

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION  
JFK CROSSING  
BOARD OF APPEALS CASE NO. 2016-0041**

Date: **DATE**

Re: Application of 420 HARVARD ASSOCIATES LLC for a Comprehensive Permit

Location: Assessor’s Atlas Map Sheet 15, Block 077, Lot 11-12, known and numbered as 420 Harvard Street, Brookline, Massachusetts; and Assessor’s Atlas Map Sheet 15, Block 077, Lot 09, known and numbered as 49 Coolidge Street, Brookline, Massachusetts

**PROCEDURAL HISTORY**

1. On May 17, 2016, Massachusetts Housing Partnership (“MHP”) issued a Project Eligibility Letter (“PEL”) to 420 Harvard Associates LLC (the “Applicant”).
2. On May 31, 2016, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the “Act”), to construct thirty-six (36) units of rental housing, ~~2,785~~ square feet of office space, and thirty-five (35) parking spaces (the “Original Project”) on approximately 10,851 square feet located at the corner of Harvard and Fuller Streets in Brookline, Massachusetts (the “Original Site”).
3. On October 19, 2016, the Applicant submitted a revised Comprehensive Permit Application (the “Application”) to the Town of Brookline (the “Town”) to construct twenty-five (25) units of rental housing, approximately ~~4800-5,000~~ square feet ~~square feet~~ of retail and office space, and twenty-seven (27) parking spaces configured between two buildings (the “Project”) on two separate, abutting parcels located at 49 Coolidge Street and 420 Harvard Street totaling approximately 13,956 square feet of land area (the “Site”). Twenty-three rental housing units at 420 Harvard Street served by nineteen underground parking spaces and a total of 4,100 square feet of retail and office space at 420 Harvard Street served by four underground parking spaces; and two rental housing units and 700 square feet of office space served by four tandem, driveway parking spaces at 49 Coolidge Street.
4. The materials submitted by the Applicant in its application and during the public hearing include:

**Comprehensive Permit Application**

Comprehensive Permit Plans for JFK Crossing dated May 3, 2016, and revised to December 12, 2016, prepared as follows:

**Sheet Numbers and Titles**

**Site Plans dated May 19, 2016, revised to December 9, 2016, prepared by McKenzie Engineering Group, Inc., stamped by professional land surveyor Bradley McKenzie.**

Sheet EX-1 – Existing Conditions Plan including street trees, grading, and utilities  
Sheet C-1 – Site Feasibility Plan including street trees, grading, utilities, and site of proposed infiltration system.

[“Site Plans”]

**Architectural Plans dated May 3, 2016 revised to December 12, 2016, prepared by Embarc Studio stamped by registered architect Dartagnan Brown.**

Sheet A001	Cover
Sheet A100	Ground Floor Plan
Sheet A101	Garage Level
Sheet A101L	Landscape Plan
[No Sheet A103]	
Sheet A102	Floor Plan Levels 2 and 3
Sheet A104	Floor Plan Level 4
Sheet A105	Penthouse Floor Plan
Sheet A106	Roof Plan
Sheet A107	49 Coolidge Proposed Plans [floor plans]
Sheet A200	Site Sections
Sheet A201	Exterior Elevations [Harvard Street and Fuller Street]
Sheet A202	Exterior Elevations [South and West]
Sheet A203	Fuller Street Ramp
Sheet A300	Street View – Harvard and Fuller
[No Sheet A300A]	
Sheet A300B	Exterior Perspective Revision
Sheet A300C	Street View – Rendering
Sheet A301	Street View – Harvard Street
[No Sheet A301A]	
Sheet A301B	Harvard Street View – Revision
Sheet A301C	Street View Rendering
[No Sheet A302]	
Sheet A303	Façade Elements
Sheet A400	Aerial Perspectives
Sheet A401	Fuller Street Perspectives
Sheet A402A	View from Coolidge Street
Sheet A402B	Coolidge Street Perspective
Sheet A403A	View from Coolidge Street
Sheet A403B	Coolidge Street Perspective
Sheet A500	Shadow Studies – Summer Solstice
Sheet A501	Shadow Studies – Fall/Spring Equinox
Sheet A502	Shadow Studies – Winter Solstice
[Unnumbered]	unit mix, affordable units, living area and common area square footage

[“Architectural Plans”]

Landscape plan dated December 12, 2016 and prepared by Blair Hines Design Associates, landscape architects

Sheet A101L Landscape Plan

[“Landscape Plans”]

**Traffic Impact Assessment dated May 25, 2016, amended August 20, 2016 with additional data provided September 26, 2016, and October 14, 2016 prepared by Vanasse & Associates, Scott W. Thornton, P.E., and Derek Roach, EIT.**

5. The Applicant submitted a request for waivers from local bylaws and regulations and ~~waivers~~ keyWaivers-Key site plan dated November 30, 2016 and amended December 9, 2016.
6. The Brookline Board of Appeals (the “Board”), with the consent of the applicant, opened a duly advertised public hearing on June 27, 2016. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: July 25, 2016, August 30, 2016, September 13, 2016, September 26, 2016, October 19, 2016, November 2, 2016 ~~(continued)~~, November 22, 2016 ~~(continued)~~, November 30, 2016, December 12, 2016, December 28, 2016. All continuances beyond 180 days from June 27, 2016 were with the Applicant’s written consent.
7. The Board conducted a duly noticed site visit on July 6, 2016.
8. On December 28, 2016 the Board closed the public hearing.
9. ~~[placeholder for Board deliberation during public MEETINGS]~~

~~10.9.~~ The Board deliberated on the Application at a public ~~hearing/meeting~~ meeting held on DATE January 23, 2017 and voted to grant a Comprehensive Permit subject to the conditions listed below.

~~11.10.~~ 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.

~~12.11.~~ 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 in part the technical review of Town department heads, and independent site and building design peer reviewer, and an independent traffic peer reviewer in regard to matters of public health and safety, environmental health and safety, site and building design, and preliminary stormwater management plans, and other issues of local concern.

~~13.12.~~ The following consultants and independent peer reviewers assisted the Board in its review of the application:

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

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

## FINDINGS

1. According to the Commonwealth’s Department of Housing and Community Development Subsidized Housing Inventory (“SHI”), as defined in 760 CMR 56.02, as of May 31, 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.
2. The Town has an ongoing, active program of promoting: low- and moderate-income housing, including inclusionary zoning; financial and technical assistance to non- and for-profit property owners and developers; technical and financial assistance to those seeking to purchase, rent and rehabilitate affordable homes; and other Chapter 40B affordable housing developments.
3. MHP determined that the Original Project was eligible under the New England Fund housing subsidy program, and at least twenty-five percent (25%) of the units would be available to households earning at or below eighty percent (80%) of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. On October 19 2016, the Applicant submitted the Project, which proposes that at least twenty percent (20%) of the units would be available to households earning at or below fifty percent (50%) of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban and Development.
5. The Site consists of two separate, abutting lots within different zoning districts as defined in the Brookline Zoning By-Law amended June 2, 2014. The lot at 420 Harvard Street is zoned as L-1.0 (local business district); the lot at 49 Coolidge is zoned as T-5 (two-family district).
6. The Site is ~~within located the on~~ Harvard Street ~~commercial district~~, which ~~Harvard Street extends~~ from the Boston-Brookline town line to the area known as Brookline Village ~~and~~ consists ~~in part of~~ ~~commercial~~ structures ~~that are~~ mostly one-story tall. The Site extends into ~~the a~~ two-family district, which includes single- and two-family structures and three-story apartment buildings and row-houses.
7. The Site currently features two structures: a single-family dwelling and driveway at 49 Coolidge Street; and a two-and-a-half (2.5) story structure at 420 Harvard Street with ground floor office space and four residential units on the second floor with nine (9) surface parking spaces accessed by a 44 foot curb cut off Fuller Street.
8. On October 14, 2015, the Brookline Preservation Commission (the “Preservation Commission”) reviewed the Applicant’s demolition review application for the structure at 420 Harvard and issued a Certificate of Non-Significance pursuant to the Town Demolition By-Law Section 5.3 that indicates the structure is not historically or architecturally significant and may be demolished.
9. The Planning Board, ~~independent design peer reviewer~~ Clifford Boehmer, and local residents expressed in written and oral comments during the public hearing that the Original Project was too massive and its site configuration and parking infeasible, and the architectural style and building typology of the six-story apartment structure was incongruous with ~~architecturally coherent~~ ~~small-scale commercial properties on~~ Harvard Street ~~commercial district~~ and that the Original Project had inadequate setbacks to the abutting single- and two-family homes.

10. In August through November, the Applicant met several times with immediate abutters to propose and refine conceptual plans to address the height, massing, density, setbacks and parking plan on the Site.

~~11.~~ 11. At the August 10, 2016, public hearing the Applicant presented and formally submitted a conceptual plan for the Project that included the abutting lot and structure at 49 Coolidge Street, reduced the height by one story, relocated the parking spaces underground, eliminated the parking stacker system, and moved two (2) of the thirty-six (36) units to the structure at 49 Coolidge Street.

~~11.~~12. On August 12, 2016, the Applicant submitted a copy of the Purchase and Sale Agreement dated August 13, 2016 (the “PSA”) to demonstrate site control.

~~12.~~13. On September 6, 2016, David Hanifin, Senior Loan Officer, MHP, submitted an e-mail to Planning Director Alison C. Steinfeld to confirm that the Applicant submitted the August 10, 2016 plans and August 13, 2016 PSA to MHP and to state that site control is a matter solely within the purview of the subsidizing agency. On December 28, 2016, Mr Hanifin submitted a letter re-affirming and updating the May 17, 2016 Project Eligibility Letter based on the October 28, 2016 plans and specifically the two separate parcels that comprise the Project ~~(MM)~~.

~~13.~~14. On the November 2, 2016, public hearing, the Applicant presented a formally amended plan, which included detailed architectural and landscaping plans, shadow studies and architectural renderings from an electronic 3D model and *of* which abutters at 44 Fuller Street and 45 Coolidge Street testified they were generally supportive. The Applicant revised the affordable housing program such that at least twenty percent (20%) of the units would be available to households earning at or below fifty percent (50%) of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.

15. On November 30, 2016 and December 6, 2016, the Applicant submitted an amended request for waivers from local regulations.

~~14.~~16. Peter Ditto, Director of Engineering and Transportation, submitted a letter to the ZBA dated November 30, 2016, stating-providing that the Fuller Street driveway as designed on the October 28, 2016, plans, in conjunction with his recommendations, to the Board presents no safety hazard to pedestrians.

~~15.~~17. The waiver requests for the Project were based on the Site consisting of two separate parcels and not one merged parcel.

~~16.~~18. At the November 30, 2016, public hearing, the Applicant testified that the project’s two parcels would be placed in common ownership after a building permit is issued.

~~17.~~19. Placing the lots in common ownership does not automatically eliminate the lot line shared by the two parcels. In addition, the two distinct zoning districts (delineated by the shared lot line) will remain whether or not the lot line is eliminated. Eliminating the lot line would trigger new non-compliance with zoning and make other waiver request non-applicable. Because the two zoning districts will remain, the Applicant has confirmed that he shall retain the shared lot line after the parcels are placed in common ownership.

~~18.~~20. The Applicant has stated that retail space will not be used for food preparation or production, ~~including restaurants and cafes.~~

~~19:~~21. The Applicant stated that parking on the Site will not be provided to customers of the commercial spaces.

~~20:~~22. The preliminary trash plan reviewed by and accompanying conditions recommended by the Director of Environmental Health assumes that ~~no restaurants or cafes will be allowed~~ no foods except coffee will be prepared on the Site.

~~21:~~23. The Board heard the concerns of Town staff, boards, commissions, and residents and weighed them against local needs. The Board finds that the Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.

~~22:~~24. 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.

~~23:~~25. 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.

~~24:~~26. 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.

~~25:~~27. 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 Fuller, Coolidge, and Harvard Streets and the surrounding area that are not directly related to or caused by the Project.

~~26:~~28. The Applicant has had the opportunity to review the following conditions 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 twenty-five (25) units of rental housing and no more than 5,000 square feet of ~~retail and office~~ commercial space, as shown on the Site Plans, Architectural Plans, and Landscape Plans, subject to all of the conditions listed below.

## CONDITIONS

1. The Project shall include no more than twenty-five (25) units of rental housing in no more than two (2) buildings, which buildings are shown on the Site Plans and the Architectural Plans, with no more than twenty-three (23) rental housing units and approximately 5,000 square feet of retail and office space in the apartment building at the 420 Harvard Street lot and no more than two (2) rental housing units and approximately seven hundred (700) square feet of office space in the structure at the 49 Coolidge Street lot, and no fewer than twenty-three (23) underground parking spaces spanning both lots and no more than four (4) tandem driveway parking spaces at the 49 Coolidge Street lot as shown on the parking layout plan on Sheet A101 listed under Item 4 under Procedural History.

~~2.~~ 2. Parking shall not be provided to customers visiting ~~retail and office tenants~~ the commercial space.

~~3.~~ 3. Parking spaces shall not be ~~leased-provided~~ to off-site residents or businesses.

~~4.~~ 4. Professional kitchens requiring ventilation per the State Building Code shall not be permitted on the Site.

~~5.~~ 5. Parking at the 49 Coolidge Street parcel shall be used solely by the employees of the non-residential space.

~~1-6.~~ 6. The open space on the Site shall be used for ~~the quiet enjoyment~~ passive use of solely by the residents of the Project and the employees of the commercial tenants of the Project.

~~2-7.~~ 7. Twenty (20) percent of the units shall 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.

~~3-8.~~ 8. The total maximum number of bedrooms shall be forty-six (46) and the maximum number of units and maximum number shall be as listed in the following table.

Unit Type	Number of Units	Total Bedrooms per Unit Type
420 Harvard		
Studio	3	3
One Bedroom	6	6
Two Bedroom	10	20
Three-Bedroom	4	12
49 Coolidge		
Two Bedroom	1	2
Three Bedroom	1	3
TOTAL 46 <u>Bedrooms</u>		

~~4-9.~~ 9. With respect to the Applicant’s request for waivers from local bylaws and regulations dated December 12, 2016, the Board approves those waivers listed in Exhibit 1. The Project must comply with bylaws and regulations not waived.

~~5-10.~~ 10. 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.

~~6-11.~~ 11. 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.

7.12. 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.

13. Prior to 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 by the Applicant. Any proposed removal of street trees shall be subject to M.G.L. c.87, the “Shade Tree Act.”

8.14. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan to the Director of Transportation and Engineering for review and approval.

9.15. Traffic mitigation shall be as follows:

- (a) The Applicant, in consultation with the Director of Engineering and Transportation, shall install a NO PARKING THIS SIDE sign on the southwest-bound side of Fuller Street between Fuller-Harvard Street intersection and the driveway entrance, with all costs related to performance thereunder borne by the Applicant.
- (b) The Applicant shall contribute \$10,000 to the final cost to install an audible pedestrian signal at the traffic signal located at the Harvard Street and Fuller Street intersection. Prior to the issuance of a Building Permit, the Applicant shall deposit \$10,000 into a segregated Town account to be used by the Town for the signal upgrade. \$10,000 to the estimated cost of the upgrade. If the funds are not used within three (3) years from the date of deposit for the installation of an audible pedestrian signal at the traffic signal located at Harvard Street and Fuller Street intersection, the funds shall be returned to the Applicant.
- (c) The Applicant shall ensure that the Fuller Street driveway apron is at the same level as the sidewalk elevation and that the material for the driveway apron is the same as that of the sidewalk.
- (d) The Applicant shall install both visual and audible signals on the Site at the Fuller Street driveway exit to alert pedestrians of exiting vehicles.
- (e) The Applicant shall install mirrors on the Project’s structure at 420 Harvard to assist drivers exiting the Fuller Street driveway.
- (f) 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.

10.16. 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) all rubbish generated from the Project’s housing units, retail space, and office space at 420 Harvard will-shall be handled and disposed of once weekly by a private waste management services contracted by the Applicant in compliance with all applicable regulations;



- (b) all recycling generated from the Project's housing units, retail space, and office space at 420 Harvard ~~will~~shall be handled and disposed of once weekly by a private waste management service contracted by the Applicant in compliance with all applicable regulations;
- (c) eight 96-gallon receptacles total for rubbish and recycling for residential units
- (d) four 96-gallon receptacles total for rubbish and recycling for commercial tenants
- (e) the schedule for the property owner's rubbish and recycling pick-up demonstrating compliance with Town bylaws;
- (f) rubbish receptacles and recycling containers shall not be stored in the public way on Harvard and/or Fuller Streets at any time;
- (g) rubbish and recycling receptacles shall not be stored in the loading bay in the Fuller Street front yard between 8 AM and 11 PM on weekdays and weekends
- (h) all rubbish and recycling generated by the housing units and office unit at 49 Coolidge will be picked up and disposed of by the Town of Brookline.
- (i) Rubbish produced by commercial tenants and rubbish produced by residential tenants shall be stored in separate receptacles;
- (j) the Applicant shall inform the Public Health Department when the Project's residential units are ninety (90) percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance;
- (k) No foods shall be prepared within the commercial space except coffee. Prospective retail tenants shall require local licensing and other approvals relative to the sale of food and beverages as required local authorities. Additional reviews by these departments and boards shall occur at that time. [Jesse: confirm language]

~~11.~~17. The loading zone in the Fuller Street front yard shall be striped.

~~12.~~18. Plantings between the property line at 44 Fuller Street and the driveway shall be no higher than three (3) feet for the first six (6) feet of the Fuller Street front yard for optimal driver visibility.

~~13.~~19. Prior to the issuance of a Building Permit, the Applicant shall submit a construction management plan, consistent with the requirements listed in Condition ~~4654~~, to the Building Commissioner and the Director of Engineering and Transportation for review and approval.

~~14.~~20. ~~P~~rior to the issuance of a ~~B~~uilding ~~P~~ermit, for each building on the Site or a portion thereof, the Applicant shall comply with the Public Works Department's Site Plan Review Checklist and with the Building Department's Certificate of Occupancy Process ~~in accordance with~~as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.

21. 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

~~15~~22. 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.

~~16~~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.

~~17~~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 square feet (20 sf), with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.

~~18~~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 Conditions ~~5-10~~ and ~~611~~.

~~19~~26. After the issuance of a ~~B~~uilding ~~P~~ermit, the Applicant shall submit to the ~~Planning~~-Director of Planning and Community Development or her designee proof that the lots at 420 Harvard Street and 49 Coolidge Street are in common ownership.

~~20~~27. The two lots shall remain common ownership in perpetuity. The two lots shall remain as separate lots in perpetuity consistent with the waivers granted by the Board.

~~21~~28. 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.

29. Prior to the Commencement of Construction, the Applicant shall provide proof that utility companies shall permit existing utilities that cross the lots at 420 Harvard Street and 49 Coolidge Street to be eliminated or relocated underground and that the Town shall not be financially responsible for the relocation of said utilities underground.

~~22~~30. Prior to the issuance of demolition permit, the Applicant shall conduct a pre-construction survey of the above and below grade structures among properties at 428 Harvard Street, 45 Coolidge Street, and 44 Fuller Street 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.

31. There shall be no blasting during the construction of the Project.

~~23~~32. 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.

33. Prior to the issuance of a ~~B~~uilding ~~P~~ermit, 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 Town Zoning Bylaw, and which shall be subject to the review and approval of the Director of Engineering and Transportation. Mitigation measures in the TAP shall include the Applicant (i) providing subsidies for its employees’ public transit costs; (ii) providing on-site sale of MBTA passes; (iii) providing no fewer than thirty (30) racks for secure bicycle storage ~~and~~, (iv) publicizing transit options and (v) including in leases for commercial spaces language that MBTA pass subsidies are available to employees.

## Housing

~~24.~~34. As a condition of any approval hereunder, at least twenty (20) percent 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.

~~25.~~35. The Affordable Units shall be dispersed throughout the Project and shall have the same bedroom “ratio” or “mix” as the ~~other units~~ Market Rate Units (as defined in Condition 46) 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 five (5) units in the Project which are Affordable Units.

~~26.~~36. 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

~~27.~~37. 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.

~~28.~~38. 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 the 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 the Subsidizing Agency’s approval of the Project.

~~29.~~39. 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 systems as defined by the Town and subject to the approval of the Subsidizing Agency.~~

~~30.40.~~ 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.

~~31.41.~~ For the period in which the Project is being monitored by the Subsidizing Agency, upon the Town's request, the owner shall share all monitoring reports with the Director of Community Development including annual rent increases and information verifying income eligibility for affordable units.

~~32.42.~~ Five (5) 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 five (5) Affordable Units in perpetuity as set forth in Condition 26, (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. Prior to the issuance of any building permit, a Regulatory agreement, which shall include monitoring provisions if such provisions are not provided in a separate Monitoring Services Agreement, shall be executed by both the Applicant and the Subsidizing Agency, in form and content as approved by the Subsidizing Agency as Subsidizing Agency, and recorded with the Registry of Deeds by the Applicant against the Property, provided, however, that if a lender or governmental funding agency for the project requires the issuance of building permits prior to any construction loan closing, then the building permits may be issued, subject to the Building Commissioner's satisfaction with compliance with all other applicable legal requirements for issuance, and released to the construction lender's closing attorney, who may then release them to the Applicant upon the execution and recording of the Regulatory Agreement. Such restrictions shall take priority over all financing documents related to the project and shall survive foreclosure. The Applicant/Owner shall provide copies of monitoring reports to the Town. Moreover, a second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in Exhibit 2) shall be prepared prior to expiration of the initial Regulatory Agreement, approved by the Town Attorney, executed and recorded for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent to continue such restrictions. Such agreement shall be consistent with the terms of this Decision and with the customary terms of Town regulatory agreements.~~

~~33.43.~~ ~~When The Applicant shall retain the Town or a consultant it designates as the Monitoring Agent for this development for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant, 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.~~

~~34.44.~~ 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.

~~35.45.~~ The Town will not issue a building permit for the Project without review of final plans by the Assistant Director ~~of for~~ Community Development Planning and final approval from the Subsidizing Agency.

~~36.46.~~ 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 sixteen (16) certificates of occupancy for market-rate units shall be issued until at least four (4) occupancy permits for Affordable Units are issued.

### Fire Safety

~~37.47.~~ Prior to the issuance of a Building Permit, the Fire Chief or his designee shall review and approve the final site plan, ~~including without limitation,~~ to ensure, including without limitation, that fences and landscaping do not impede firefighter access to the lower windows in both buildings.

~~38.48.~~ Prior to the application for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) both buildings have enhanced NFPA-13 (or latest versions of the NFPA code) designed sprinkler systems and (b) both buildings in the Project have direct alarm notification to the Fire Department designed in accordance with the latest version of Building and Fire codes.

### Infrastructure

~~39.49.~~ 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 buildings;
- (c) All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable system.

~~40-50.~~ The Applicant shall operate and maintain all of the foregoing in Condition ~~41-49~~ in good working condition and repair at all times at its sole cost.

~~41-51.~~ 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

~~42-52.~~ 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 10 and ~~611, as well as Condition 19, if applicable.~~
- (b) The Director of Engineering and Transportation has reviewed and approved the final site and lighting plans in accordance with Conditions ~~11-12~~ and ~~1920~~, the final stormwater management and drainage plans in accordance with Condition 914, the water, stormwater and sewage facility designs in accordance with Condition ~~4351~~, the erosion control plans in accordance with Condition ~~16-22~~ and the pavement surfaces in accordance with Condition 5058, and all other items requiring review, verification, or approval by or to the satisfaction of the Director of Transportation and Engineering as listed in these Conditions.
- (c) It has paid all fees and funded all improvements required pursuant to Condition ~~10-15~~ and, if applicable, Condition 813.
- (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 Transportation and Engineering, 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 ~~1419~~).
- (g) The Chief of Environmental Health has reviewed and approved the rubbish and recycling plan in accordance with Condition ~~1116~~.
- (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- (i) The Assistant Director ~~of for~~ Community ~~Development Planning~~ has reviewed the final plans in accordance with Condition ~~3245~~.
- (j) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with Condition ~~3947~~.
- (k) The Town Arborist has reviewed a plan to protect existing street trees or add new street trees in accordance with Condition 813.

#### Construction

43.53. 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 and businesses in the general area. The Applicant shall provide the Police Department with the name and 24-hour telephone number for the project manager responsible for construction. The hours for operation of construction equipment, deliveries and personnel are limited to: Monday through Friday (excluding Federal and State holidays) from 7:00 am to 5:00 pm; and Saturday from 8:30 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.

44.54. 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 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.

45.55. The Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than thirty (30) months except subject to causes beyond the Applicant's reasonable control. Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11).

46.56. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.

47.57. 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.

48.58. Prior to Commencement of Construction, the Applicant shall provide the Director of Transportation and Engineering 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

49.59. 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.

50.60. 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.

51.61. 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.

- ~~52-62.~~ 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.
- ~~53-63.~~ Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
- ~~54-64.~~ 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 at least one of the Project's buildings. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).
- ~~55-65.~~ 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).
- ~~56-66.~~ This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
- ~~57-67.~~ All utilities shall be underground.
- ~~58-68.~~ Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
- ~~59-69.~~ All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.
- ~~60-70.~~ 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.
- ~~61-71.~~ 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.
- ~~62-72.~~ The height of the structure at 49 Coolidge, when renovated, shall be no higher than the height of the existing structure.

ATTACHED:

Exhibit 1 (Granted Waivers)

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

Exhibit 3 (Public Hearing Notice – June 16, 2016 and June 23, 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:

---

Patrick J. Ward  
Clerk, Board of Appeals