

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION
1180 BOYLSTON STREET
BOARD OF APPEALS CASE NO. 2016-0036**

Decision Filed with Town Clerk
[timestamp]

Date: DATE FILED

Re: Application of CHESTNUT HILL INVESTMENTS LLC for a Comprehensive Permit

Location: Assessor’s Atlas Map Sheet 122B, Block 433, Lot 12, known and numbered as
1180 Boylston Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On March 4, 2016, Massachusetts Housing Finance Agency (“MassHousing”) issued a Project Eligibility Letter (“PEL”) to Chestnut Hill Investments LLC (the “Applicant”).
2. On May 11, 2016, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the “Act”), to construct 45 units of rental housing, approximately 7,000 square feet of ground floor commercial space, and 80 underground parking spaces with 24-hour valet service for occupants of the residential units and customers and employees of tenants of commercial space (the “Original Project”) on approximately 14,719 square feet located at the corner of Hammond and Boylston Streets in Brookline, Massachusetts (the “Site”).
3. On December 21, 2016, the Applicant submitted a revised Comprehensive Permit Application (the “Application”) to the Town of Brookline (the “Town”) to construct 45 units of rental housing, approximately 5,300 square feet of ground floor commercial space, and 69 underground parking spaces with 24-hour valet service for occupants of the residential units and customers and employees of tenants of commercial space (the “Project”) on the Site.
4. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application

Comprehensive Permit Plans for 1180 Boylston dated April 29, 2016, and revised to February 7, 2016, prepared as follows:

Sheet Numbers and Titles

Site Plans dated April 25, 2016, revised to February 7, 2017, prepared by Nitsch Engineering, Boston, Mass., stamped by professional engineer Deborah M. Danik.

- Sheet C0.00 Civil Notes, Legends, and Abbreviations
- Sheet C1.00 Site Layout Plan [proposed conditions]
- Sheet EX-1 Topographic Plan of Land [existing site conditions dated April 7, 2016]

[“Site Plans”]

Site Plans dated April 25, 2016, revised to February 7, 2017, prepared by Nitsch Engineering, Boston, Mass., stamped by professional engineer Deborah M. Danik with additional information provided November 18, 2016.

Sheet C0.00	Civil Notes, Legends, and Abbreviations
Sheet C1.00	Site Layout Plan [proposed conditions]
Sheet C2.00	Site Utility Plan
Sheet C3.00	Site Utility Details

["Stormwater Management Plan"]

Loading Zone Plan revised and dated December 16, 2016 prepared by Vanasse and Associates, Inc., Boston, Mass.

["Loading Zone Plan"]

Architectural Plans dated April 29, 2016 revised to February 6, 2017, prepared by CBT Architects, Boston, Mass. and stamped by registered architect Alfred Wojciechowski.

Sheet A0	Cover Sheet
Sheet A001	Plot Plan
Sheet A002	Survey Plan
Sheet A003	Architectural Site Plan
Sheet A100	Parking Floor Plan
Sheet A101	Ground Floor Plan
Sheet A102	Typical Floor Plan (Second – Fourth)
Sheet A103	Fifth Floor Plan
Sheet A104	Sixth Floor Plan
Sheet A105	Roof Plan
Sheet A200	North and West Elevation
Sheet A201	South and East Elevations
Sheet A300	Sections
[unnumbered]	Shadow Studies
[unnumbered]	unit mix, affordable units, living area and common area square footage

["Architectural Plans"]

Landscape plan dated February 28, 2017 and prepared by Copley Wolff Design Group, Boston, Mass., landscape architects.

Sheet L100	Materials Plan
Sheet L200	Plantings Plan
Sheet L300	Site Details

["Landscape Plans"]

Traffic Impact Assessment dated March 2016, amended August 20, 2016 with additional data provided October 11, 2016, and January 17, 2017, prepared by Giles Ham, Vanasse & Associates, Inc.

["Traffic Study"]

Parking Plan dated submitted by Parking Plus April 29, 2016 and amended November 14, 2016 by Michael Gery, President, and Mark Braconnier of Pilgrim Parking, Boston, Mass. with additional information dated December 1, 2016. ["Parking Plan"]

Geotechnical Report: Subsurface Explorations and Geotechnical Recommendations for 1180 Boylston Street prepared by GEI Consultants, Woburn, Mass., dated April 2015 and stamped by professional engineer Douglas J. Aghjayan. Additional information submitted July 1, 2016, September 15, 2016, November 17, 2016 by professional engineer, licensed site professional, and project manager Catherine Johnson.

["Geotechnical Report"]

5. The Applicant submitted a request for waivers from local by-laws and regulations and Waiver-Key site plan dated March 7, 2016 and amended February 16, 2017.
6. The Brookline Zoning Board of Appeals (the "Board" or the "ZBA"), with the consent of the Applicant, opened a duly advertised public hearing on June 9, 2016. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: July 11, 2016, August 8, 2016, August 17, 2016, September 19, 2016, October 25, 2016, November 7, 2016, November 29, 2016 (continued), December 7, 2016, December 21, 2016, January 25, 2017, February 7, 2017, February 15, 2017, March 6, 2017, and March 20, 2017. All continuances beyond 180 days from June 9, 2016 were with the Applicant's written consent. *Placeholder for public meetings after close of hearing.*
7. The Board conducted a duly noticed site visit on June 29, 2016.
8. On March 20, 2017 the Board closed the public hearing.
9. The Board deliberated on the Application at a *public hearing/meeting* held on **DATE** 2017 and voted to grant a Comprehensive Permit subject to the conditions listed below.
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.
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 Original Project and the Project. The Board considered in part the technical review of Town department heads, an independent site and building design peer reviewer, an independent traffic peer reviewer, and independent parking design peer reviewer, and an independent license site professional in regard to matters of public health and safety, environmental health and safety, traffic, parking, site and building design, preliminary stormwater management plans, and other issues of local concern.
12. The following consultants and independent peer reviewers assisted the Board in its review of the application:

Engineering and Traffic

James Fitzgerald, P.E., LEED AP
Director of Transportation
Environmental Partners Group, Inc.
Quincy, Massachusetts

Parking Plan

Arthur G. Stadig, P.E.
Vice President / Managing Principal

Walker Parking Consultants
Boston, Massachusetts

Geotechnical / Environmental Engineering

John Chambers, Professional Geologist and Licensed Site Professional
Senior Vice President
Fuss and O'Neill
Providence, Rhode Island

Site and Building Design

Clifford Boehmer, AIA, President
Davis Square Architects
Somerville, Massachusetts

MassHousing Partnership Fund

Chapter 40B Advisor
Judi Barrett, Director of Municipal Services
RKG Associates
Boston, Massachusetts

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, the use of vehicle stackers in the underground garage, parking demand, location and design of the Hammond Street Loading Zone, safety, traffic, trash/recycling management, stormwater management, site remediation, 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 11, 2016, approximately 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. MassHousing 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. It was specified in the Application that all of the 45 residential units will be age-restricted (at least 55 years old and up).
5. The Site is zoned as G-1.0 (general business district) and to the south abuts a T-5 (two-family) zoning district, as defined in the Brookline Zoning By-Law amended June 2, 2014.
6. The Site is located at the corner of Hammond Street and Boylston Street, also known as Route 9, a state highway. Boylston Street consists in part of commercial structures that are mostly one-story tall

with some single- and multi-family housing. To the east, the Site abuts a six-unit, three story condominiums with no on-site parking; all six units are have been certified for listing on the SHI, as defined in 760 CMR 56.02.

7. The Site consists of two front yards, three rear yards, and one side yard.
8. The new curb cuts on Boylston Street, a state highway, will require the approval of Massachusetts Department of Transportation ["MassDOT"].
9. Two existing curb cuts on Hammond Street will be removed.
10. The Site is the location of a former gas station owned and operated by Cumberland Farms. All structures have been demolished. *[Date of Demo Review]*
11. The site is listed as a disposal site under Release Tracking Number 3-19813 and is subject to the requirements of the Massachusetts Contingency Plan pursuant to 310 CMR 40.0000. Cumberland Farms, the former owner of the site, is the responsible party obligated to clean up the gasoline release and protect the public health in accordance with the Massachusetts Contingency Plan.
12. As of the date of this Decision, the Site has not yet achieved a condition of no significant risk under the Massachusetts Contingency Plan for remediation.
13. John Chambers, independent Licensed Site Professional for the ZBA, stated in his December 7, 2016 report to the ZBA that "long-term remediation is a critical step to ensure the safety of future users and that the ZBA should ensure that a party (either the developer or Cumberland Farms) accept these obligations before the Project is constructed."
14. Because future changes at the Site as a result of excavation will disturb hazardous materials, the Applicant has confirmed at a public hearing before the ZBA on December 7, 2017 that he is the party responsible for environmental compliance and long-term remediation of the Site.
15. The Applicant's Geotechnical Report prepared by GEI and dated April 2015 was based on two levels of underground parking. The plans for the Original Project and the Project reviewed by John Chambers, Fuss and O'Neill, the independent peer reviewer, were based on one level of underground parking. In an email to Maria Morelli (Senior Planner, Department of Planning and Community Development) dated January 25, 2017, Daniel LaFrance of Fuss and O'Neill confirmed that the peer reviewers were aware of the change in scope and that this change was not a factor in its review.
16. The Planning Board, Town staff, independent design peer reviewer Clifford Boehmer, and independent traffic and parking peer reviewers James Fitzgerald and Arthur Stadig expressed in written and oral comments during the public hearing that the driveway configuration and parking plan of the Original Project was infeasible.
17. In September 2016 and February 2016 the Applicant met with immediate abutters at the six-unit condominiums on Boylston Street to address the height, massing, density, setbacks and parking on the Site.
18. At the January 25, 2017 public hearing the Applicant presented and formally submitted a conceptual plan for the Project that reduced the height from 69 feet to 64 feet, increased front yard setbacks, increased step-backs on the upper floors, reduced the number of parking spaces from 80 to 69, eliminated approximately 2,000 square of commercial space, and increased the setback on the east

façade from five feet to 20 feet. The Applicant included architectural and landscaping plans, shadow studies and architectural renderings from an electronic 3D model, and a tour of the 3D model.

19. On February 14, 2017, at the request of the Building Commissioner Daniel Bennett, the Applicant submitted a preliminary building code analysis of the Project, which Mr. Bennett deemed satisfactory.
20. On February 15, 2017, the Applicant submitted an amended request for waivers from local regulations.
21. Peter Ditto, Director of Engineering and Transportation, submitted a letter to the ZBA dated December 7, 2016 providing that an infiltration system could not be accommodated on the Site entirely outside the building's footprint. To compensate, the Applicant at request of Mr. Ditto increased the size of the underground water tank to 6300 cubic feet to hold the volume of stormwater from a 25-year storm to reduce the rate of stormwater runoff and not tax the municipal system's 12-inch diameter drain in Boylston Street.
22. On January 23, 2017, the Brookline Transportation Board held a duly noticed public hearing to review plans and required data for the Hammond Street Loading Zone revised and dated December 16, 2016 [the "Loading Zone"].
23. In its January 25, 2017 letter to the ZBA, the Brookline Transportation Board supported the installation of a loading zone in the public way on Hammond Street, reducing the sidewalk to four feet wide, only if its recommended conditions are met, including but not limited to the removal of one street tree, the elimination of one metered parking space, and the Applicant's grant of an easement (pending the approval of Town Meeting) to restore pedestrian access to a minimum of ten feet wide.
24. In his January 25, 2017 letter to the ZBA, Peter Ditto, Director of Engineering and Transportation, provided support for the installation of Loading Zone only if the conditions for its design, location, and use specified in his aforementioned letter and the conditions specified in the Brookline Transportation Board's January 23, 2017 letter are met.
25. On March 8, 2017 Andrew Pappasturgeon, Commissioner of Public Works, submitted a warrant article to Town Meeting asking for approval to enter into an easement agreement with the Applicant to ensure adequate pedestrian access between the Loading Zone and the building's west façade.
26. The Applicant stated before the ZBA that he would be willing to grant an easement to the Town for adequate pedestrian access between the Loading Zone and the building's west façade.
27. The removal of a street tree for the installation of the Loading Zone is not within the purview of the ZBA and is subject to a separate hearing process administered by the Town Arborist pursuant to M.G.L. c.87, the "Shade Tree Act.
28. In a February 3, 2017 email to the Planning Department, Thomas Brady, Town Arborist, confirmed that the street tree that the Brookline Transportation Board identified for removal for the installation of a safely designed Loading Zone is a 6-inch caliper Bradford Pear tree characterized as in good condition and protected under the Shade Tree Act.
29. The Applicant has stated that commercial space on the Site will not be used for food preparation or production requiring cooking or venting.

30. Both the preliminary trash plan reviewed by and the accompanying conditions recommended by Patrick Maloney, Director of Environmental Health, assume that no food will be prepared or served in the commercial spaces on the Site.
31. Peter Ditto, Director of Engineering and Transportation, submitted a letter to the ZBA dated January 25, 2017 provided that it was acceptable for private waste management trucks to back into the driveway off Boylston Street.
32. 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.
33. The Board finds that the conditions imposed in this Decision are necessary in order to address Local Concerns, as that term is defined in 760 CMR 56.02. 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.
34. The Board finds that granting certain waivers from local bylaws 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 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.
35. 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.
36. 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 Hammond and Boylston Streets and the surrounding area that are not directly related to or caused by the Project.
37. 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 45 units of rental housing and no more than 5,300 square feet of 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 45 units of rental housing in no more than one building, which buildings is shown on the Site Plans and the Architectural Plans, with no more than approximately 5,300 square feet of commercial space on the ground level at the 420 Harvard Street lot and underground spaces for parking 69 vehicles at full occupancy to be shared by tenants of the residential units and customers and employees of tenants of the commercial spaces, as shown on the parking layout plan on Sheet A100 listed under Item 4 under Procedural History [specify holding areas 63-69 on plan].

2. Professional kitchens requiring ventilation per the State Building Code shall not be permitted on the Site.
3. Twenty-five percent of the units shall be available to households earning at or below 80% percent of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. The total maximum number of bedrooms shall be 74 and the maximum number of units shall be 45, all of which are age-restricted (55 years of age and up) as listed in the following table.

45 Units Age-Restricted (55+)		
Unit Type	Number of Units	Total Bedrooms per Unit Type
One Bedroom	16	16
Two Bedroom	29	58
Three-Bedroom	NA	NA
TOTAL 74 Bedrooms		

5. With respect to the Applicant’s request for waivers from local by-laws and regulations dated February 16, 2017, the Board approves those waivers listed in Exhibit 1. The Project must comply with by-laws and regulations not waived.
6. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the buildings, indicating façade design and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the plans listed under Item 4 under Procedural History. Color, windows, and materials shall be reviewed and approved on Site by the Assistant Director for Regulatory Planning within a reasonable timeframe.
7. 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 driveway; 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.
8. Prior to the issuance of a Building Permit, the Applicant shall submit a lighting plan to the Director of Engineering and Transportation and the Building Commissioner for review and approval. All exterior lighting on the Site shall be installed and maintained so that no direct light or glare shines on any street or any nearby homes and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with local by-laws.
9. 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 on Hammond and Boylston Streets, for the review and approval by the Town Arborist and with all costs for performance thereunder borne by the Applicant. Any proposed removal of street trees shall be subject to M.G.L. c.87, the “Shade Tree Act.”

10. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan to the Director of Transportation and Engineering for review and approval.
11. Prior to the installation of the Loading Zone on Hammond Street, the Applicant shall have granted the Town a permanent easement, pending Town Meeting's approval, or a license to ensure a ten-foot wide continuous path of travel between the loading zone and the building's west façade available to the public at all times. If approval of the easement or license is not granted or if the Applicant does not enter into an easement or license agreement with the Town, the Loading Zone shall not be installed.
12. The Loading Zone shall be installed and used in accordance with the conditions recommended by the Brookline Transportation Board and Peter Ditto, Director of Engineering and Transportation in their testimony to the ZBA:
 - (a) The use of the commercial Loading Zone shall be available to any vehicle authorized by the Traffic Rules and Regulations for the Town of Brookline and shall not be for the exclusive use of tenants of the Project.
 - (b) Parking in the Loading Zone is prohibited during the peaks hours of 7 am to 9 am and 4 pm to 6 pm.
 - (c) The 60-foot long curbside Loading Zone shall accommodate a single unit 30-foot vehicle for commercial use;
 - (d) The location of the Loading Zone shall be a no less than **x feet** from the STOP bar at the Boylston Street-Hammond Street intersection;
 - (e) The Loading Zone will require the removal of the existing Bradford Pear street tree, pursuant to M.G.L. c.87, and one metered parking spot to ensure that commercial trucks can nose into the Loading Zone without blocking a traveling lane and backing in. Loading Zone shall not be installed if the street tree and the metered parking spot are not eliminated.
 - (f) The cost for removal of existing materials and installation of new materials and the Town's labor related to construction of the Loading Zone shall be borne by the Applicant.
 - (g) Prior to the issuance of a building permit, the Applicant shall reimburse the Town for two-years of revenue associated with the loss of one metered parking space, which the Director of Engineering and Transportation calculated to be \$9,360.
 - (h) In consultation with the Director of Transportation and Engineering, the Applicant shall install a sign stating COMMERCIAL LOADING ZONE with all costs for performance thereunder borne by the Applicant.
 - (i) In consultation with the Director of Transportation and Engineering, the Applicant shall install a sign stating NO STOPPING ANYTIME/TOW AWAY ZONE 7 am to 9 am / 4 pm to 6 pm with all costs for performance thereunder borne by the Applicant.
 - (j) Any changes in the design of the Loading Zone shall be approved by the Director Engineering and Transportation.

- (k) The Applicant shall keep the Loading Zone clear of snow, leaves, and debris to ensure that commercial vehicles parked in Loading Zone do not block the travel lane.
 - (l) The Applicant shall keep the ten-foot wide travel path between the Loading Zone and the building's west façade clear of snow and other obstructions at all times.
13. Prior to the issuance of building permit, the Applicant shall obtain approval from Massachusetts Department of Transportation to remove the existing curb cuts and install new curb cuts on Boylston Street for the Project's driveway that are no less than 30 feet wide to accommodate three driveway lanes—one for entering the Site, one for exiting the Site, and a second exit lane to be used as a holding area by the Project's parking attendants.
14. 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 eastbound side of Boylston Street between Hammond Street-Boylston Street intersection and the driveway entrance, with all costs related to performance thereunder borne by the Applicant.
 - (b) The Applicant shall contribute \$20,000 to the final cost to install an audible pedestrian signal and painted crosswalk at the traffic signal located at the Hammond Street and Heath Street intersection. Prior to the issuance of a Building Permit, the Applicant shall provide \$20,000 to the Town for deposit into a segregated Town account to be used by the Town for the signal upgrade and crosswalk installation. 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 and painted crosswalk located at Hammond Street and Heath Street intersection, the funds shall be returned to the Applicant.
 - (c) The Applicant shall ensure that the Boylston 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 mirrors on the Project's structure to assist drivers exiting the Boylston Street driveway.
 - (e) 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 driveway exit with all costs borne by the Applicant.
 - (f) The Applicant shall install a sign on the driveway alerting drivers entering the Site to keep right with all costs borne by the Applicant.
 - (g) Vehicles entering the Site shall not queue onto Boylston Street at any time.
 - (h) The Project's parking attendants, building management, employees of the commercial space, customers of the commercial space, visitors to the Project, or occupants of the residential units shall not park vehicles on Boylston Street at any time.
 - (i) The Project's parking attendants shall not keep unattended vehicles idling in the driveway.
 - (j) The Applicant shall install trees and shrubs in the six-foot wide buffer between the driveway and the property line shared with 1162-1164 Boylston Street for adequate screening and privacy and shall maintain or replace such landscaping to retain this screening.
 - (k) The Applicant shall keep sidewalks in front of the Site on Hammond Street and Boylston Street clear of snow and ice and shall remove snow mounds that collect on Boylston Street to the left

and right of the driveway to ensure that the visibility of drivers entering or exiting the Site is not obstructed. The Applicant shall not store snow in the public way where it will impede the visibility of drivers entering or exiting the Site or impede safe pedestrian access in the public way.

- (l) The Applicant shall not store snow on the driveway where it would narrow the width of the driveway to less than 30 feet.
 - (m) Prior to the issuance of a Building Permit, the Director of Engineering and Transportation shall review landscaping plans to ensure that driver visibility is not impeded.
15. 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. Said plan shall include provisions guaranteeing that:
- (a) all rubbish generated from the Project's housing units and commercial space shall be handled and disposed of twice weekly by a private waste management services provider contracted by the Applicant in compliance with all applicable regulations;
 - (b) The Project shall provide a trash compactor and a total of two dumpsters each sized at two-cubic yards, for the building rubbish. The Project shall provide four totes, each sized at 96 gallons, for recycling;
 - (c) The rubbish and recycling shall be picked up together twice a week by the Applicant's private waste management service;
 - (d) The pick-up location shall be in the drop-off area of the Site's driveway next to the Project's building;
 - (e) At no time shall trash be stored in either of the Site's front yards or in the public way or along property lines shared with residential and commercial abutters;
 - (f) Rubbish and recycling receptacles shall not be stored in the driveway yard between 10 AM and 11 PM on weekdays and weekends;
 - (g) The private waste management truck shall back into the Site's driveway for pick-up. The truck shall not back out onto Boylston Street nor shall it stop on Boylston Street to pick up waste;
 - (h) Private waste management trucks shall not enter the site before 7 AM on weekdays and weekends;
 - (i) Rubbish and recycling storage rooms must be maintained in compliance with State Sanitary Code requirements. Separate rooms shall be designed for recycling and trash storage, respectively;
 - (j) The Applicant shall install noise reducing sheet rock (i.e. quiet rock), or other method be used to reduce noise impact in the compactor room;
 - (k) The Project's commercial space shall not include food preparation or service (including not selling coffee/tea or packaged foods);
 - (l) 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 with this Decision;

16. Prior to the issuance of a Building Permit, the Applicant shall submit a construction management plan, consistent with the requirements listed in Condition 59, to the Building Commissioner and the Director of Engineering and Transportation for review and approval.
17. Prior to the issuance of a Building Permit, 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 as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.
18. Prior to the issuance of the final Certificate of Occupancy for the Project, the Applicant's registered architect and professional engineer shall certify in writing to the Building Commissioner that the Project complies with the Site Plans and the Architectural Plans, including the modifications required by this Decision.
19. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with plans showing that no erosion from the Site will cause deposition of soil or sediment upon adjacent properties or public ways. For purposes of this Decision, "Commencement of Construction" shall mean: the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities; the placement of or mobilization for construction activities including but not limited to placing materials, machinery, supplies or construction equipment on the Site and removal or disconnection of utilities or water or sewer lines; or any alteration, demolition, repair or improvements to a building or structure.
20. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit as-built plans certified by a registered architect to the Building Commissioner for his review and determination of conformance with the approved plans and the Conditions of the Decision.
21. 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.
22. After the issuance of the final Certificate of Occupancy and 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 6 and 7), unless the changes are deemed substantial by the Subsidizing Agency pursuant to 760 CMR 56.04(5).
23. 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.
24. Prior to the issuance of demolition permit, the Applicant shall conduct a pre-construction survey of the above and below grade structures located at 1162-1164 Boylston Street, 513, 515, 517, and 521 Heath Street, and 612, 614, 616, 624 Hammond Street, subject to receipt from abutters of rights of access. Any damage to structures within this area due to construction of the Project shall be the financial responsibility of the Applicant to repair.
25. There shall be no blasting during the construction of the Project.

26. Contemporaneously with sending or within ten (10) days of receiving any and all correspondence to or from 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.
27. Prior to the issuance of a Building Permit, the Applicant shall submit a Transportation Access Plan (“TAP”) for reducing the number of vehicular trips to and from the Project, to be prepared in accordance with the Transportation Access Plan Guidelines of the Town (Sec. 5.09.3.c.6 of the Town Zoning By-law), 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 *ten bicycle racks* for secure bicycle storage; (iv) publicizing transit options; and (v) including in leases for the commercial spaces language mandating MBTA pass subsidies be provided to employees by the tenants; and (vi) installing transit screens in the building lobby for use by residents, visitors, staff, and commercial employees and customers to display the on-time arrival of nearby MBTA buses and trains.

Housing

28. As a condition of any approval hereunder, at least 25% of the units shall be and shall remain affordable and shall be marketed to eligible households whose annual income may not exceed 80% of 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 Market Rate units shall be eligible to be included in the Town’s SHI.
29. The Affordable Units shall be dispersed throughout the Project and shall have the same bedroom “ratio” or “mix” as the Market Rate Units (as defined in Condition 39) 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 nine units in the Project that are Affordable Units.
30. Affordable Units shall:
 - a. Be evenly dispersed throughout the project
 - b. Be indistinguishable from the market rate units in external appearance
 - c. Have the same interior finishes as the market rate units
 - d. Contain the same square footage as the average size of the Project’s market rate units containing the same number of bedrooms
31. All leases for the units in the Project shall include language stating that tenants may not use dens, living rooms, or dining rooms as bedrooms. Lease and occupancy agreements shall be for a term of not less than six (6) months. Nightly rentals shall not be permitted.
32. Prior to the issuance of a Certificate of Occupancy by the Building Commissioner, the Director of Planning and Community Development will review and approve the distribution of units between the Affordable and Market Rate Units to ensure that the floor plans and amenities of the Affordable Units relative to the Market Rate Units are consistent with the conditions of the Subsidizing Agency’s approval of the Project.

33. Local Preference: The Applicant shall work with the Director of Community Development to request that no less than 70% of the affordable units be awarded to households with local preference during the initial lottery, as defined by the Town and subject to the approval of the Subsidizing Agency.
34. The Assistant Director for Community Planning must review the affirmative marketing plan for the Affordable Units before it is submitted to the Subsidizing Agency for final approval. The Assistant Director for Community Planning will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.
35. For the period in which the Project is being monitored by the Subsidizing Agency, upon the Town's request, the owner shall share all monitoring reports with the Assistant Director for Community Planning including annual rent increases and information verifying income eligibility for affordable units.
36. Nine units in the Project shall in perpetuity be Affordable Units. Prior to the issuance of any Building Permit, a Regulatory Agreement, which shall include monitoring provisions if such provisions are not provided in a separate Monitoring Services Agreement, shall be executed by both the Applicant and the Subsidizing Agency, in form and content as approved by the Subsidizing Agency as Subsidizing Agency, and recorded with the Registry of Deeds by the Applicant against the Property, provided, however, that if a lender or governmental funding agency for the Project requires the issuance of a Building Permit(s) prior to any construction loan closing, then the Building Permit(s) 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 Town Counsel, 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's Regulatory Agreements.
37. The Applicant shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period commencing at 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.
38. Subject to the requirements of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements (as defined in Exhibit 2, Terms To Be Included in Replacement Town Regulatory Agreement) relative to limited dividends from the Project during the Subsidy Period (as defined in Exhibit 2), 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 the Applicant to the Subsidizing Agency to revalue the Applicant's equity in the Project, made by the 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), contemporaneously 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.

39. The Town will not issue a Building Permit for the Project without review of final plans by the Assistant Director for Community Planning and final approval from the Subsidizing Agency.
40. No more than eight 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 certificate of occupancy is issued for an Affordable Unit. No more than 32 certificates of occupancy for Market Rate units shall be issued until at least four occupancy permits for Affordable Units are issued.

Fire Safety

41. Prior to the issuance of a Building Permit, the Fire Chief or his designee shall review and approve the final site plan to ensure that fences and landscaping do not impede firefighter access to the lower windows in both buildings.
42. 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 version 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

43. Prior to the issuance of a Building Permit, the Applicant shall provide plans for the review and approval of the Director of Engineering and Transportation for the installation on the garage level a 6,300 cubic foot water tank to hold the volume of stormwater from a 25-year storm to reduce the rate of stormwater runoff and not tax the municipal system's 12-inch diameter drain in Boylston Street.
44. 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 connections, 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 systems.
45. The Applicant shall operate and maintain all of the foregoing specified in Condition 44 in good working condition and repair at all times at its sole cost.
46. 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.

Environmental / Geotechnical

47. Prior to the Commencement of Construction, the Applicant shall state in writing that he is the party responsible for the (a) environmental compliance at the Site and (b) the proper function and operation of the environmental control proposed by the Applicant.
48. The Applicant shall provide to the Town within ten days of submission or receipt any documentation or correspondence related to the Site remediation pursuant to the 310 CMR 14.0000, the Massachusetts Contingency Plan.
49. The Applicant shall provide to Town within ten days of submission and/or receipt all documentation and correspondence related to the Notice of Intent and General Permit under the Environmental Protection Agency's (EPA) purview for the regulation of the short-term dewatering after the commencement of construction. [MILESTONE], the Town shall inspect the treatment system during dewatering to ensure proper dewatering practices. Should the Town hire a third party consultant for this review, all costs for the review shall be borne by the Applicant.
50. The Applicant shall install heavy waterproofed structural slab to resist the buoyant force of groundwater, eliminating the need for an underdrain and post-construction groundwater discharge to protect the occupants of the building, to mitigate public health issues potentially posed by the residual petroleum contamination in the ground at the Site, and to prevent flooding and structural damage to the foundation.
51. After the final Certificate of Occupancy is issued, no additional load to the municipal system shall be allowed without the Director of Engineering and Transportation's approval.
52. Prior to Commencement of Construction, the Applicant shall submit for the review and approval of the Director of Engineering and Transportation a design for the long-term waterproofing system stamped by professional engineer. Should the Director of Engineering and Transportation hire a third party consultant to review the design of the waterproofing system, all costs for the Town's consultant's review shall be borne by the Applicant.
53. Prior to MILESTONE, the Town shall inspect and verify the proper installation and function of the waterproofed system based on the design review to ensure that the waterproofing system operates effectively as an environmental control. Should the Director of Engineering and Transportation hire a third party consultant to review the installation of waterproofed slab, all costs for the Town's consultant's inspection shall be borne by the Applicant.
54. The Applicant shall install a ventilation system for the underground parking garage to control vehicle exhaust and act as an environmental control to mitigate the potential for residual petroleum vapors to migrate into the proposed building and expose the occupants of the building to vapors.
55. The Applicant shall install a generator or back-up power system to maintain ventilation of the underground garage during power outages.
56. Prior to the issuance of a Building Permit, the Applicant shall submit a ventilation system design for the review and approval of the Director of Engineering and Transportation. Should the Town hire a third party consultant to conduct said review, all costs for this review shall be borne by the Applicant.
57. Prior to MILESTONE, the Town shall inspect and verify the proper installation and function of the ventilation system. Should the Town hire a third party consultant to conduct said inspection, all costs for this inspection shall be borne by the Applicant.

58. During construction, the Applicant shall not stockpile remediation waste on the Site at any time.
[Peter: Town inspection during removal of remediation waste?]

Pre-Building Permit Review

59. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:
- (a) Final site plans and architectural plans have been reviewed and approved by the Assistant Director for Regulatory Planning in accordance with Conditions 6 and 7.
 - (b) The Director of Engineering and Transportation has reviewed and approved the final site and lighting plans in accordance with Conditions 8 and 17; the final stormwater management and drainage plans in accordance with Condition 10; the water, stormwater and sewage facility designs in accordance with Condition 44; the erosion control plans in accordance with Condition 19; the pavement surfaces in accordance with Condition 63; 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 12, 14 and, if applicable, Condition 9.
 - (d) It has initiated and participated in a pre-construction meeting to discuss the proposed construction schedule with its contractor and the Town, including but not limited to the Building Commissioner, Director of 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 16).
 - (g) The Chief of Environmental Health has reviewed and approved the rubbish and recycling plan in accordance with Condition 15.
 - (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
 - (i) The Assistant Director for Community Planning has reviewed the final plans in accordance with Condition 38.
 - (j) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with Condition 40.
 - (k) The Town Arborist has reviewed a plan to protect existing street trees or add new street trees in accordance with Condition 9.
 - (l) The Director of Engineering has reviewed and approved the design of the waterproofing system in accordance with Condition 50 *[C of C]*.
 - (m) The Director of Engineering has review and approved the design of the ventilation system in accordance with Condition 54.

- (n) The Applicant has submitted in writing he is the party responsible for environmental compliance and long-term environmental controls at the Site in accordance with Condition 46.
- (o) The Town and the Applicant have entered into an easement agreement to ensure ten-foot wide pedestrian access between the Loading Zone and the building west façade.
- (p) The Applicant has submitted proof to the Town that MassDot has granted an approval for the curb cut specified on the plans listed under Item 4 under Procedural History.
- (q) **EPA?**

Construction

- 60. During construction, the Applicant shall conform to 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.
- 61. 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; 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.
- 62. 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).
- 63. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.
- 64. Upon the request of the Director of Engineering and Transportation and/or the Building Commissioner, the Applicant shall provide written reports during construction outlining the status of the Project.
- 65. 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

66. 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.
67. Any reference to Town staff shall be read to include a designee (either other staff member(s) or a consultant) of that person or of the head of the respective Town department or division.
68. 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.
69. 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.
70. Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
71. 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).
72. 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).
73. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
74. All utilities shall be underground.
75. Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
76. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.
77. 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.
78. There shall be no structures or buildings or paved surfaces on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.

ATTACHED:

Exhibit 1 (Granted Waivers)

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

Exhibit 3 (Public Hearing Notice – May 26, 2016 and June 2, 2016)

RECORD OF VOTE

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

Johanna Schneider, 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

Twenty-Day Appeal Period Ended (stamp)
--