

BOARD OF APPEALS PUBLIC HEARING
- 10/10/2018

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FOR THE HEARING ENTITLED:

BOARD OF APPEALS PUBLIC HEARING
265-299 GERRY ROAD
(PUDDINGSTONE AT CHESTNUT HILL)

Date: Wednesday, October 10, 2018
Held at: Brookline Town Hall
333 Washington Street
Brookline, Massachusetts
Commencing at: 7:00 p.m.
Court Reporter: Megan M. Castro, RPR, CSR

1 APPEARANCES:

2 Mark Zuroff, Chair

3 Chris Hussey, Board Member

4 Lark Palermo, Board Member

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6 Polly Selkoe, Esquire

7 Alison Steinfeld

8 Joe Geller

9 Marc Levin

10 Steven Schwartz, Esquire

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1 P R O C E E D I N G S

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3 MR. ZUROFF: Good evening, ladies and
4 gentlemen. I am calling to order this meeting of
5 the Zoning Board of Appeals, for the purpose of
6 the 40B presentation concerning 265-299 Gerry
7 Road, which is also known as Puddingstone of
8 Chestnut Hill.

9 For the record and as you all know, this
10 is a public hearing and it is being recorded and
11 a transcript will be available on the website at
12 some point in the future.

13 My name the Mark Zuroff. I am sitting as
14 chair tonight. To my right is Lark Palermo. To
15 my left is Christopher Hussey. And also sitting
16 with us is Polly Selkoe, who is the
17 representative of the planning department.

18 As it is a public hearing, we will be
19 hearing from the public. If you wish to be
20 heard, I ask that everyone who wishes to address
21 this hearing go to the podium, speak clearly and
22 distinctly, so that a clear record can be made of
23 the proceedings. Identify yourself before you
24 speak. And we will be happy to hear from anyone

1 who wishes to speak.

2 The agenda for this evening is basically
3 as follows. We are going to hear a brief
4 presentation from the applicant, who will also
5 show us some plans having to do with the project.
6 It is our intention to go through, briefly, but
7 as comprehensively as we can, the proposed
8 conditions, which will be presumably imposed as
9 part of our decision.

10 We will not reach a decision tonight. We
11 will discuss it and we will react to the
12 provisions and the conditions as they are
13 presented. But in view of the fact that the
14 conditions and the proposed decision has not been
15 posted, to this point, on the website, we do want
16 to give an opportunity to the public to address
17 those conditions and to react to the proposed
18 decision before we actually vote on it.

19 So I presume that those -- the proposed
20 decision, with the conditions, will be posted as
21 soon as tomorrow. And at our next meeting, it is
22 our hope that we will have a final vote on the
23 proposed decision.

24 So again, it is our purpose to have as

1 much participation from the public as possible.
2 And so we will now hear from the applicant
3 concerning some proposals and we will go through
4 the proposed conditions, because they are part of
5 the video presentation.

6 Mr. Levin, identify yourself, please.

7 MR. LEVIN: I am Marc Levin, Chestnut
8 Hill Realty. Good evening, all. A very brief
9 presentation.

10 There was a request to identify another
11 location for the playground, in the event that we
12 don't succeed in getting a playground permitted
13 in the original location.

14 So here in the upper-left, you see the
15 playground. See if I can -- it doesn't do it.

16 So in any event, the upper-left, you see
17 the playground in the middle of a quadrangle.
18 That is an ideal spot for it. It is proximate to
19 our project. However, there is always the chance
20 that we will not be able to get it permitted as
21 such. So to get it within the 40B lot, you now
22 see it within the corner -- I will now go to the
23 next one, as it blows up.

24 You see it right now. It is almost in

1 the center -- slightly left of center. We have
2 placed it in the green space, kitty-corner to the
3 edge of the 218-unit building. So putting it
4 back in context, broader view, there you have got
5 it.

6 So hopefully, we can do the first,
7 because it is a great spot. Second is good, but
8 not as good. And so this is what we will be
9 pursuing.

10 MR. ZUROFF: Simple question for you.
11 Maybe it is not so simple.

12 In either location, whether it be this
13 one in the proposed 40B site or off the 40B site,
14 which would, I assume, require kind of an
15 easement access, some kind of agreement between
16 the owner of one lot and the owner of another.
17 But I am most concerned about, number one, the
18 safety of the site, how it is insulated from the
19 roadway, from the parking spaces and so forth.
20 And two, about the noise that may be generated by
21 the site with regard to the tenants that are
22 closest to it.

23 MR. LEVIN: Are you referring to the
24 tenants currently at Hancock Village?

1 MR. ZUROFF: Your tenants, the people
2 that live in the new building or the tenants that
3 live in the surrounding quadrangle.

4 MR. LEVIN: Joe has a unique perspective,
5 as his grandparents live here. I will let him
6 answer that.

7 MR. GELLER: Joe Geller, from Stantec
8 Consulting.

9 That is true; my grandparents did live
10 here when I was a kid. We played all in this
11 area. And there was actually a playground very
12 close to the location of this one, the on-site
13 location.

14 I think what we have done in this
15 situation, if you remember the building -- the
16 new building is elevated. The park is below it.
17 So I think that will probably have less of an
18 impact on those units, and those will
19 have -- everything is getting new windows and all
20 of that. It makes it a lot better, from a noise
21 perspective.

22 And the other location is, I think, far
23 enough away and sort of at an edge, so nobody is
24 looking at that corner.

1 That corner, these are blank walls on
2 these corners, here. So that is kind of why we
3 picked that location. Well, we picked that
4 location because it was one of the only locations
5 that we could fit it in, but it actually works
6 pretty well, from that perspective.

7 The first one, it is centered,
8 specifically, so it is as far away from the units
9 as it can be. But if you see the distance
10 there -- I don't remember what the distance is,
11 but it is pretty substantial, and that courtyard
12 actually would be a great place to have that kind
13 of play facility.

14 MR. ZUROFF: Will the playgrounds have
15 lighting?

16 MR. GELLER: No. No lighting.

17 And you also asked about access and
18 safety and security. So they will be fenced.
19 And I think, in terms of both sites, they are off
20 the roadway enough and there are sidewalks
21 between them and the roadway, and then they will
22 all be fenced.

23 MR. ZUROFF: So they will be secure?

24 MR. GELLER: Yes.

1 MR. ZUROFF: Any other questions from the
2 Board about those proposals.

3 MR. HUSSEY: No, I don't think.

4 I have just got a comment. I think, it
5 is a playground, not a playing field. So I don't
6 expect much noise to be generated from this.

7 MR. ZUROFF: Hopefully, the kids are
8 having a good time.

9 MR. HUSSEY: I lived next to a playground
10 on Arlington Road for 20 years, and I don't
11 remember there being noise, at all, to speak of.

12 MEMBER OF THE PUBLIC: Could you speak
13 louder, please.

14 MR. HUSSEY: I lived near a playground up
15 on Arlington Road for 20 years, and I don't
16 remember any noise emanating from the playground,
17 at all. From a playing field, there was, but not
18 from the playground.

19 MR. ZUROFF: Okay.

20 MR. LEVIN: So that is our only graphics
21 for tonight.

22 So the planning board has put together
23 draft conditions. This is the conditions that
24 you are imposing upon us. Since we have it on

1 our screen here, I am happy to lead us through
2 it. However, it is really your -- the conditions
3 you are putting on us, so.

4 MR. ZUROFF: So to make it clear for the
5 public, these are the conditions which the Board
6 has discussed, the planning department has taken
7 it upon themselves to write them up, based on
8 what we have discussed in the public hearings.
9 They have been presented to the applicant. The
10 applicant has reviewed them. They have suggested
11 some changes, which we will go through.

12 Lark has already made suggestions to
13 them, which have been incorporated by the
14 applicant. There are some further comments that
15 you have added to them, but you can explain
16 whether there have been any material changes.
17 And whatever changes you are proposing, we would
18 like to hear about them.

19 MR. LEVIN: Okay.

20 MR. SCHWARTZ: Steven Schwartz,
21 Goulston & Storrs, counsel for the applicant.

22 One thing that might be helpful for the
23 Board to delete "is" is in its consideration. I
24 think Mr. Hussey was probably the only member of

1 the Board when we did the Residences on South
2 Brookline decision.

3 One of the reasons why these conditions
4 were relatively straightforward, at least on the
5 regulatory -- many of the regulatory conditions
6 were essentially taken from the ROSB decision.
7 So I would say that would explain at least half,
8 if not more, of the conditions were pretty much
9 the same as what was used in ROSB.

10 MR. ZUROFF: Are you implying that,
11 because this board has already granted a decision
12 with those conditions on them, that you have
13 already pretty much accepted them?

14 MR. SCHWARTZ: Right. I am not implying
15 anything other than -- that was a different
16 board, but it was reviewed by the Board, by the
17 consultant for that board, and they were
18 acceptable to us and they continue to be
19 acceptable to us now. So just for your
20 information.

21 MR. ZUROFF: I just want the public to
22 understand where they come from and how we are
23 approaching them. And again, the planning
24 department, I am sure, has put a great deal of

1 work into them, as they did the previous time.

2 But that decision has nothing to do with
3 this decision.

4 MR. LEVIN: And to clarify that -- or to
5 answer that, really, the basic difference is,
6 aside from the nuances, such as the alternative
7 plan for the playground and having to deal with
8 the traffic improvements along Independence
9 Drive, which are committed to in both
10 projects -- so language had to address that and
11 we will see that. If one is done first, then it
12 doesn't get done twice -- the primary differences
13 between them, as we read it, is the conditions
14 that were requested -- or suggested, I should
15 say, by the Town's peer reviewers for stormwater
16 and traffic and blasting. So that is where the
17 major differences are between Puddingstone and
18 ROSB.

19 MR. ZUROFF: And the other unique part of
20 this particular set of conditions is the
21 alternative plan.

22 MR. LEVIN: Right.

23 MR. ZUROFF: Which we have gotten the
24 opinion of town counsel on. I believe all of the

1 Board members are aware of that. So again, part
2 of the conditions, here, will be that there is an
3 alternative that is proposed and that these
4 conditions address that in such a way that this
5 project can be reconsidered as part of the
6 alternative plan, should that come to fruition.

7 So with that said, you may proceed.

8 MR. LEVIN: Okay. I can --

9 MS. SELKOE: Can you make the print
10 bigger on this and not show the whole page, so
11 people can really read it?

12 (Pause.)

13 MR. LEVIN: All right.

14 MS. SELKOE: I told Mark that I am happy
15 to just summarize them.

16 Of course, the Board has seen them and
17 the public hasn't, but the public will see them,
18 starting tomorrow.

19 The first condition, condition number 1,
20 just talks about the fact that the plans have to
21 be in conformance with the site plans and the
22 architectural plans listed in the procedural
23 requirements, where it lists all of the plans.

24 And it says the project shall include

1 demolition of three apartment buildings in
2 Hancock Village, two in the Town and one in
3 Boston.

4 Condition number 2, the project shall
5 include no more than 230 units of rental housing
6 and no more than four buildings, which buildings
7 are shown on the site plan. And no more than 422
8 parking spaces, of which, up to 352 will be
9 garage spaces.

10 Condition number 3 lists the total number
11 of bedrooms at 454 and has a chart that lists the
12 number of units and the number of bedrooms.

13 Condition number 4, it talks about the
14 waivers that they have in Exhibit 1, which this
15 Board has seen previously.

16 Then the next several conditions all have
17 to do with affordable housing. And it says that
18 all of the units will be eligible for inclusion
19 in the subsidized housing inventory. And then it
20 goes on to say that at least 20 percent shall be
21 occupied or rented by households
22 earning 50 percent or less or, alternatively, at
23 least 25 percent shall be occupied and rented by
24 households earning 80 percent or less than AMI.

1 And then it goes on to talk about what
2 the guidelines say about how those will be
3 distributed.

4 Condition number 7, in accordance with
5 the guidelines, there will be preference of
6 renting up to 70 percent of the affordable units
7 to residents of the town, and that includes
8 employees, employees of businesses located in the
9 town, et cetera.

10 Number 8, all leases shall include
11 language stating that tenants may not use any
12 rooms, other than bedrooms, for sleeping
13 purposes.

14 Condition number 9, after the subsidizing
15 agency has given written notice to the Town that
16 the subsidy will expire, the applicant shall
17 enter into a permanent restriction regulatory
18 agreement with the Town, which the applicant
19 shall record at the registry of deeds.

20 The project has to remain rental, in
21 perpetuity. The affordable units have to be in
22 perpetuity, and all of the units have to be
23 included in the SNHI.

24 Number 10, when that regulatory agreement

1 takes effect, the affordability requirements
2 shall be monitored and enforced by the Town.

3 Number 11, subject to the requirements of
4 the subsidizing agency to monitor and enforce
5 everything under this agreement, they shall
6 provide copies to the Select Board. And it goes
7 on to the subsidizing agency.

8 And that paragraph is quite lengthy, but
9 it is technical.

10 Number 12, unless otherwise required 6by
11 buy the subsidizing agency, the affordable units
12 shall be dispersed throughout the project and
13 have the same bedroom ratio or mix.

14 And now, the next subject is
15 architecture, number 13.

16 MR. ZUROFF: Polly, can I ask a question
17 about that condition?

18 MS. SEKLOE: Number 12?

19 MR. ZUROFF: The specified units that are
20 subsidized units, or the affordable units, can
21 they be rotated throughout project? Or are they
22 specified from get-go and they stay that way?

23 MS. SEKLOE: I will ask Marc that
24 question, with what they plan to do. I think

1 they can be rotated, can't they?

2 MR. LEVIN: So what we typically do is we
3 fix them. We sit down with the planning
4 department and agree on which units will be
5 affordable. But there is a little hitch in that.
6 They can't remain fixed in all circumstances,
7 because, if the person's income level goes up and
8 disqualifies them for the unit, they can -- they
9 can't be tossed out. They have to be allowed to
10 stay, which means you have to identify another
11 unit in its place, and there is a mechanism for
12 that.

13 MR. ZUROFF: So to clarify. Let's assume
14 that one unit is no longer qualified -- the
15 tenant no longer qualifies for affordable housing
16 benefits. You get to choose another unit,
17 similar layout or similar size?

18 MR. LEVIN: There is language that would
19 have to be agreed. Comparable.

20 MS. SEKLOE: I would think that you would
21 show that to the Town.

22 MR. LEVIN: It is comparable unit.

23 MR. ZUROFF: So again, the housing units
24 within the project are all basically the same

1 finish, the same amenities within the units.

2 There aren't specified units that are for
3 affordable housing?

4 MR. LEVIN: Well, there are.

5 MR. ZUROFF: To start, there are.

6 MR. LEVIN: To start, yes.

7 MR. ZUROFF: But they are not different
8 from the other units?

9 MR. LEVIN: No. And they have to be
10 distributed, and we work that out with the
11 planning staff.

12 MR. ZUROFF: Okay. Thank you. Just
13 wanted to clarify.

14 MR. SCHWARTZ: Just to clarify one thing
15 on that, the specifics of that are
16 typically -- are included in the regulatory
17 agreement with the subsidizing agency. So from a
18 regulatory perspective, it is, really, you have a
19 choice to make under the 40B program, whether you
20 are going to have fixed units or floating units.
21 That is an option that is available to the
22 developer.

23 Chestnut Hill Realty, in conjunction with
24 the Town, I think, has chosen to do the fixed

1 unit option. And so that is what the regulatory
2 agreement will --

3 MR. ZUROFF: So if it is a fixed unit,
4 let's say, unit A in building 1 is an affordable
5 housing unit, if that tenant no longer qualifies
6 for affordable housing, do you move that tenant
7 into another unit?

8 MR. SCHWARTZ: No, that tenant gets to
9 remain there, typically, unless they exceed 140
10 percent of the area median. But until they
11 exceed 140 percent of the area median, they get
12 to stay. And then, it is up to -- the developer
13 is obligated to find the next comparable unit
14 that is available to turn into an affordable
15 unit.

16 MR. LEVIN: That said, we could offer
17 them a different unit, to not get crazy and be
18 having --

19 MR. ZUROFF: I know it is not, you know,
20 one of those puzzles that you move pieces around.

21 MR. LEVIN: It is not that common an
22 occurrence.

23 MR. ZUROFF: I get that.

24 But the reason I bring that up is because

1 I have had experience with another town where
2 there is an affordable component and they
3 literally have fixed units and, if somebody wants
4 to move from one unit to another, from an
5 affordable unit to a non-affordable unit, the
6 developer says: This is the affordable unit and
7 you either take this or you don't get it. So it
8 is not that way here.

9 MS. SELKOE: Okay. Condition number 13,
10 under architecture --

11 MR. ZUROFF: All the units are the same.
12 In this project that I am talking about, they
13 have specified units.

14 MR. LEVIN: These are going to be
15 specified units.

16 MR. ZUROFF: To start. But they are all
17 comparable units, is what I am saying.

18 MR. LEVIN: They are all comparable.

19 MR. ZUROFF: That is all I wanted to
20 know. Thank you.

21 MS. SEKLOE: Number 13, under
22 architecture, it just says that they have to
23 conform to the architectural plans that have been
24 approved by this Board.

1 Open space and landscaping, condition
2 number 14 says that there shall be no structures
3 or buildings or paved surfaces, other than those
4 shown on the site plans.

5 Number 15, the applicant shall execute
6 and cause to be recorded a restriction in favor
7 of the Town. The restriction shall run in
8 perpetuity and shall prohibit additional
9 structures or buildings or paved surfaces on the
10 site.

11 Number 16, the applicant shall
12 demonstrate, to the satisfaction of the planning
13 director, that an adequate plan for maintaining
14 and replacing, as necessary, the plantings on the
15 site. And where new plantings are proposed,
16 there should be at least 3 feet of soil depth,
17 unless not feasible. And it has to all be
18 subject to review and approval of the Town
19 arborist.

20 Number 17, the applicant shall submit
21 final landscaping plans to the planning director
22 for review, to determine that they are consistent
23 with the final plans that you have approved.

24 Number 18, all exterior lighting on the

1 site shall be installed and maintained, so that
2 no direct light or glare shines on any public
3 street or nearby single-family home.

4 Traffic and vehicular and pedestrian
5 circulation, number 19. This is the same in
6 Residences of South Brookline, that, prior to the
7 application for a building permit, the applicant
8 shall provide the Town with \$350,000, which shall
9 be segregated in an interest-bearing account, to
10 be used by the Town for roadway improvements in
11 and along Independence Drive. And then it goes
12 through some details about that.

13 MS. PALERMO: Polly, can I ask a question
14 about that?

15 MS. SELKOE: Sure.

16 MS. PALERMO: I just wanted to confirm
17 that the Town has made the business decision that
18 it is going to limit itself to the \$350,000.

19 MS. SELKOE: They have. We have
20 discussed this, and it was also part of the
21 decision for ROSB, and that was what the Town
22 agreed to.

23 MS. PALERMO: Well, ROSB was prior to
24 this proposal. So ROSB, the Town was getting

1 \$350,000?

2 MS. SEKLOE: Yes.

3 MS. PALERMO: But in this proposal, we,
4 the Town, are not getting any additional funding,
5 even though --

6 MS. SEKLOE: No. But if, for instance,
7 ROSB were not built, then it will obligate them,
8 if Puddingstone is built, to give the \$350,000.

9 MS. PALERMO: Okay. I just want to make
10 sure that that is sufficient funding to
11 compensate the Town for the additional --

12 MS. SEKLOE: Well, I did meet with
13 Peter Ditto and go over this, and they were
14 satisfied with that.

15 MS. PALERMO: Okay.

16 MS. SEKLOE: Number 20 requires a
17 transportation access plan and, in accordance
18 with the transportation access plan, guidelines
19 of the Town. It goes into details about that.

20 Number 21, after 90 days have elapsed
21 since the Town has issued the C of O, for all
22 buildings, and the applicant certifies that at
23 least 90 percent of the units are occupied, the
24 applicant shall monitor traffic and prepare a

1 traffic study to show that, you know, that
2 everything is being met the way that they had
3 said that it would be met.

4 Fire safety --

5 MR. ZUROFF: I just want to point out
6 that that condition also addresses the
7 realignment of the direction of Gerry and Sherman
8 Roads.

9 MS. SEKLOE: It does. It also -- I
10 should have said this. If they meet the warrant
11 for a traffic signal at the intersections Sherman
12 and Thornton, then they are willing to pay to
13 install that traffic signal. But that will be
14 subject to the review and approval of the
15 director of engineering and transportation.

16 MR. ZUROFF: Right. Okay.

17 MS. SELKOE: Fire safety, number 22. The
18 final plans have to conform to the site plan that
19 has been approved, and the final plans have to be
20 reviewed by the fire chief and the director of
21 engineering and transportation.

22 Specifically, the water main, sizing,
23 layout, valve and curb stop locations, water and
24 sewer lines, and the fire department access

1 routes and hydrant locations.

2 Number 23, the applicant shall certify,
3 in writing to the fire chief and building
4 commissioner, that all of the buildings have the
5 NFPA13, which is the sprinkler systems, and they
6 all have direct alarm notification to the fire
7 department and that the Sherman building includes
8 a class 1 or 3 standpipe system.

9 Stormwater. The applicant shall submit a
10 final stormwater management report and plans for
11 review to the director of engineering and
12 transportation, to ensure that the final
13 stormwater management plans are consistent with
14 the site plan that has been approved and the
15 final stormwater management report shall contain
16 an operations and maintenance plan that includes
17 a breakdown of the cost estimates for the
18 maintenance of individual components of the
19 stormwater management system. There will be no
20 standing water on the low lying areas of the site
21 allowed.

22 Number 25, they have to -- the applicant
23 has to submit buoyancy calculations demonstrating
24 a factor of safety against uplift for the

1 subsurface basement -- I am sorry -- subsurface
2 basin, not basement.

3 Number 26, the applicant shall remove
4 snow that cannot be stored on the site.

5 Number 27, when there is less than a
6 two-foot cover over catch basin connections,
7 ductile iron pipe shall be used.

8 Water. Number 28, the applicant's
9 engineer shall demonstrate, in a written
10 certification made to the satisfaction of the
11 fire chief, that for domestic and firefighting
12 purposes, there is adequate water flow and
13 pressure.

14 Number 29, prior to the C of O, the
15 applicant shall submit for review, to the chief
16 of environmental health, a mosquito control plan
17 which shall include seasonal treatment of all
18 storm drains and larvicide applied the licensed
19 pest control operators.

20 Infrastructure. Number 30, the following
21 portions of the project shall be and shall remain
22 forever private and the Town shall not have, now
23 or ever, any legal responsibility for their
24 operation, maintenance, repair, or replacement.

1 That includes on-site stormwater management
2 system, roadways, driveways, parking areas, open
3 space, snow plowing and removal, sewer,
4 stormwater and water connections, lighting, trash
5 disposal, recycling, and all site utilities,
6 including water, fire protection and gas, if
7 applicable, and, if applicable, electric,
8 telephone, and cable system.

9 Number 31, the applicant shall operate
10 and maintain all of the forgoing set forth in
11 condition 30 in good working condition and repair
12 at all times, at its sole cost.

13 Number 32, prior to the issuance of the
14 building permit, all water, stormwater, and sewer
15 shall be subject to the review and approval of
16 the director of engineering and transportation.

17 Number 33, prior to the building permit,
18 the applicant shall provide design calculations
19 for the retaining wall identified on the site
20 plan.

21 Number 34, during the construction of the
22 water, sewer, and stormwater systems, the
23 applicant's project engineer shall be on site, at
24 least weekly, to inspect the installation of all

1 such systems and on a monthly basis, certify in
2 writing to the director of engineering and
3 transportation, that all of these systems were
4 properly installed.

5 Pre-building permit review. Number 35,
6 prior to the issuance of the building permit, the
7 applicant shall demonstrate to the satisfaction
8 of the building commissioner, that final site
9 plans and architectural plans have been reviewed.

10 This is kind of like a checklist of what
11 the applicant will have to go through. So they
12 will have to go through each one of these -- what
13 it does, it lists each one of these conditions
14 that we have just read, and says that they must
15 check that off and prove that they have all been
16 done.

17 Construction. During construction, the
18 applicant shall conform to all state, local, and
19 federal regulations about noise, vibration, dust,
20 and blocking of any roads. They shall provide
21 the police, health, building, and fire with the
22 name and 24-hour telephone number of the project
23 manager responsible for construction.

24 And then, hours for operation and

1 deliveries are limited to Monday through
2 Saturday, 7:00 to 5:00. And any noise or traffic
3 complaints will be investigated by the
4 appropriate Town departments.

5 Number 37, for purposes of this decision,
6 commencement of construction shall mean the
7 applicant has begun clearing and grubbing,
8 removal of stumps and top soil.

9 Before this, the applicant shall provide
10 a construction management plan, and that would
11 include all of the typical things, like the truck
12 routes and limited work areas and that kind of
13 thing, where people -- construction workers will
14 park.

15 Number 38, ledge shall be removed at
16 least 12 inches below the storm tank systems.
17 And at 48 hours prior to installing the storm
18 tank system, the Town will inspect them to ensure
19 compliance.

20 Number 39, the applicant will make all
21 commercially reasonable efforts to ensure that
22 entire construction period, from commencement to
23 the time of C of O, for any phase, shall be no
24 more than 36 months, unless there are causes

1 beyond the applicant's reasonable control.

2 Number 40, the applicant shall ensure
3 that no erosion from the site occurs that will
4 cause deposition of soil or sediment upon
5 adjacent properties or public ways.

6 And prior to the commencement of
7 construction, the applicant shall provide the
8 director of engineering and transportation with
9 an SWPP showing the following: Catch basins,
10 site perimeter controls, specific locations of
11 stabilized construction entrances, final
12 locations of stockpile areas on erosion control
13 plans and construction detail from erosion
14 controls at perimeters of stockpiles.

15 41, the applicant shall keep in optimum
16 working order all equipment that makes sounds.

17 42, during construction, they will have
18 to give a written monthly report outlining the
19 status of the project to the director of
20 engineering and the building commissioner.

21 Number 43, during construction, the
22 applicant may post, on site, no more than one
23 temporary construction or development sign, which
24 has to be approved by the assistant director of

1 regulatory and planning.

2 44, prior to commencement of
3 construction, the applicant shall provide the
4 director of engineering and transportation with a
5 report and photographs of the conditions of
6 paving surfaces along truck routes, and then,
7 again, prior to the issuance of certificate of
8 occupancy, to ensure construction traffic has not
9 adversely affected the pavement.

10 Blasting, number 45. Prior to
11 commencement of construction, the applicant shall
12 provide the Town's fire chief and building
13 commissioner, together with the Town's
14 geotechnical blasting consultant, to be paid for
15 by the applicant, a final blasting drilling plan
16 that is consistent with the one that has been
17 already submitted. And all of it has to be in
18 accordance with federal, state, and local rules.

19 The applicant shall comply with the
20 following conditions. Prior to the initiation of
21 blasting, they will hold a public meeting. They
22 will distribute to all abutters, pre-blast
23 information. They will conduct pre-blast
24 conditions surveys.

1 And during blasting, the applicant shall
2 utilize an electronic blast initiation system and
3 will allow a member of the Town's fire department
4 to be present on the site, and also as well as
5 the project's blasting consultant. They will
6 maintain secure areas, they will utilize warning
7 signals, and they will do other safety measures.

8 The applicant shall monitor the blasts
9 with equipment located on site and at the Baker
10 School, within the Beverly Road residential
11 neighborhood, near Harvard Vanguard Medical, and
12 within the Hoar Sanctuary.

13 The project's geotechnical engineers
14 shall evaluate post rock wall stability and
15 provide recommendations for temporary rock wall
16 support as necessary.

17 The project's contractor shall submit
18 post-blast reports.

19 Preoccupancy permit review. Prior to the
20 C of O of each building, the applicant shall
21 comply with the public works department's site
22 plan review checklist and with building
23 department's certificate of occupancy process.
24 And they will have their registered architect and

1 professional engineer has to certify in writing
2 to the building commissioner, that the project
3 complies with the site and architectural plans.

4 And then there is some general
5 conditions, 47. This comprehensive permit is
6 binding upon heirs and successors, runs with the
7 land, as does all board of appeals decisions.

8 Number 48, reference to Town staff shall
9 include a designee.

10 49, if any part of this decision is held
11 invalid, it doesn't make the rest of it invalid.

12 Number 50, upon execution by the members
13 of the Board, the clerk of the Board is directed
14 to file this decision with the Town clerk and
15 notify the applicant.

16 Any person aggrieved may appeal.

17 Subsequent to the end of the applicable
18 appeal periods and prior to commencement, the
19 applicant shall record the decision in the
20 Norfolk registry of deeds.

21 This comprehensive permit shall expire if
22 construction is not commenced within three years
23 from date of this decision -- that this decision
24 becomes final.

1 54, if the applicant revises any of the
2 site or architectural plans, it shall present the
3 revised plans to the Board in accordance with the
4 law.

5 Number 55, the comprehensive permit may
6 be transferred by the applicant only upon
7 compliance with the requirements of 760 CMR.

8 56, prior to making an application for
9 building permit, the applicant shall deposit
10 \$28,000, adjusted for inflation, in a segregated
11 account. Funds to be used by the building
12 department and division of engineering and
13 transportation to cover the cost of plumbing, gas
14 and electrical inspections, and engineering fees.

15 Number 57, all utilities shall be
16 underground.

17 58, applicant shall pay for the Town's
18 cost of police and fire details.

19 Number 59, all conditions are to be
20 interpreted and enforced to the extent permitted.

21 Number 60, prior to the issuance of a
22 building permit, the applicant shall submit a
23 preliminary rubbish and recycling plan to the
24 chief of environmental health for review and

1 determination of compliance with Town
2 regulations. And then it goes through the
3 details of that trash plan.

4 In number 61, if the applicant
5 successfully obtains zoning relief and all of the
6 necessary permits and approvals required to
7 construct the alternative project, up to and
8 including a building permit, each issued by the
9 applicable governing authority without any
10 material conditions that are unacceptable to the
11 applicant and with the appeal periods expired,
12 then the applicant shall return to the Board to
13 request a modification that eliminates the infill
14 building and adjusts, to the extent necessary,
15 all related development, construction, the
16 housing production aspects of the project, such
17 as parking, stormwater, paved surfaces.

18 In such a case, provided the Board
19 determines the request for modification is
20 materially consistent with the alternative site
21 plan, it will consider such a modification to be
22 insubstantial, because the alternative project
23 will obviate the need for the housing units
24 contained in the infill buildings.

1 63, the project may be constructed in
2 multiple phases or subphases.

3 Number 64, prior to the commencement of
4 construction, the applicant shall diligently
5 pursue and obtain all necessary approvals to
6 construct a playground at Hancock Village in the
7 off-site location. If the applicant is unable to
8 obtain that, the applicant will construct a
9 playground on the site in the area shown on the
10 alternative play area.

11 Construction of such playground shall be
12 substantially completed within one year of the
13 date of issuance of the final C of O.

14 And that is it.

15 MR. ZUROFF: Okay.

16 That is lengthy, it is complicated, and
17 we do expect that the public will have a chance
18 to review them and comment on them after they are
19 posted on the public website. So we are not
20 going to act on those -- this proposed
21 decision this evening.

22 I think we have had a chance to comment
23 on questions as they are presented, and we will
24 also be going through them comprehensively before

1 the next meeting, so that, if we have further
2 comments, we will make those comments at that
3 point.

4 Do you have any comments today?

5 MS. SEKLOE: Maybe the public might want
6 to.

7 MR. ZUROFF: I am going to, but I just
8 wanted to know if the Board had any further
9 comments.

10 MR. HUSSEY: Not me.

11 MS. PALERMO: No, I do not.

12 MR. ZUROFF: Okay. Then we will take
13 this time to offer the public an opportunity to
14 address what we have been presented. I know that
15 it is a lot to take in and you probably want more
16 time with them. But feel free to step up and
17 tell us your concerns.

18 We are getting close to the end of the
19 process, so we want to hear from you, as much as
20 possible.

21 MS. LEICHTNER: Hello, again.

22 Judy Leichtner, precinct 16 town meeting member.

23 I actually have some questions. I mean,
24 you have heard our concerns in terms of the size

1 of this project and the fact that this project
2 has grown from the original application, which is
3 certainly concerning and something that does not
4 usually happen. I have not seen it happen in any
5 other project in Brookline. And that is
6 disappointing that that is where we are.

7 But I did have some specific questions.
8 One, about the playgrounds. I would like to know
9 the size of the playgrounds, how one compares to
10 the other. That didn't -- it was hard to see.
11 And I also wanted to know if, in fact, the 40B
12 outline changes due to the consideration, how
13 that might either affect the size of the
14 playgrounds. Does the playground then fit within
15 the 40B -- the new 40B lines? That was hard to
16 tell, based on the pictures and the information
17 that we have gotten about how they would like
18 that special permit to run.

19 I was interested in what you were saying,
20 Ms. Palermo, about the money for the
21 transportation costs, and is that -- considering
22 that we are now adding another 230 units, is the
23 amount of money still adequate for everything
24 that needs to be done. And that was a question

1 that I had, as well, and would like to have that
2 addressed.

3 There doesn't seem to be anything in here
4 about conditions that have to do with Boston.
5 And we know that this project has some things
6 that have to be done in Boston, in order for it
7 to be an appropriate project. They have to get
8 demolition of certain projects there; is there
9 stormwater that occurs, actually, in the Boston
10 part. And I don't see any of that addressed here
11 and wondered if that is something that would be
12 something that you might want to address.

13 I did have a question about the retaining
14 wall. It doesn't -- where that retaining wall
15 is, that we have referred to on number 33. It
16 was not clear.

17 And my one other concern has to do with
18 this tradeoff of the 36 units and how that will,
19 unfortunately, affect the SHI for the Town. 36
20 units in a 40B all count. The 36 units in the
21 tradeoff, only 15 percent of them will count,
22 which is what, five or six units? And I don't
23 know how good a trade that is for the Town, even
24 though it may be nice in terms of, you know, how

1 everything -- the layout. But I do think that
2 that is not a particularly good trade for the
3 Town of Brookline, to lose units, in terms of
4 the SHI.

5 And I also -- I don't know -- I haven't
6 done the math, but, again, is there a difference
7 between the 20 percent of units that have to be
8 affordable under the 40B, versus the inclusionary
9 zoning that would be part of a new Gerry Road
10 building, which is only 15 percent. And so that
11 seems to be a tradeoff, too. It is probably only
12 one unit, but.

13 So those are my questions and concerns,
14 just, you know, from trying to do this quickly.

15 MR. ZUROFF: You will have an opportunity
16 to further elucidate your questions.

17 MS. LEICHTNER: Right. But I figured, if
18 you had those questions, maybe they can be
19 answered.

20 MR. ZUROFF: They are all legitimate, I
21 believe, and I am sure the developer can address
22 at least some of those, maybe not to your
23 satisfaction or to our satisfaction, but we are
24 willing to hear.

1 MS. LEICHTNER: Thank you.

2 MR. ZUROFF: Anybody else, before the
3 developer addresses those?

4 Then, Marc, you may address them.

5 MR. GELLER: So you can see, I don't have
6 the exact square footage. We can get that
7 information for the next meeting, if we are
8 coming back again.

9 But I think you see in this one, we have
10 a lot more area to play with on that one, so we
11 are able to put in a larger playground. When we
12 look at this one, you can see it is smaller. I
13 think what we are trying to do is a get as much
14 play value as we can. So the play equipment that
15 we will select will have an equal play value, but
16 they won't have as much space to run around the
17 play equipment.

18 MR. ZUROFF: What about --

19 MR. LEVIN: So whether -- if it doesn't
20 fit on the 40B lot, we will include it in the
21 alternative plan, so that it gets built, in
22 either event.

23 MR. ZUROFF: I understand that
24 that -- the only -- the alternative project will

1 include the playground on the other lot?

2 MR. LEVIN: Yes, if necessary.

3 MR. ZUROFF: And that will you provide
4 whatever cross-use access, easements, rights of
5 way, et cetera, that would be necessary.

6 MR. LEVIN: Yes. And, from a practical
7 standpoint, if we succeed in that 40A process, we
8 will have a community center. And clearly, that
9 will be accessible to the residents of the 40B,
10 without easements. It will just be part of
11 their --

12 MS. PALERMO: Can I also point out that,
13 if you go ahead with the alternative plan, then
14 the playground could be located where one of the
15 infill buildings is located and still be on the
16 40B lot?

17 MR. LEVIN: We are committed to having a
18 playground in the alternative lot, if -- that is
19 probably the best way to do it, than to try to
20 cram it into the reduced 40B lot.

21 MR. ZUROFF: What about the question of
22 the Boston regulatory authorities?

23 MR. LEVIN: We should probably put some
24 language in there, that we will get all of the

1 applicable permits that are required to build the
2 project, from the City of Boston.

3 MR. ZUROFF: To clarify that -- and it is
4 a reasonable clarification. I know you need a
5 demolition permit to take down a building that is
6 in Boston. But as far as the stormwater
7 management, is there an effect from taking down
8 the building that Boston has oversight on?

9 MR. GELLER: No, you mean, in terms of
10 stormwater?

11 MR. ZUROFF: Yes.

12 MR. GELLER: No.

13 MR. ZUROFF: The question has been
14 raised. It is a legitimate question.

15 MR. GELLER: We mentioned it, actually, I
16 think, when we talked about the permits that are
17 required. Boston Water & Sewer requires
18 connection permits for all drainage in the City
19 of Boston, so we would have to get a Boston
20 Water & Sewer permit.

21 MR. LEVIN: As well as a permit for the
22 swimming pool.

23 MR. ZUROFF: Oh, right.

24 And the retaining wall, that is the wall

1 between the big building and the driveway?

2 MR. LEVIN: No, I don't think so. I
3 think -- do you know which one it is?

4 MR. GELLER: What was the question?

5 MR. LEVIN: The retaining wall that needs
6 to be --

7 MS. STEINFELD: Number 33. Reference to
8 number 33. It is right here.

9 (Pause.)

10 MR. LEVIN: That's right. That is where
11 it is.

12 MR. ZUROFF: Oh, it is on that side?

13 MR. LEVIN: Yes, you can see it.

14 MR. ZUROFF: Okay.

15 MR. GELLER: It is just because we have a
16 drainage system underneath that parking lot, so
17 it is just making sure that that drainage system
18 doesn't impact that wall.

19 MR. ZUROFF: Okay.

20 MS. STEINFELD: Alison Steinfeld,
21 planning director. If I may, I would like to
22 respond to the issue regarding the \$350,000 for
23 completing streets.

24 These conditions, including this specific

1 one, have been fully vetted by the Town engineer,
2 and he is satisfied that \$350,000 is reasonable,
3 and he did not seek to recommend anything more to
4 the ZBA.

5 I should note that the fact that
6 additional tenants will now live on Hancock
7 Village does not affect the design of
8 Independence. That is -- I was going was to
9 say -- independent of the number of people.

10 MR. ZUROFF: And the transportation
11 department has fully vetted this plan?

12 MS. STEINFELD: Yes. I should say that
13 all relevant departments, including Town counsel,
14 have fully vetted, not only the plan, but
15 definitely the conditions that have been proposed
16 by the planning department.

17 MR. ZUROFF: Thank you.

18 MR. LEVIN: The peer reviewer did, as
19 well.

20 MR. STEINFELD: Yes, our peer reviewer.
21 Well, he is not the peer reviewer, but the
22 traffic consultant.

23 MR. LEVIN: No. The traffic peer
24 reviewer.

1 MS. STEINFELD: Oh, the traffic peer
2 reviewer, yes.

3 MR. ZUROFF: All right. Then I think, as
4 I said, these proposed decisions and conditions
5 will be posted on the website. We invite the
6 public to review them. As I said, we will also
7 be reviewing them carefully at our next meeting,
8 which will be October 24th.

9 MS. SELKOE: As you are continuing this
10 hearing.

11 MR. ZUROFF: So I haven't gotten to that,
12 yet.

13 But at the next meeting, we will further
14 invite public comment. The Board will be able to
15 make further comments. And it is our hope and
16 intent to, at that meeting, vote on this and
17 finalize our decision. So without further
18 discussion, this meeting is adjourned and
19 continued to October 24th, here in this -

20 MS. SELKOE: Actually, we won't be in
21 this room, because this room is not available,
22 but we will be in room 111, on the first floor of
23 Town Hall.

24 MR. ZUROFF: Thank you all for coming.

1 Thank you for everyone that has been here, and we
2 will see you in a couple of weeks.

3 (Whereupon, at 8:04 p.m., the hearing was
4 adjourned.)

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1 COMMONWEALTH OF MASSACHUSETTS

2 Suffolk, ss.

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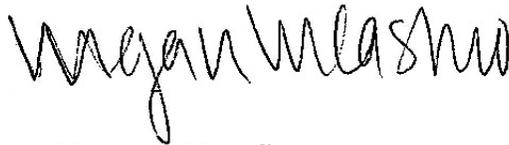
4 I, Megan M. Castro, a Notary Public in
5 and for the Commonwealth of Massachusetts, do
6 hereby certify:

7 That the hearing that is hereinbefore set
8 forth is a true record of the testimony given by
9 all persons present.

10 IN WITNESS WHEREOF, I have hereunto set
11 my hand this 26th day of October, 2018.

12

13



Megan M. Castro

15

Registered Professional Reporter
Certified Shorthand Reporter No. 152614

16

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My Commission expires:

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July 31, 2020

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<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$28,000 34:10</p> <p>\$350,000 22:8,18 23:1,8 44:22</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 13:19 14:14 19:4 25:8</p> <p>10 15:24</p> <p>11 16:3</p> <p>12 16:10,18 29:16</p> <p>13 16:15 20:9,21</p> <p>14 21:2</p> <p>140 19:9,11</p> <p>15 21:5 39:21 40:10</p> <p>16 21:11 37:22</p> <p>17 21:20</p> <p>18 21:24</p> <p>19 22:5</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 14:4</p> <p>20 9:10,15 14:20 23:16 40:7</p> <p>21 23:20</p> <p>218-unit 6:3</p>	<p>22 24:17</p> <p>23 25:2</p> <p>230 14:5 38:22</p> <p>24-hour 28:22</p> <p>25 14:23 25:22</p> <p>26 26:3</p> <p>265-299 3:6</p> <p>27 26:5</p> <p>28 26:8</p> <p>29 26:14</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 14:10 21:16 25:8</p> <p>30 26:20 27:11</p> <p>31 27:9</p> <p>32 27:13</p> <p>33 27:17 39:15 44:7,8</p> <p>34 27:21</p> <p>35 28:5</p> <p>352 14:8</p> <p>36 29:24 39:18,19,20</p> <p>37 29:5</p> <p>38 29:15</p>	<p>39 29:20</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 14:13</p> <p>40 30:2</p> <p>40A 42:7</p> <p>40B 3:6 5:21 6:13 18:19 38:11,15 39:20 40:8 41:20 42:9,16,20</p> <p>41 30:15</p> <p>42 30:17</p> <p>422 14:7</p> <p>43 30:21</p> <p>44 31:2</p> <p>45 31:10</p> <p>454 14:11</p> <p>47 33:5</p> <p>48 29:17 33:8</p> <p>49 33:10</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50 14:22 33:12</p> <p>54 34:1</p> <p>55 34:5</p> <p>56</p>	<p>34:8</p> <p>57 34:15</p> <p>58 34:17</p> <p>59 34:19</p> <p>5:00 29:2</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>60 34:21</p> <p>61 35:4</p> <p>63 36:1</p> <p>64 36:3</p> <p>6by 16:10</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 15:4</p> <p>70 15:6</p> <p>760 34:7</p> <p>7:00 29:2</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 15:10</p> <p>80 14:24</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 15:14</p>
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