

DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION
BABCOCK PLACE [134-138 BABCOCK STREET]
BOARD OF APPEALS CASE NO. 2017-0020

Decision Filed with Town Clerk
[time stamp]

Date: **DATE FILED**

Re: Application of Babcock Place, LLC, for a Comprehensive Permit

Location: Assessor's Atlas Map Sheet 10, Block 049, Lot 06 known and numbered as 134 Babcock Street, and Lot 05-01 known and numbered as 138 Babcock Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On February 17, 2017, Massachusetts Housing Finance Agency ("MassHousing") issued a Project Eligibility Letter ("PEL") to Babcock Place LLC (the "Applicant").
2. On March 15, 2017, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the "Act"), to construct a five-story building with 62 units of rental housing within approximately 68,583 sf of gross floor area and 31 ground level parking spaces (the "Original Project") on two abutting lots approximately 21,291 square feet total located at 134 Babcock Street and 138 Babcock Street in Brookline, Massachusetts (the "Site").
3. On January 29, 2018, the Applicant submitted a revised Comprehensive Permit Application (the "Application") to the Town of Brookline (the "Town") to construct 45 units of rental housing within approximately 42,872 square feet of gross floor area and a 12,438 square-foot partially below-grade garage with 36 parking spaces with vehicle stackers in one building ranging from five stories to three-and-one-half stories (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 134-138 Babcock Street dated September 30, 2016, and revised to January 29, 2018, prepared as follows:

Sheet Numbers and Titles and Narrative Plans

Site Plans dated June 21, 2017, revised to January 23, 2018, prepared by J. F. Hennessy, Brookline, Mass.

Sheet C-100 Existing Conditions Plan stamped by professional land surveyor Michael A. Clifford

Sheet C-200 Pavement, Layout, and Materials Plan dated February 14, 2018 and stamped by professional engineer Bert E. Corey

["Site Plans"]

Stormwater Management Design and Runoff Calculations Report dated November 15, 2017 and revised January 23, 2018 and prepared and stamped by professional engineer Bert E. Corey of Schofield Brothers, Framingham, Mass.

Sheet C-300 Utilities & Grading Plan dated February 14, 2018 and stamped by professional engineer Bert E. Corey

["Stormwater Management Plan"]

Architectural Plans dated September 30, 2016 revised to February 14, 2018, prepared by Cube 3 Lawrence, Mass. and stamped by registered architect Aaron Bancroft.

Sheet A-003	Unit Mix
Sheet A-081	Atlas Plan – Ground Floor
Sheet A-081	Atlas Plan – Typical Upper Floor
Sheet A-101	Ground Floor Plan [garage]
Sheet A-102	Second Floor Plan
Sheet A-103	Third Floor Plan
Sheet A-104	Fourth Floor Plan
Sheet A-105	Fifth Floor Plan
Sheet A-106	Roof Plan
Sheet A-200	Conceptual Rendering
Sheet A-201	Building Elevations
Sheet A-202	Building Elevations
Sheet A-300	Project Site Sections
Sheet A-600	Typical Units Plans

["Architectural Plans"]

Landscape plan dated February 14, 2018 and prepared and stamped by registered landscape architect Nelson Hammer of Hammer+Walsh Design Inc., Boston, Mass..

Sheet L 101	Landscape Plan [and abutting structures]
Sheet L 102	Landscape Plan
Sheet L 103	Tree Survey [with trees to be eliminated for construction of Project]
Sheet L 201	Landscape Details
Sheet L 202	Plant Images

["Landscape Plans"]

Traffic Impact Assessment dated February 2017, with amended and additional data provided November 16, 2017, and November 17, 2017, prepared by Shaun P. Kelly, Vanasse & Associates, Inc.

["Traffic Study"]

Parking Stackers Specifications dated September 16, 2016 and December 12, 2016 by CityLift.

["Parking Stackers Specifications"]

Foundation Engineering Report dated November 9, 2017 and prepared by Nicholas Hodge and Chris M. Erickson, P.E. of McPhail Associates LLC, Cambridge, Mass.

["Geotechnical Report"]

Temporary Excavation Support (Applicant's Proposed Construction Approach) dated January 9, 2018 and prepared by McPhail Associates LLC, Cambridge, Mass.

["Temporary Excavation Support Method"]

Tree Protection Plan and Land Assessment dated January 16, 2018 prepared by certified arborist Howard Gaffin.

Tree Protection Plan including "Tree Protection Zone" and "Construction Mitigation Plan: Tree Protection Zone Requirements"

["Tree Protection Plan"]

Rubbish and Recycling Plan including:

Trash Narrative/Recycling Program
Trash Room Plan dated January 12, 2018 and prepared Cube 3 Studio, Lawrence, Mass.
Wastequip C-33X-APT Apartment Compactor specifications

["Rubbish/Recycling Plan"]

5. The Applicant submitted a request for waivers from local by-laws and regulations and Waiver-Key site plan dated March 15, 2017 and amended **XXXXX**, 2018.
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 April 13, 2017. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: May 10, 2017, June 21, 2017 (continued), July 24, 2017, August 23, 2017, October 2, 2017, November 6, 2017 (continued), November 8, 2017 (continued), November 27, 2017, December 4, 2017 (continued), December 11, 2017 (continued), December 13, 2017 (continued), January 17, 2018 (continued), January 29, 2018, January 30, 2018, March 7, 2018 (continued), and March 14, 2018. **[Any public meetings.]** All continuances beyond 180 days from April 13, 2017 were with the Applicant's written consent and filed with the Town Clerk.
7. The Board conducted a duly noticed site visit on June 5, 2017.
8. On March **14**, 2018 the Board closed the public hearing.
9. The Board deliberated on the Application at a public hearing held on March **14**, 2018 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 and staff, an independent site and building design peer reviewer, an independent traffic peer reviewer, and independent parking design peer reviewer in regard to matters of public health and safety, environmental health and safety, traffic, parking, site and building design, protection of abutters trees, foundation methods, 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

Site and Building Design

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

MassHousing Partnership Fund

Chapter 40B Advisor
Judith Barrett, Principal
Barrett Planning Group LLC
Duxbury, 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, massing, scale, architectural style, streetscape/public realms and front yard setback modal pattern, feasibility of the parking plan, the use of vehicle stackers in the partially below grade garage, parking demand and parking ratio, landscaping plan, usable open space, loss of existing trees, protection of abutters' tree roots and tree canopies, abutters' viewsheds, shadow impacts, soil conditions, foundation method, public and environmental health and safety, traffic and pedestrian safety, rubbish and recycling management, garage ventilation, stormwater management, and site circulation, including matters of local concern identified in the PEL under "MassHousing Determination."

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 April 13, 2017, 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 25% of the units would be available to households earning at or below 80% of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. The Site is located on Babcock Street, which consists of multifamily, single-family, and two-family structures. The boundary of the Gaffam-McKay Local Historic District begins one lot away to the north.
5. The Site is comprised of two lots, one of which is zoned as M-1.5 (multifamily district) and consisting of 13,582 square feet and the second of which is zoned as T-5 (two-family district) and consisting 7,709 square feet, as defined in the Brookline Zoning By-Law amended June 2, 2014.
6. The Site has eleven direct abutters sharing a property line with the Site and ten of the aforementioned direct abutters are located in the T-5 zoning district spanning Babcock Street and Manchester Streets to the north and Stedman Street to the west. The Site abuts a four-story apartment building to the south located in an M-1.5 zoning district.
7. In a letter to the ZBA dated January 23, 2018 professional land surveyor Michael A. Clifford of J. F. Hennessy Company confirmed that the Site’s survey plan dated January 17, 2018 is consistent with the Massachusetts Land Court decisions for two abutting Stedman Street lots to the west, which results in a reduction of 208 square feet of land area of the Site’s two lots from their respective deeded dimensions.
8. The Applicant confirmed that the deed for 138 Babcock Street was unrecorded prior to the purchase and sale to the Applicant.
9. The Planning Department at the request of the ZBA asked MassHousing on August 21, 2017, September 6, 2017, and September 28, 2017 if the fact that an unrecorded deed prior to purchase and sale affects ownership and proof of site control to which MassHousing did not answer in the affirmative or in the negative.
10. Existing conditions at the Site (“Existing Conditions”) include a Colonial Revival style house constructed circa 1898, and a two-family residence and garage both constructed in 1941, all of which the Preservation Commission found architecturally and/or historically significant in its April 26, 2017 letter to the ZBA.
11. The Town’s Housing Production Plan (“HPP”) approved by the Massachusetts Department of Housing and Community Development (“DHCD”) November 9, 2016 identifies nodes and corridors in the Town as suitable opportunities for affordable housing, which excludes the majority of Babcock Street, the Site, and several blocks of the neighborhood abutting the Site.
12. Existing Conditions provide no usable open space, as defined by the Brookline Zoning By-Law amended June 2, 2014.

13. The Project will provide no usable open space, as defined by the Brookline Zoning By-Law amended June 2, 2014.
14. Existing Conditions include two curb cuts and an asphalt surface parking lot with approximately 41 parking spaces that by private agreement are leased predominantly to residents of 120 Babcock Street, 122 Babcock Street, 124 Babcock Street, and 126 Babcock Street ("120 Babcock Street") a four-story apartment building with no on-site parking. Existing Conditions include approximately 20 parking spaces that straddle the property line to the south shared with the lot known and numbered as 120 Babcock Street.
15. ~~The Project will not continue to provide parking to residents at 120 Babcock.~~
16. ~~In its July 11, 2017 letter to the ZBA the Town's Planning Department stated to the best of its knowledge that the removal of parking spaces used by residents at 120 Babcock Street and straddling the property line shared with 120 Babcock as a result of the Project would not create infectious invalidity or new zoning nonconformities or make the lot at 120 Babcock Street more nonconforming in regard to parking requirements.~~
17. The Project will eliminate one of the two existing curb cuts and increase the width of existing curb cut to the south to 21 feet wide.
18. Peter Ditto, the Town's Director of Engineering and Transportation, confirmed in his January 29, 2018 testimony to the ZBA that the Project will reduce the amount of impervious surface area compared with Existing Conditions.
19. Existing Conditions consist of approximately 25 trees that vary in caliper and species.
20. Sheet L103 "Tree Survey" listed in Item 4 under Procedural History indicates that 23 out of 25 trees, totaling 298 caliper inches, will be eliminated to construct the Project. The Landscaping Plan does not replace the eliminated trees in kind.
21. Independent peer review James Fitzgerald, P.E. in his January 29, 2017 testimony that the cluster of trees at the northeast corner of the Existing Conditions would need to be removed to avoid obstructing the visibility of drivers exiting the Site.
22. In the PEL dated February 17, 2017, MassHousing determined that during the public hearing process for the Application "[t]he Applicant should provide a detailed planting plan, and to identify proposed measures to protect existing tree cover (both on-site and in the yards of abutting properties) during and after construction."
23. In his August 23, 2017 and October 2, 2017 testimony to the ZBA, independent peer review Clifford Boehmer, AIA, stated that because of the proximity to abutters' trees to the west of the Original Project, he questioned what type of foundation would be proposed to have the least impact on abutters' trees.
24. Town Arborist Thomas Brady and Town landscape architect Ann Blair stated in their December 5, 2017 letter to the ZBA in their review of the architectural, civil, and landscaping plans dated November 17, 2017 that the root zones of abutters' trees to the west of the Site will be affected by the excavation for the below grade parking and tightness the site. Mr. Brady recommended that the Applicant submit a tree protection plan and proposed construction means and methods during the public hearing process to assess the effectiveness of measures to reduce impact on abutters' trees.

Comment [MM1]: Reinstate 15 and 16 per Town Counsel.

25. Town Arborist Thomas Brady and Town landscape architect Ann Blair stated in their December 7, 2017 letter to the ZBA in their review of revised landscaping plans dated December 6, 2017 that despite the increased setback to the west, they still needed to review a tree protection plan and proposed construction means and methods to assess the effectiveness of measures to reduce impact on abutters' trees.
26. The Applicant submitted the Arborist Report and Tree Protection Plan dated January 16, 2018 by certified arborist Howard Gaffin.
27. Mr. Gaffin conducted test pits at the Site on January 4, 2018 to discern the size of the roots of abutters' trees. The aforementioned test pits were inspected by Town Arborist Thomas Brady on January 4, 2018.
28. Howard Gaffin calculated the Tree Protection Zone using the methodology defined in *Trees and Development* (Metheny, N. and Clark, J.M. International Society of Arboriculture: 1998), one of several industry standards.
29. Town Arborist Thomas Brady in his January 17, 2018 letter to the ZBA that the industry standard used to calculate the Tree Protection Zone is an accepted methodology.
30. The Applicant submitted the selected method of excavation known as the Temporary Excavation Support method dated January 9, 2018 and prepared by McPhail geotechnical engineers for the Project and based on the Tree Protection Zone calculated by Howard Gaffin to limit impact on abutters' trees.
31. Town Arborist Thomas Brady stated in his January 17, 2018 letter to the ZBA that he was pleased the Applicant selected the Temporary Excavation Support Method for the Project.
32. The Metropolitan Area Planning Council ("MAPC") and Northeastern University prepared a Climate Vulnerability Assessment ("Vulnerability Assessment") for the Town of Brookline in December 2017, which mapped an approximate 150-acre "hot spot" (defined as "a location in the hottest 5% of land area in the 101-community MAPC region"), created by high coverage of impervious surfaces and limited open space and tree canopy, located about 160 yards away from the Site to the southeast and encompassing the majority of Babcock Street ("Hot Spot").
33. The Vulnerability Assessment discovered that U.S. Census block groups in the Town with a high number of vulnerable populations categorized in terms of race, income, and age coincided with the Hot Spot and had a high exposure rating to high-temperature impacts.
34. The Vulnerability Assessment estimated the value of the Town's tree canopy in the storage of climate-changing carbon to exceed \$8 million.
35. The independent architectural peer reviewer, Clifford Boehmer, AIA, confirmed at the August 23, 2017 hearing that he could not provide a conclusive assessment of the Project's massing, scale, and impact to abutters' trees without a survey of grades of abutting properties to the north and west of the Site.
36. At the October 2, 2017 hearing the ZBA requested that the Applicant provide a grading and tree survey of the properties sharing a property line with the Site.
37. On October 31, 2017 the Applicant provided a certified land survey prepared by registered land surveyor Bert E. Corey that included a tree survey of Existing Conditions and a tree survey and

grading of abutting properties known and numbered as 115 Stedman Street, 117 Stedman Street, 119 Stedman Street, 121 Stedman Street, 123 Stedman Street, 125 Stedman Street, 16 Manchester Street, 140 Babcock Street, 142 Babcock Street, and 148 Babcock Street.

38. Grading beyond the Site declines at its steepest at a 50% slope beyond the property line to the west of the Site onto Stedman Street abutters' rear yards.
39. Grading on the Site inclines toward the property line to the west, partially submerging the ground floor of the Project below grade.
40. The front-yard setback modal pattern on Babcock Street is approximately 20 feet.
41. The Site consists of one front yard, one front yard for a rear lot, one rear yard, a left side yard, a right side yard shared with 16 Manchester Road, and a right side yard shared with 140 Babcock Street.
42. **In xx and xx the Applicant met with [abutters]** to discuss the height, massing, density, setbacks and parking on the Site.
43. At the January 29, 2018 public hearing the Applicant presented and formally submitted a revised plan of record for the Project that:
 - increased front yard setback from 8 feet to a range of 13 feet to 14'-9", the greater depth of which aligns the Project's building with the abutting apartment building to the south of the Site,
 - increased the step-back on the fifth floor to approximately 56 feet from the property line to the west and placing the fifth floor outside of the sight line of abutters to west of the Site,
 - increased the step-back of the fourth floor to at least 20 feet from the property line to the west, increased the setback to the foundation from 9'-8" to a range of 16 feet to 21 feet from the property line to the west,
 - increased the parking ratio from 0.5 to 0.8 through use of vehicle stackers and reduction of number of units, and
 - decreased the floor area from 68,583 square feet to 55,310 square feet.

The Applicant included site, architectural and landscaping plans, shadow studies, and summer and winter architectural perspectives from an electronic 3D model.

44. At the request of Building Commissioner Daniel Bennett, the Applicant submitted a preliminary building code analysis of the Project dated November 17, 2017, which Mr. Bennett deemed satisfactory.
45. On February 26, 2018, the Applicant submitted an amended request for waivers from local regulations.
46. On January 22, 2018, the Transportation Board voted to accept a Complete Streets design for southbound Babcock Street to include a five-foot bike lane and a nine-foot vehicular travel lane, which was considered by all independent peer reviewers reviewing the Project.
47. Independent traffic peer reviewer, James Fitzgerald, P.E., stated in his January 3, 2018 letter to the ZBA that waste management and delivery trucks parking on Babcock Street would impact the stream of vehicular and bicycle traffic traveling southbound on Babcock Street and will impact circulation of traffic entering and exiting the Site driveway.

48. Peter Ditto, Director of Engineering and Transportation, stated in his testimony to the ZBA on January 29, 2018 that it is not safe for private waste management trucks and delivery and moving trucks to back into and out of the driveway off Babcock Street and that it was preferable for private waste management trucks and delivery and moving trucks to temporarily park on Babcock Street to pick up waste and deliver packages.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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 36 partially underground parking spaces as shown on the Site Plans, Stormwater Management Plan, Architectural Plans, Temporary Excavation Support Method, Tree Protection Plan, 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 is shown on the Site Plans and the Architectural Plans, with no fewer than 36 garaged parking spaces and no surface parking spaces as shown on the Site Plans and Architecture Plans listed under Item 4 under Procedural History.
2. 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 from time to time.

3. The total maximum number of bedrooms shall be 62 and the maximum number of units shall be 45, as listed in the following table.

Unit Type	Number of Units	Total Bedrooms per Unit Type
Studio	20	20
One Bedroom	13	13
Two Bedroom	7	14
Three-Bedroom	5	15
TOTAL 62 Bedrooms		

4. With respect to the Applicant’s request for waivers from local by-laws and regulations dated **DATE**, the Board approves those waivers listed in Exhibit 1. The Project must comply with by-laws and regulations not waived.

Housing

5. 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.
6. Lease and occupancy agreements shall be for a term of not less than six (6) months. Nightly rentals shall not be permitted. Airbnb and similar lodging services shall not be permitted.
7. Local Preference: The Applicant shall work with the Assistant Director for Community Planning 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.
8. **Eleven** units in the Project shall in perpetuity be Affordable Units.
9. 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.
10. The Owner 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~~ **any applicable** Regulatory Agreement during this period shall be borne by the Owner.

Comment [MM2]: Town Counsel query for Judi: 24.44%. OK? Judi Barrett: round up / should be 12.

Comment [MM3]: Town Counsel wants to make clear that this pertains to the second reg agreement.

11. The Town will not issue a Building Permit for the Project without final approval from the Subsidizing Agency.
12. No more than four 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 eight certificates of occupancy ~~permits~~ for Affordable Units are issued.

Fire Safety

13. Prior to the application for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that:
 - (a) the Project's building has enhanced NFPA-13 (or latest version of the NFPA code) designed sprinkler systems, and
 - (b) the Project's building has direct alarm notification to the Fire Department designed in accordance with the latest version of Building and Fire Codes.
14. Prior to the issuance of a Building Permit, the Fire Chief or his designee shall review and approve the final site plan.
15. Prior to the issuance of a Building permit, the Applicant shall submit a construction site safety plan in compliance with NFPA 241 by a third-party fire safety professional who has been approved by the Fire Chief ("Construction Site Safety Plan") for the review and approval of the Building Commissioner and the Fire Chief with all costs thereunder borne by the Applicant. The Construction Site Safety Plan shall include measures to decrease and/or eliminate fire safety hazards. The Fire Chief or his designee may review onsite operations during construction. The third-party fire safety professional shall report any conflicts with the Construction Site Safety Plan to the Fire Department within a timely manner.
16. Prior to the issuance of the first Certificate of Occupancy, the private property management company for the Project shall submit a fire safety and emergency procedures plan for the review and approval of the Fire Chief or his designee.

Pre-Construction

17. 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; and/or any alteration, demolition, repair or improvements to a building or structure ("Commencement of Construction").
18. 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.

19. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with a report and photographs of the condition of pavement surfaces along truck routes before Construction Commencement and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic does not adversely affect the pavement.
20. Prior to the issuance of a demolition permit, the Applicant shall conduct a pre-construction survey of the above and below grade structures located at addressed known and numbered as 115 Stedman Street, 117 Stedman Street, 119 Stedman Street, 121 Stedman Street, 123 Stedman Street, 125 Stedman Street, 16 Manchester Street, 140 Babcock Street, 142 Babcock Street, and 148 Babcock 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.
21. Prior to Commencement of Construction, the Applicant shall submit for the review and approval by the Town Arborist the Tree Protection Plan listed under Item 4 of Procedural History revised to include in the Tree Protection Zone the tree numbered 9931 on the Site Plans listed under Item 4 of Procedural History and located on the north property line on the Site Plans ("Revised Tree Protection Zone").
22. The Tree Protection Plan shall serve to protect abutters' trees identified in the Revised Tree Protection Zone from all activities related to the construction of the Project including but not limited to excavation, grading, and landscaping of the Site as set forth in the Tree Protection Plan and Temporary Excavation Support Method.
23. Prior to Commencement of Construction, the Applicant shall submit in writing for the review and approval of the Town Arborist a plan prepared by a certified arborist that describes construction means and methods and the sequence and scope of the tree protection measures to ensure that the roots and canopies of abutters trees in the Revised Tree Protection Zone are protected to the maximum extent possible during construction.
24. Prior to commencement of excavation of the Site to install the foundation, the Applicant shall install the Temporary Excavation Support measures as listed under Item 4 of Procedural History to minimize encroachment on the Revised Tree Protection Zone.
25. There shall be no blasting during the construction of the Project.
26. There shall be no clear-cutting of trees identified on Sheet C-100, "Existing Conditions," listed under Item 4 of Procedural History prior to Commencement of Construction. Prior to Commencement of Construction, the Applicant shall submit a tree survey signed and stamped by a certified arborist indicating the species, caliper, and health of trees to be eliminated for the construction of the Project for review and approval by the Town Arborist.
27. The Applicant shall contribute \$400 for every three inches of caliper of trees identified for elimination for construction of the Project and deemed healthy by the Town Arborist not to exceed a total of \$20,000 for funding the planting of trees in the public way, the locations of which shall be determined by the Commissioner of Public Works or his designee. Prior to the issuance of a Building

Comment [MM4]: Town Counsel: Do we need a submission from the geotech engineer as well.

Permit, the Applicant shall provide a total contribution amount determined by the Town Arborist and which shall not to exceed \$20,000 to the Town for deposit into a segregated Town account to be used by the Town for the planting of trees in the public way. If the funds are not used within three years from the date of deposit for the planting of trees in the public way, the funds shall be returned to the Applicant.

28. Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of the existing street trees and ~~shall submit provide~~ a plan for protecting existing street trees during construction, and ~~the~~ planting ~~of any~~ additional street trees on Babcock Street, 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.”
29. 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.
30. Prior to the issuance of a Building Permit, the Applicant shall submit final site and landscaping plans indicating: plant types and sizes at planting and location of plants; location of and materials for fences, walls, walkways, and driveway; height of fences and elevation at top of walls in relation to grade; exterior lighting; location of utilities, mechanicals, parking spaces, and bicycle storage; and the location of trash, recycling, and snow storage, subject to the review and approval of the Assistant Director for Regulatory Planning.
31. Prior to the issuance of a Building Permit, the Applicant shall submit for the review and approval of the Assistant Director for Regulatory Planning ~~and the Commissioner for Public Works or his designee~~ (a) an adequate plan for maintaining the Landscape Plan within the first two years of planting on the Site, (b) an adequate plan for replacing as necessary Landscape Plan plantings on the Site, and (c) evidence of a performance bond in an amount sufficient to cover ~~for costs for~~ pertaining to the maintenance and restoration of the Landscape Plan as necessary during the first two years of planting including but not limited to plants, labor, watering, and fertilizing.
32. 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.
33. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan to the Director of Engineering and Transportation for review and approval.
34. Prior to the issuance of a Building Permit, for the 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.
35. 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.

36. 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.

Transportation

37. Traffic mitigation shall be all as follows: **FINAL LANGUAGE TO COME FROM P. DITTO**
- (a) The Applicant, in consultation with the Director of Engineering and Transportation, shall install two NO **PARKING ANY TIME** signs on the southbound side of Babcock Street between the Site's property line at the north and the Site's property line at the south, with all costs related to fabrication and installation borne by the Applicant;
 - (b) The Applicant shall ensure that the Babcock 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;
 - (c) The Applicant, in consultation with the Director of Engineering and Transportation, shall purchase and install a STOP sign and a stop line consisting of concrete pavers at the driveway exit with all costs borne by the Applicant;
 - (d) Vehicles entering the Site shall not queue onto Babcock Street at any time;
 - (e) No vehicles shall idle in the driveway or the garage;
 - (f) The Applicant shall keep sidewalks in front of the Site on Babcock Street clear of snow and ice and shall remove snow mounds that collect on Babcock 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;
 - (g) The Applicant shall not store snow and/or other materials on the driveway;
 - (h) 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;
 - (i) There shall be no loading area on the driveway and/or in any of the Site's yards. Delivery, waste and recycling management, and moving trucks shall not back into the Site's driveway and shall not back out onto Babcock Street; and
 - (j) The installation of the structural columns and vehicle stackers in the underground garage and the driveway shall reflect the Ground Floor plan dated DATE and listed under Item 4 of Procedural History. If that configuration is not possible, the columns shall be installed so that the width of the drive aisles and parking spaces conform with the Town's zoning bylaw **[waiver request]**. If the Applicant submits a final parking plan showing a column layout that differs from that on the DATE Ground Floor plan, then prior to the issuance of a Building Permit, the Applicant shall provide an Autoturn simulation for the review and approval of the Director of Engineering and Transportation. Should the Director of Engineering and Transportation hire a third party consultant to review the revised parking plan and Autoturn simulation, all costs for the Town's consultant's review shall be borne by the Applicant.
38. 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

Comment [MM5]: NO STOPPING?

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 nine bicycle racks for secure bicycle storage; (iv) publicizing transit options; (v) installing transit screens in the building lobby for use by residents, visitors, and staff, to display the on-time arrival of nearby MBTA buses and trains; and (vi) installing in at least one parking space or 2 percent of the Project's parking spaces, whichever is greater, an electric vehicle charging station and installing at another 15% of the Project's parking spaces with conduit to accommodate the installation of electric vehicle charging stations in the future.

39. Prior to the issuance of a Building Permit, the Applicant shall submit an electrical plan for parking areas, subject to the review and approval of both the Director of Engineering and Transportation and the Building Commissioner or their designees, that shows:

- (a) Installation of electric vehicle charging stations as required by this Decision; and
- (b) Conduit to accommodate future installation of electric vehicle charging stations in parking areas as required by this Decision.

Ventilation/Air Quality

- 40. The Applicant shall ventilate the partially underground parking garage to control vehicle exhaust and ensure that carbon monoxide levels are in compliance with the State air quality standards and the State Building Code. Any mechanical ventilation equipment shall be maintained in compliance with the Town noise bylaw.
- 41. The Applicant shall install a generator or back-up power system to maintain mechanical ventilation of the partially underground garage during power outages.
- 42. The Applicant shall submit air-quality samples registering air quality at the time the Project's units are 90 percent occupied to the Chief of Environmental Health to ensure that carbon monoxide levels are in compliance with State air quality standards and the State Building Code.

Rubbish/Recycling

- 43. 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 and recyclables generated from the Project shall be shall be picked up together at least twice per week by the Applicant's private waste management service in compliance with all applicable regulations;
 - (b) The Project shall provide a trash compactor in a collection room in the garage and a total of four dumpsters each sized at two-cubic yards, for the building rubbish and recycling. Two of the four dumpsters shall be for rubbish, and two of the four dumpsters shall be for recycling.
 - (c) The motor of the trash compactor shall have a low decibel rating approved by the Chief of Environmental Health;
 - (d) The pick-up location shall be at the garage entrance next to the Project's building. At no time shall rubbish and recycling dumpsters be stored in the Site's driveway;

- (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 abutters;
- (f) Rubbish and recycling dumpsters shall not be stored outside the building footprint between 11 AM and 11 PM on weekdays and weekends; *PAT*
- (g) The private waste management truck shall not back into the Site's driveway for pick-up. The truck shall not back out onto Babcock Street to pick up waste and/or recycling;
- (h) The private waste management truck shall not park on Babcock Street between 7 AM and 9 AM Monday through Friday and 3 PM and 6 PM Monday through Friday.
- (i) Rubbish and recycling collection room in the Project's garage must be maintained in compliance with State Sanitary Code requirements. Separate rooms shall be designed for recycling and trash storage, respectively;
- (j) The trash and recycling collection room in the Project's garage shall be mechanically ventilated to the roof;
- (k) The Applicant shall install noise reducing sheet rock (i.e. quiet rock), or other material that reduces noise impact, from the trash compactor room; and
- (l) The Applicant shall inform the Public Health Department when the Project's residential units are 90 percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance with this Decision.

Certificate of Occupancy

- 44. 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.
- 45. 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.
- 46. 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.
- 47. 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).

Infrastructure

48. 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.
49. The Applicant shall operate and maintain all of the foregoing specified in Condition ~~xx-48~~ 48 in good working condition and repair at all times at its sole cost.
50. After the final Certificate of Occupancy is issued, no additional stormwater and/or wastewater load to the municipal system shall be allowed without the Director of Engineering and Transportation's approval.

Construction

51. 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.
52. During construction and initial leasing, the Applicant may post on Site no more than one 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.
53. 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).
54. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.
55. 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.

General

56. 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.

57. 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.
58. 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.
59. Upon execution by the Board, the the Director of Planning and Community Development or her designee is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.
60. Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
61. 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).
62. 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).
63. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
64. All utilities shall be underground.
65. Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
66. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations.
67. 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.
68. 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.

Summary of Pre-Building Permit Review **[Finalize last]**

69. 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 x and x.

- (b) The Director of Engineering and Transportation has reviewed and approved the final site and lighting plans in accordance with Conditions x and x; the final stormwater management and drainage plans in accordance with Condition 10; the water, stormwater and sewage facility designs in accordance with Conditions x and x; the erosion control plans in accordance with Condition x; the pavement surfaces in accordance with Condition 65; and all other items requiring review, verification, or approval by or to the satisfaction of the Director of Engineering and Transportation as listed in these Conditions.
- (c) It has paid all fees and funded all improvements required pursuant to Condition xx, and if applicable, Condition xx.
- (d) It has initiated and participated in a pre-construction meeting to discuss the proposed construction schedule with its contractor and the Town, including but not limited to the Building Commissioner, Director of Engineering and Transportation, and the Fire Chief.
- (e) All required local, state and federal approvals and permits have been obtained and it has obtained Final Approval from the Subsidizing Agency as provided in 760 CMR 56.05(8)(c)(2) and (3).
- (f) The Building Commissioner has approved the Construction Management Plan (Condition xx).
- (g) The Chief of Environmental Health has reviewed and approved the rubbish and recycling plan in accordance with Condition xx.
- (h) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- (i) The Fire Chief or his designee has reviewed and approved the final site plan in accordance with Condition xx.
- (j) The Town Arborist has reviewed a plan to protect existing street trees or add new street trees in accordance with Condition 9.
- (k) The Town Arborist has reviewed the Revised Tree Protection Zone and xx in accordance with Conditions xx and xx.
- (l) The Building Commissioner and the Chief of Environmental Health have reviewed and approved the design of the ventilation system in accordance with Conditions xx and xx.
- (m) The Applicant has provided proof to the Director of Planning and Community Development that the age-related deed restriction was filed with the Norfolk County Registry of Deeds in accordance with Condition xx.

[[LAST PAGE FOLLOWS]]

ATTACHED:

Exhibit 1 (Granted Waivers – DATE)

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:

_____ (signed)
Jesse Geller, Chair, 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 _____ (date).

ATTEST:

Patrick J. Ward
Town Clerk

Twenty-Day Appeal Period Ended (Town Clerk stamp)

APPLICANT:

When the Town Clerk confirms the end of the 20-day appeal period, file one copy of the Decision with the Registry of Deeds Norfolk County and return cover page stamped by Registry to the Planning Department.