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Volume XII  
Pages 1-24

Brookline Zoning Board of Appeals Hearing  
1180 Boylston Street  
Comprehensive Permit Application  
Chestnut Hill Investments, LLC  
February 15, 2017, at 7:00 p.m.  
Brookline Town Hall  
333 Washington Street, 6th Floor  
Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky

## 1 APPEARANCES

2 Board Members:

3 Johanna Schneider, Chair

4 Jonathan Book

5 Mark Zuroff

6

7 Town Staff:

8 Alison Steinfeld, Planning Director

9 Maria Morelli, Senior Planner

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11 Applicant:

12 Rachna Balakrishna, Chestnut Hill Investments, LLC

13 Geoff Engler, Vice President, SEB, LLC

14 Haril A. Pandya, AIA LEED AP, Principal,

15 CBT Architects

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1 PROCEEDINGS:

2 7:07 p.m.

3 MS. SCHNEIDER: We're going to get started  
4 so that we can get out of here at a reasonable time.  
5 We don't have very much to cover.

6 So we are opening tonight's hearing on  
7 1180 Boylston Street, the comprehensive permit  
8 application, 40B project. Unless I'm mistaken, we  
9 have one item on the agenda tonight.

10 Maria, before we start with that, do you  
11 have any staff updates that you'd like to share with  
12 us?

13 MS. MORELLI: Sure. At the last hearing  
14 you had requested that the applicant reach out to  
15 the abutters on Boylston Street just to initiate a  
16 conversation of that civil matter concerning  
17 drop-off privileges, and I did get an update from  
18 Rachna Balakrishna. I'm not sure if Rachna wants to  
19 speak, and also the abutters.

20 But the general gist is that you understand  
21 that the abutters have -- they want temporary  
22 drop-off privileges. They don't want overnight or  
23 permanent parking privileges. They just want to be  
24 able to drop off, say, you know, 10 minutes or so to

1 drop off groceries or a child or elderly parents.

2           And the situation with the applicant is  
3 that their sort of order of business is to ensure  
4 that there's no queuing onto Route 9. So Rachna's  
5 response was that, I quote, I told them that we can  
6 try to figure out something once the building's done  
7 and the garage is in operation, but at this point we  
8 don't know what the level of activity in the garage  
9 will be, and we have to manage queuing. Overall, it  
10 was a good meeting, and the abutters understood the  
11 situation on the parking.

12           So my understanding is that this will  
13 continue, but we really need to see an actual  
14 situation to better understand what can be  
15 accommodated.

16           MS. SCHNEIDER: Anybody have any questions  
17 about that?

18           MR. ZUROFF: No. I would interpret that as  
19 saying the developer is willing to work something  
20 out, if possible.

21           MS. MORELLI: Yes.

22           MS. SCHNEIDER: I want to thank the  
23 developer for getting together with the neighbors so  
24 quickly. I know there were not many days between our

1 last hearing, and we appreciate you making an effort,  
2 and we hope that you will indeed continue a dialogue  
3 with the neighbors. It's important.

4 Anything else, Maria?

5 MS. MORELLI: No. I think the applicant's  
6 architect was going to present waivers. They're  
7 going to be about 10 minutes late, so I'm certainly  
8 happy to go through the waivers list.

9 MS. SCHNEIDER: If you don't mind, that  
10 would be great.

11 MS. MORELLI: Glad to do it.

12 MS. SCHNEIDER: Are you all all right with  
13 that?

14 MR. ENGLER: Yes. For the record Geoff  
15 Engler from SEB, representing the applicant.

16 We're fine with Maria walking through. We  
17 were prepared to talk about them. I know you all  
18 have the exhibit that's in support of the waivers.  
19 It just really clarifies some of the dimensional  
20 waivers.

21 So, Maria, if you want the honor to go  
22 through.

23 And as she indicated, our architect will be  
24 here shortly to project the exhibit that you have in

1 front of you, as well as anything you might ask.

2 MS. SCHNEIDER: Okay. Thank you.

3 MS. MORELLI: So just to recap, this is a  
4 parcel that is a little more than -- it's 14,719  
5 square feet, and it's in a district zone G-1, which  
6 is a general business district, and it abuts a T-5  
7 district.

8 So to begin with the first waiver, Waiver  
9 A, the section that's cited is Section 4.07 Table of  
10 Use Regulations. The specific use is 6, which  
11 pertains to allowing the property to be used as a  
12 multifamily dwelling with ground floor retail uses  
13 and accessory parking. I'll just read that Use 6.

14 It's "Multiple or attached dwelling of four  
15 or more units, other than the preceding item, divided  
16 into dwelling units each occupied by not more than  
17 one family but not including lodging house, hotel,  
18 dormitory, fraternity, or sorority."

19 And under G it says, yes, it's allowed, but  
20 it has an asterisk and that asterisk pertains to  
21 this. Compliance with 4.08 requires having six or  
22 more dwelling units, and that's not applicable here  
23 because this is an affordable housing proposal, so we  
24 don't need the inclusionary zoning.

1           The second is permitted by special permit  
2 in two S districts. That also doesn't pertain here.

3           And the last one, "In L and G districts,  
4 the ground floor of the building must have no more  
5 than 40 percent of its frontage along a street  
6 devoted to residential use, including associated  
7 parking or lobby use."

8           There is a lobby on the Hammond Street  
9 side, so just to be conservative, that is listed  
10 here.

11           B is Section 4.08. This is not applicable.  
12 That's the inclusionary zoning section of our bylaws,  
13 and it's not applicable here.

14           Waiver C is Section 5.09 regarding design  
15 review. And we have recommended that it is okay to  
16 grant a waiver except for the following sections.  
17 These all are under 5.09. The subsections are 3.C.2,  
18 an existing conditions plan, which they have  
19 provided. Obviously, that wouldn't be -- a waiver is  
20 needed for that. Subsection 3.C.3, which is a  
21 drawing of the proposal, that is provided. 4.F  
22 relates to stormwater drainage. Certainly we would  
23 not be providing a waiver for the town to review  
24 stormwater drainage. Same for 4.G, which is utility

1 services. 4.H, regarding advertising features; 4.J,  
2 regarding safety and security; and 4.M, which regards  
3 energy efficiency. We are a stretch code community,  
4 and therefore they would need to comply with the  
5 stretch code.

6           And then there is Waiver D, which is  
7 Section 5.20, Table 5.01 regarding maximum floor  
8 area. What is allowed is a ratio of 1.0 in this  
9 district. The development consists of a 14,719  
10 square foot lot, and the proposed ratio would be 4.4.  
11 There is a breakdown of the gross floor area on each  
12 floor, and it's separating retail or commercial from  
13 residential for a total of 64,694 square feet.

14           On the second page, Section 5.30, Table  
15 5.01, which regards the maximum height of buildings.  
16 The maximum height in this district is 40 feet. And  
17 there are three methodologies for which you can use  
18 to calculate. And the one that is appropriate here,  
19 approved by the commissioner, is Method c, and that  
20 deals with a height of 68 feet 2 inches. That is  
21 maximum.

22           Section 5.44.1 regarding accessory  
23 underground structures: It is an underground garage,  
24 and what this regulation stipulates is that that



1 structure cannot be within 10 feet of any lot line,  
2 and the minimum is less than 1 foot from the lot  
3 line.

4 Section -- this is Waiver E.2, Section 5.60  
5 and Section 5.07, Table 5.01, Footnote 5. So it's a  
6 little complicated, but if you have dwelling units in  
7 a general business district, then Footnote 5 of Table  
8 5.01 will refer you to 5.07, which stipulates that  
9 for side yard, rear yard, and usable open space, what  
10 you need to comply with are the minimum under the  
11 multifamily or 1.0. In this case, any other  
12 structure or use. That best fits the mixed-use  
13 scenario that we have here.

14 So the formula is the length of the wall.  
15 And if you look at your waiver key, you'll see that  
16 this is Key No. 2. The "S" pertains to the side yard  
17 that we're talking about here. This is right behind  
18 Mr. Delany's property where the sushi place is. And  
19 the formula is the length of that wall of the  
20 building, which is 40 feet divided by 10, plus 20.  
21 So it's a 40-foot wall divided by 10, which is 4 feet  
22 adding to the 20. The minimum side yard setback is  
23 24 feet, and they're providing about 1 foot.

24 Section 5.70, this is Waiver E.3. This is

1 in regard to the Rear Yard No. 1. And if you look at  
2 the waiver key, this is -- what you would normally  
3 think would be a side yard to Mr. Delany's property  
4 is actually a rear yard. It is opposite the front  
5 yard. And in this case, we have to look at M-1.0,  
6 any other structure or use, because this is mixed  
7 use. The minimum required rear yard is 40 feet, and  
8 they are providing 1 foot.

9           Okay. Waiver E.4, we're going to be  
10 looking at rear -- it's marked 4, so this is the  
11 second rear yard, and this is along the abutter on  
12 Boylston Street. So the rear yard here, we're  
13 looking at a formula of 40 feet. Again, this is  
14 under multifamily 1.0, any other structure or use.  
15 Minimum would be 40 feet, and what is provided is 19  
16 feet 3 inches. And that's going to be to one of the  
17 floors, 2, 3, or 4, which are supported over the  
18 driveway. That's at the narrowest point.

19           And then Waiver E.5, this is another rear  
20 yard, and it's marked as 3. And this is the rear  
21 yard that abuts the T-5 district. And what Section  
22 5.73 stipulates here is that if a business district  
23 abuts a two-family district, then the rear yard --  
24 minimum rear yard setback has to be the minimum rear

1 yard setback that is stipulated for that T-5  
2 district. In this case it's 30 feet, and what is  
3 provided is 1 foot.

4           There is not a usable open space  
5 requirement under M-1.0 for any other structure or  
6 use. Okay, so that is deleted. It is not  
7 applicable.

8           Regarding Waiver F, this pertains to  
9 parking spaces, and we're using -- remember, the  
10 bylaw was amended recently. We have lower  
11 requirements, but this application was submitted when  
12 we had the higher minimums.

13           So we have two things to look at here. One  
14 are the number of the spaces required for  
15 residential, and that formula is 2 parking spaces per  
16 residential unit. We have one- and two-bedrooms.  
17 That would mean that we would need, with 45 units, 90  
18 parking spaces. Regarding the retail, the formula is  
19 1 space per 200 square feet of ground floor retail.  
20 We've got 5,700 square feet. We would need 27 spaces  
21 for a total of 117 spaces. And what is provided is  
22 1 space per unit for 45 total for residential, and  
23 1 space for 225 square feet of commercial for 19  
24 spaces for the commercial, and that's a total of 69

1 spaces.

2           Waiver H pertains to the loading bay.  
3 That's Section 6.06, Table 6.02. In this case,  
4 because of this number of -- the amount of square  
5 feet for the commercial space, there would need to be  
6 one loading bay, and that actually would be off-site,  
7 and it would not be exclusive use.

8           If you look at Commissioner Bennett's  
9 letter, after Waiver H he is adding three more,  
10 Waiver I, J, and K.

11           Section 6.02.2.F, this pertains to  
12 residents' use, the visitor parking. In this case, we  
13 would need -- 10 percent of the parking spaces would  
14 need to be reserved for visitor or tradespeople, and  
15 that is not provided.

16           Waiver J cites Section 6.04.2.E. You  
17 cannot have more than 25 percent of the total number  
18 of parking spaces compact spaces. One thing we are  
19 asking the architect to provide is just to clarify  
20 what are compact spaces on the plans.

21           And with Waiver K, Section 6.04.3, this  
22 pertains to no parking removed in order to park  
23 another car, and that would be happening with the  
24 valet service. There would be a lot of juggling of

1 vehicles, so that is also cited.

2 And other than that, Commissioner Bennett  
3 did not have any other things or sections to note.

4 MR. BOOK: With respect to the last waiver  
5 that Commissioner Bennett added, I thought if there's  
6 an attendant, it's permitted.

7 MS. MORELLI: Well, you know, I don't think  
8 it's really clear. I'll have to look at that again.  
9 That is 6.04.3. So I'll just read that really  
10 quickly.

11 "3. Parking facilities shall be designed  
12 so that each motor vehicle may proceed to and from a  
13 parking space provided for it without requiring the  
14 moving of any other motor vehicle. The board of  
15 appeals, however, may, by special permit, modify this  
16 requirement and the dimensional requirements in  
17 paragraph 2 where a parking facility is under  
18 full-time attendant supervision."

19 MR. BOOK: Okay. So we would have to get a  
20 special permit.

21 MS. MORELLI: Right. Because this is a  
22 special permit situation, obviously the commissioner  
23 is not making any assumptions about --

24 MR. BOOK: Okay. Thank you.

1 MS. MORELLI: Another thing I wanted to  
2 add: I noticed that a lot of the setbacks are 1 foot  
3 or less. And Commissioner Bennett, just early on in  
4 the process, sent a letter to all the ZBA members  
5 regarding building code requirements when there are  
6 shallow setbacks and buildings are close to each  
7 other. He is requesting a building -- preliminary  
8 building code analysis as a courtesy to all the ZBA  
9 panels hearing 40B cases, and that has been provided  
10 by the project team. Commissioner Bennett reviewed  
11 it, and it is satisfactory to him.

12 MS. SCHNEIDER: Thank you, Maria.

13 Has the applicant been made aware of the  
14 three additional waivers that were included in  
15 Commissioner Bennett's letter? Are there any issues,  
16 questions, or objections to those three additional --  
17 you're okay with those?

18 MR. ENGLER: It's our expectation that  
19 we'll -- whatever Maria wants, but amend the waiver  
20 list and resubmit it inclusive of those three.

21 MS. SCHNEIDER: Okay.

22 Maria, at this point, is it appropriate for  
23 us to vote on the waivers that are in front of us, or  
24 is it better for us to wait until the applicant has

1 submitted an amended waivers request list?

2 MS. MORELLI: You can -- first of all, I  
3 think it might be -- just one thing I wanted to  
4 clarify, that the waivers are really -- if you  
5 approve the plan, then it goes without saying that  
6 the waivers are really being consistent -- if you  
7 approve the waivers, then it's just being consistent  
8 with the plan that you are approving. So I just  
9 wanted to make that clear.

10 And you can certainly vote on the waivers,  
11 subject to the updates that I just listed in  
12 Commissioner Bennett's letter if you wish.

13 MS. SCHNEIDER: Is it preferable that we  
14 wait until we have a full list, then?

15 MS. MORELLI: I think in this case -- I  
16 think it's okay. Since we're saying that we're  
17 adding them, just subject to the additional three  
18 waivers that are cited, I think that would be okay.

19 MS. SCHNEIDER: Okay.

20 I do want to point out that as part of  
21 Commissioner Bennett's review, and this is documented  
22 in a memo to us dated February 15, 2017, the analysis  
23 that he has done indicates which of these waivers are  
24 required to build the project, such that if we do not

1 approve these waivers, the project currently before  
2 us cannot be built. It needs this relief. And going  
3 through his list, it looks like, from this chart,  
4 those that he deems not applicable have been --  
5 appear in strikeout, and, you know, the exceptions  
6 that he's recommending also have been built into  
7 this.

8 Does the board want to discuss any of these  
9 waiver requests? Any particular waiver request that  
10 people have questions about or concerns with?

11 MR. BOOK: As we've been brought along in  
12 the process, none of these waivers are a surprise.

13 MS. SCHNEIDER: Yeah, I agree.

14 Mark?

15 MR. ZUROFF: Yeah. We've gone through  
16 every one of these, conceptually at least, so there's  
17 no surprises here.

18 MS. SCHNEIDER: Do we need to approve them  
19 one by one, or can we just --

20 MS. MORELLI: I would recommend that you do  
21 go through them one by one.

22 MS. SCHNEIDER: Okay. So we're going to go  
23 through and take a vote on each one of these  
24 requested waivers.



1 Waiver No. A -- is that sufficient for the  
2 record if we just go by the numbers -- the letters?

3 MS. MORELLI: Yes.

4 MS. SCHNEIDER: Waiver No. A?

5 MR. ZUROFF: No objection.

6 MR. BOOK: No objection.

7 MS. SCHNEIDER: Okay. A is approved.

8 Waiver No. C? Yes?

9 MR. ZUROFF: Yes.

10 MR. BOOK: Yes.

11 MS. SCHNEIDER: Waiver D?

12 MR. ZUROFF: Yes.

13 MR. BOOK: Yes.

14 MS. SCHNEIDER: Waiver E?

15 MR. ZUROFF: Yes.

16 MR. BOOK: Yes.

17 MS. SCHNEIDER: E.1?

18 MR. ZUROFF: That's underground?

19 MS. SCHNEIDER: Underground structures.

20 MR. BOOK: Yes.

21 MR. ZUROFF: Yes.

22 MS. SCHNEIDER: E.2, side yard?

23 MR. BOOK: Yes.

24 MR. ZUROFF: Yes. I think as a group, all

1 the setbacks.

2 MS. SCHNEIDER: Okay. E.1 through 4, yes.

3 I'm sorry, E.1 through 5 are yes.

4 F? Yes?

5 MR. BOOK: Yes.

6 MR. ZUROFF: Yes.

7 MS. SCHNEIDER: And H?

8 MR. BOOK: Yes.

9 MR. ZUROFF: Yes.

10 MS. SCHNEIDER: And we also have before us  
11 three additional waivers recommended by Commissioner  
12 Bennett.

13 I, residence use, visitor parking, yes.

14 MR. ZUROFF: Yes.

15 MR. BOOK: Yes.

16 MS. SCHNEIDER: J, limit on compact spaces.

17 MR. ZUROFF: Yes. Do we have enough  
18 information to --

19 MS. MORELLI: Yeah. I would just  
20 recommend -- could the architect certify or just say  
21 how many compact parking spaces you do have?

22 MR. PANDYA: I couldn't say the specific  
23 number.

24 MS. MORELLI: Okay. I have the full-sized

1 plan here if you want to --

2 MR. ZUROFF: Are any of the spaces  
3 designated as --

4 MR. PANDYA: They weren't designated  
5 because we were just doing parking counts.

6 MS. MORELLI: Just so you're aware of our  
7 regulation on width, with parking spaces, compact is  
8 7 1/2 feet wide and 16 feet long. So if you have any  
9 spaces that meet those requirements, they're  
10 considered compact. Standard is 8 1/2 feet wide and  
11 18 feet long, so --

12 MR. ENGLER: There's no requirement to have  
13 compact spaces.

14 MS. MORELLI: No, there's no requirement.  
15 The only threshold is that you not have more than  
16 25 percent.

17 MR. ENGLER: Right. So we probably don't  
18 need that waiver.

19 MR. PANDYA: We do not need more than  
20 25 percent compact spaces.

21 MR. ENGLER: We don't need that waiver.

22 MS. MORELLI: Okay. So then all I will  
23 just have you do is on the parking plan, if you can  
24 just show dimensions, just so that the next time at a

1 public hearing we can just verify that. So at this  
2 time, we can eliminate Waiver J for now until our  
3 next public meeting when we look at the plans.

4 MS. SCHNEIDER: Okay.

5 And Waiver No. K? Yes?

6 MR. ZUROFF: Yes.

7 MR. BOOK: Yes.

8 MS. SCHNEIDER: So I think that the next  
9 step after this is going to be to review a draft  
10 decision with draft conditions. And I understand  
11 that we don't have that ready to go for tonight, but  
12 we do expect to have it --

13 MS. MORELLI: March 6th.

14 MS. SCHNEIDER: -- for our next hearing,  
15 which is on March 6th. March 6th is also the date on  
16 which this is supposed to close. And I don't know if  
17 this is something that has been discussed with the  
18 applicant already, but I'm wondering if the applicant  
19 would be amenable to one more hearing, perhaps middle  
20 to late March, so that we have more than one meeting  
21 to review the draft decision and the conditions.

22 MS. STEINFELD: And to exchange --  
23 obviously, once you close the hearing, you have 40  
24 days to discuss it, but you're limited in terms of

1 accepting new testimony, so it would provide you the  
2 opportunity to engage the applicant.

3 MR. ENGLER: I would say, yes, we're  
4 amenable to that extension, and we're on record as  
5 saying we are.

6 Would it make sense to wait to formally  
7 grant that on March 6th, so when you guys know when  
8 the next hearing is scheduled -- unless you know that  
9 now -- we could say we will give you an extension  
10 through such and such a date?

11 But we're on record as saying we'll work  
12 with you to give you what you need. But rather than  
13 say -- if you only need two weeks for the next  
14 hearing, we'll say, okay, two weeks. You know what  
15 I'm saying?

16 MS. SCHNEIDER: Maria, do we have a  
17 suggested date for the next hearing?

18 MS. MORELLI: I would suggest that we have  
19 March 20th. That's two weeks after the 6th, and I  
20 think that that would be sufficient.

21 MR. ENGLER: That would be fine.

22 MS. SCHNEIDER: Okay. Thank you.

23 Do we have any...

24 MR. ZUROFF: I do have a question for

1 Maria, I guess.

2 As far as conditions, which we haven't  
3 really addressed yet, is there going to be a list of  
4 suggested conditions? How do we get to a list of  
5 conditions?

6 MS. MORELLI: So what I would be providing  
7 would actually be a draft decision that includes  
8 procedural history, findings, and conditions. And I  
9 arrange them in categories so that it would be  
10 housing, prebuilding, permit review, environmental,  
11 fire, stormwater, all of those categories. So  
12 everything that we've discussed, all of the testimony  
13 that's been submitted, I've actually captured peer  
14 reviewer testimony, testimony from local boards,  
15 concerns of abutters, and that's been, you know,  
16 tracked all along and you'll actually see that  
17 worded.

18 MR. ZUROFF: Okay. So it will be inclusive  
19 of suggestions?

20 MS. MORELLI: That's right.

21 MR. BOOK: So you were saying the 20th?

22 MS. SCHNEIDER: Which is a Monday. Does  
23 that work for you?

24 MR. BOOK: Yup. That's fine.

1 MS. SCHNEIDER: Okay. Is there anything  
2 else we need to go over tonight?

3 MS. MORELLI: No.

4 MS. SCHNEIDER: Okay. We will continue  
5 this hearing until March 6th at 7:00 p.m. Thank you.

6 (Proceedings adjourned 7:33 p.m.)

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1 I, Kristen C. Krakofsky, court reporter and  
2 notary public in and for the Commonwealth of  
3 Massachusetts, certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth and  
6 that the foregoing is a true and correct transcript  
7 of my shorthand notes so taken.

8 I further certify that I am not a relative  
9 or employee of any of the parties, nor am I  
10 financially interested in the action.

11 I declare under penalty of perjury that the  
12 foregoing is true and correct.

13 Dated this 24th day of February, 2017.

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Kristen Krakofsky, Notary Public  
My commission expires November 3, 2017.



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