming

24 up.

 1   MR. GELLER: Thank you for reminding me.

 2   Okay. So, again, I want to thank everyone

 3 and --

 4   UNIDENTIFIED AUDIENCE MEMBER: Are we going

 5 to get a chance to speak at all?

 6   MR. GELLER: Not tonight. We may have time

 7 on the 13th, conditions, for input about conditions.

 8   UNIDENTIFIED AUDIENCE MEMBER: Does this

 9 mean that we may never be able to speak?

10   MR. GELLER: No. As I said, next hearing

11 is the 13th.

12   UNIDENTIFIED AUDIENCE MEMBER: Correct.

13   MR. GELLER: And on the 13th we're going to

14 start our discussion about conditions.

15   UNIDENTIFIED AUDIENCE MEMBER: Can you

16 explain what a condition is?

17   MR. GELLER: Sure. So conditions are those

18 requirements that we put on the project as a

19 precondition to their getting their permit. Okay?

20   So it would include, for instance,

21 compliance with -- and we'll list them out --

22 construction requirements. Okay? Cleaning

23 requirements for vehicles, things of that nature.

24   So, for instance, in -- maybe this is a bad

 1 thing to refer to, but in the case of Hancock

 2 Village, the first case, we had 70 conditions on

 3 that project: you have to do this, you have to do

 4 this. So that's what conditions are.

 5   And, in fact, we had a number of comments.

 6 I see Rich in the back. He had some comments. And

 7 Derek Chiang also sent in some comments already

 8 starting to suggest conditions, and that will be

 9 part of our discussion.

10   And I'll be candid with you. Some of them,

11 you know, we will consider and will be part of our

12 discussions, and others we may think, well, this

13 really goes to the more core issues of, you know,

14 six-story building, massive building, rather than

15 being conditions to address what we've agreed upon.

16   So those are conditions, and we welcome

17 your comments, written fashion. We'll try -- we're

18 going to set aside some time to take some testimony,

19 but, again, it will be about conditions, not about

20 the project as a whole. It's about conditions for

21 an approved project. So if you want to offer

22 testimony along those lines, we welcome it, but you

23 should focus on that.

24   UNIDENTIFIED AUDIENCE MEMBER: Will we see

 1 the conditions in advance?

 2   MR. GELLER: The intent is that --

 3   Do you want to speak to this?

 4   MS. MORELLI: Sure. So I will do my best

 5 to get a draft ready by 12/5, but town counsel does

 6 need to review it. So our goal is to have it

 7 available to the public and the applicant a few days

 8 in advance of 12/13. It won't be a full week because

 9 we do have to have our 40B consultant -- I've already

10 started on the conditions, and I'm already tracking

11 them. That won't be the only hearing which you will

12 be discussing conditions or taking public testimony.

13 That is just the first hearing.

14   MR. GELLER: And just so people understand,

15 what happens is that in generating conditions, what

16 we do -- we do -- Maria does to assist us -- is that

17 we go to comments received from peer review, town

18 departments and boards, the public, both in written

19 fashion and verbally. And you've actually given

20 tells in your comments. And those are filtered into

21 things -- the conditions.

22   And, again, I don't want to suggest every

23 single thing that you've suggested is going to be

24 there, but the core things, based on comments that

 1 have been received from the board members, will

 2 reappear in some fashion, typically as conditions.

 3   And what will take place is we will go

 4 through those conditions. If there are 70, you will

 5 see us sitting here reading the conditions, going

 6 through them. And we are going to discuss those

 7 conditions, just as you saw us with the waivers. And

 8 we will have different opinions about them.

 9   And when they are posted -- and I will

10 apologize to you in advance, because I will tell you

11 that they are long, they are complicated, and you

12 will not have time to fully digest them. It's

13 simply -- neither will we. It's simply the way this

14 works. But they will be posted, and you will be able

15 to review them and look at them and offer your

16 comments.

17   UNIDENTIFIED AUDIENCE MEMBER: Is there any

18 opportunity to offer comments about the waivers?

19   MR. GELLER: You can submit them in written

20 fashion and we will look at them, yes.

21   UNIDENTIFIED AUDIENCE MEMBER: I take it

22 you got my email?

23   MR. GELLER: Absolutely.

24   UNIDENTIFIED AUDIENCE MEMBER: Please read

 1 that.

 2   MR. GELLER: We read everything you submit.

 3 Believe it or not, we read everything you submit.

 4   UNIDENTIFIED AUDIENCE MEMBER: I just found

 5 this last night on YouTube. Fascinating and scary.

 6   I won't be here next week, so --

 7   MR. GELLER: Is it the 13th? It's two

 8 weeks.

 9   UNIDENTIFIED AUDIENCE MEMBER: Right. I

10 won't be here the 13th.

11   MR. GELLER: Okay. You mean the next

12 hearing.

13   UNIDENTIFIED AUDIENCE MEMBER: Okay.

14   UNIDENTIFIED AUDIENCE MEMBER: Is there any

15 opportunity for our attorney to review the waiver

16 comments and/or conditions?

17   MR. GELLER: When you say the "waiver

18 comments," the discussion that took place tonight?

19   UNIDENTIFIED AUDIENCE MEMBER: Well, yeah.

20 There's going to be a draft, I assume.

21   MS. MORELLI: So the waivers were actually

22 distributed to the community through Derek Chiang.

23   UNIDENTIFIED AUDIENCE MEMBER: Yup.

24   MS. MORELLI: And you also got them, too.

 1 That was the draft. And then there was a follow-up

 2 from the applicant where he had made additional

 3 changes. So we posted the waivers online. So what

 4 you see projected on the screen is actually posted

 5 on-line.

 6   Was that your question?

 7   UNIDENTIFIED AUDIENCE MEMBER: No. We know

 8 that.

 9   MR. GELLER: You want the flavor of the

10 hearing and the discussions that took place. Is that

11 what you want?

12   UNIDENTIFIED AUDIENCE MEMBER: Well, is

13 there going to be a draft prior to a final waiver

14 list, or whatever you call this thing, that you guys

15 are putting together that we could have reviewed --

16 that the public could review?

17   MS. MORELLI: Perhaps it's the draft

18 decision -- the draft of conditions that you're

19 talking about which would --

20   UNIDENTIFIED AUDIENCE MEMBER: The series

21 of waivers proposed by the applicant --

22   MS. MORELLI: Which are on the screen.

23   UNIDENTIFIED AUDIENCE MEMBER: -- some of

24 which were granted, some of which were not.

1   MR. GELLER: They're asking about a revised

2 draft.

3   MS. MORELLI: Okay. So what will happen is

4 that when you get the draft conditions, the waivers

5 that the ZBA decided to grant will be included there,

6 and the ones that you did not want to grant will be

7 excluded. That's how it is done.

8   MR. GELLER: And there are some that are

9 subject to discussions. So I'm not sure it's a bad

10 idea to --

11   MS. MORELLI: What we'll do is we'll just

12 repeat what this is with the status of the

13 discussion, because there are some waivers that

14 you're circling back to.

15   MR. GELLER: Does that help?

16   UNIDENTIFIED AUDIENCE MEMBER: And I just

17 want to reiterate that the transcript of this

18 discussion -- I know nobody's here, but if there is a

19 way to get it from the video.

20   MS. MORELLI: Yeah. I've already discussed

21 that with the court stenographer. It is their error,

22 it is not the town's error, and they've admitted

23 that.

24   UNIDENTIFIED AUDIENCE MEMBER: That's

 1 understood.

 2   MS. MORELLI: So what will happen is there

 3 is a video that will be archived through Brookline

 4 Interactive Group, and I will get my hands on that

 5 and give it to the court stenographer to see if they

 6 can transcribe from that.

 7   MR. GELLER: Okay. So we'll do the best we

 8 can. Okay.

 9   And the second part -- I don't want to

10 forget the second part of your question, which was

11 the question about conditions, which is yes. So

12 those will be -- so what we will have is once those

13 have been reviewed by town counsel and once those

14 have been reviewed by the peer review consultant,

15 those will be posted, and they'll obviously be

16 available to your counsel.

17   UNIDENTIFIED AUDIENCE MEMBER: And then

18 we'll have an opportunity to comment?

19   MS. STEINFELD: At the public hearing.

20   MR. GELLER: At the public hearing, not

21 when I see you on the street.

22   Okay. I want to thank everyone for your

23 patience, and we will see you again December 13th,

24 7:00 p.m.

1   I, Kristen C. Krakofsky, court reporter and

2 notary public in and for the Commonwealth of

3 Massachusetts, certify:

4   That the foregoing proceedings were taken

5 before me at the time and place herein set forth and

6 that the foregoing is a true and correct transcript

7 of my shorthand notes so taken.

8   I further certify that I am not a relative

9 or employee of any of the parties, nor am I

10 financially interested in the action.

11   I declare under penalty of perjury that the

12 foregoing is true and correct.

13   Dated this 19th day of December, 2016.

14

15

16 *[signature]*

17 _____
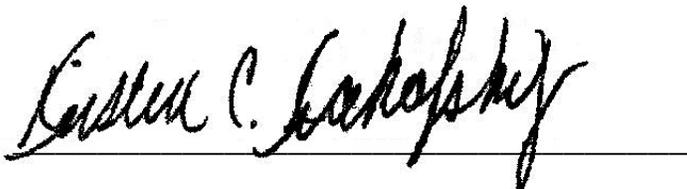
18 Kristen Krakofsky, Notary Public

19 My commission expires November 3, 2017.

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