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COMMONWEALTH OF MASSACHUSETTS

TOWN OF BROOKLINE

ZONING BOARD OF APPEALS HEARING

Held on October 24, 2018 at 7:01 p.m.  
Town of Brookline Town Hall  
333 Washington Street  
Brookline, Massachusetts 02445

RE: 265-299 Gerry Road (Puddingstone at Chestnut Hill)

BOARD MEMBERS:

Mark Zuroff  
Lark Palermo  
Chris Hussey

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

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MR. ZUROFF: Good evening, ladies and gentlemen. I'm calling to order this meeting of the Zoning Board of Appeals. My name is Mark Zuroff. I apologize for keeping you waiting a few minutes. Brookline hasn't done anything to ameliorate the traffic on the way to the town hall. So with that being said, we are here this evening for a meeting concerning the project called Puddingstone 265-299 Gerry Road. Tonight, well, first, let me introduce board members sitting with me for the record. To my left is Lark Palermo, to her left is Christopher Hussey, and we have Polly Selkoe from the Planning Department here.

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20

I remind everyone who wishes to speak tonight that it is being recorded, as all of our hearings are, and so that if you wish to speak for the record, does that microphone work?

21

AUDIENCE MEMBER: No.

22

23

24

MR. ZUROFF: No. Then just shout it out. We want to hear you, and we want to make sure that we have an accurate transcription.

1 MS. STEINFELD: Oh, so it technically  
2 isn't being recorded; it is being transcribed.

3 MR. ZUROFF: Transcribed.

4 MS. STEINFELD: And we're not on  
5 television.

6 MR. ZUROFF: We're not on television.  
7 I'm glad to hear that. I didn't do my makeup.

8 So that being said, the agenda for this  
9 evening is that we will have -- we have before us a  
10 proposed decision, which includes the proposed waivers  
11 that we've already discussed. It is my intention to  
12 go through the decision paragraph by paragraph to see  
13 whether the board members have any comments on it, to  
14 hear --

15 MS. SELKOE: Though you may remember at  
16 our last hearing, I did read through each one of the  
17 conditions.

18 MR. ZUROFF: Okay. But at the time, we  
19 had not had a chance to --

20 MS. SELKOE: Well, it hadn't been  
21 online.

22 MR. ZUROFF: And it hadn't been  
23 available to --

24 MS. SELKOE: But it is now and also

1 online hadn't been all the attachments, which are  
2 there now. So at the last hearing people from the  
3 public couldn't comment because they hadn't been  
4 online.

5 MR. ZUROFF: Right. And I have some  
6 comments on them, too. So I'd like to go through the  
7 decision. We're not going to read the entire  
8 decision, but we're going to go through it paragraph  
9 by paragraph. If the board has any comments, they can  
10 make them. We will then hear from the development  
11 team, if they have any comments or questions. We will  
12 also hear from the public as to the decision itself.  
13 And then we'll discuss whether we're going to come to  
14 a final decision tonight. We may, depending on  
15 whether the time allows.

16 So without any further delay, lady and  
17 gentleman, you want to go through the decision, you  
18 may have some comments. If you do, let's hear them.

19 MS. PALERMO: Well, I have actually --  
20 I'd like to get a better understanding as to the  
21 number of units --

22 MS. STEINFELD: A little bit louder,  
23 please.

24 MS. PALERMO: A little louder, okay.

1 MS. SELKOE: You know, because the  
2 system in back makes so much noise.

3 MS. PALERMO: Okay. The number of units  
4 in Hancock Village, according to this decision, is 789  
5 with 530 in Brookline. And I keep in mind the fact  
6 that we do have this entire project that this is a  
7 piece that fits in it. And in the third paragraph of  
8 the findings, there is an explanation of what was part  
9 of the original or what was the original project, and  
10 that it would create 230 units of housing, correct?

11 MR. ZUROFF: That's what it says.

12 MS. PALERMO: And then the new proposal,  
13 which is what I'd like confirmation of, the proposal  
14 we're dealing with now, has included within it --

15 MR. SCHWARTZ: Paragraph two of the  
16 findings was the original project and paragraph two  
17 thirty is the revised project.

18 MS. PALERMO: Thank you. Sorry, I  
19 misspoke. It was 226. I'm sorry, I misspoke, 226,  
20 and then this new proposal is 230. And the reason I'm  
21 raising this is I've heard on several occasions from  
22 the neighborhood that the number of units is actually  
23 increasing, and unless my math is wrong, if you look  
24 at all of Hancock Village, this proposal is fewer

1 units than the one that was originally proposed, and  
2 that's why I want confirmation.

3 And I'll tell you how I got there, and  
4 maybe you can correct me if I'm wrong.

5 Originally, you proposed 226 rental  
6 units and that included 186 in the large building and  
7 12 in the new apartment units, and you were renovating  
8 28 apartments in 3 existing two-story buildings, and  
9 that's how you came up with 226.

10 Now, you're building a new building --  
11 your proposal is to build a new building that will  
12 continue -- let me find the number.

13 MR. ZUROFF: Two hundred and eighteen  
14 units.

15 MS. PALERMO: Two hundred and eighteen  
16 and twelve in the new construction, and you are  
17 demolishing three buildings.

18 MR. LEVIN: Oh, yes, absolutely.

19 MS. PALERMO: You're demolishing three  
20 buildings, and those three buildings, as I understand  
21 it, have a total of -- where is the total? I think  
22 it's 22.

23 MR. SCHWARTZ: Twenty-two.

24 MS. PALERMO: Twenty-two units, fourteen

1 of which are in Brookline.

2 MR. LEVIN: Correct.

3 MS. PALERMO: So if I take 230 and I  
4 subtract 14, I end up with a total of 216 units in  
5 Brookline. If I subtract the full 22, then I end up  
6 at Hancock Village with a proposal, in essence, to add  
7 208 units which is -- am I missing something? Which  
8 is less than 226 units.

9 MR. LEVIN: That's correct.

10 MS. PALERMO: That's what I wanted to  
11 know. So I'm looking at this as I have said  
12 previously as a whole development, a piece of which is  
13 the 40B and what impact does that -- this 40B have on  
14 the whole development, the traffic, the pedestrian  
15 traffic, the motor vehicle traffic, all of that is  
16 driven by the number of units. So in fact, the number  
17 of units really is less than what you originally  
18 proposed to do; is that right? Because you're  
19 demolishing three buildings.

20 MR. SCHWARTZ: I think it's right.

21 MS. PALERMO: Maybe not.

22 MR. LEVIN: The way you say it is right.

23 MR. SCHWARTZ: But there's one thing  
24 just to be clear about it. In the original proposal,

1 there was the renovation -- part of that proposal was  
2 the renovation of 28 buildings.

3 MS. PALERMO: Which wasn't really  
4 adding.

5 MR. SCHWARTZ: Right, so when we talked  
6 about 226 total units, that included 28 renovated  
7 units. So those units exist but they were being  
8 renovated.

9 MR. ZUROFF: So the net --

10 MR. SCHWARTZ: So the net is -- so if  
11 you really wanted to be totally apples to apples in  
12 terms of the total number of new units, I think your  
13 analysis is correct. The total number of new units in  
14 our proposal now after you take out the demolition is  
15 208, Hancock Village as a whole.

16 If you look at the total number of new  
17 units in the original proposal, new units, in other  
18 words that would be -- I believe it's 196 because the  
19 28 that you're referring to are existing units that  
20 would've been renovated.

21 MS. PALERMO: Right.

22 MR. SCHWARTZ: So the point is it's not  
23 -- you can look at it in any number of ways. It's --  
24 from my own point of view, it's pretty much a wash in

1 terms of the total number of units, but I just want to  
2 be clear that as a response to the way you were  
3 analyzing it.

4 MS. PALERMO: Thank you. No, well, I was  
5 doing this quickly this afternoon, and I thought, "Am  
6 I doing this right?" But you're right because -- but  
7 it does seem to be almost equivalent the long and  
8 short of this, then. Okay.

9 MR. ZUROFF: The original proposed as  
10 opposed to this one?

11 MS. PALERMO: Correct.

12 MR. ZUROFF: Okay. I think you have the  
13 numbers right. That's all I'll say.

14 MS. PALERMO: Thank you. That was  
15 actually the only comment I have.

16 MR. ZUROFF: All right. I'm going to go  
17 through. My question on -- with regard to paragraph  
18 five was it refers to twenty percent of the units in  
19 the budget for rental by households earning at or  
20 below fifty percent of the Boston area median income.

21 My clarification question is this.  
22 Boston area median income encompasses how large an  
23 area? It's not just --

24 MR. SCHWARTZ: It's technically the

1 Boston/Cambridge/Quincy metropolitan statistical area,  
2 which is the HUD determination for what our  
3 metropolitan statistical area is essentially in the  
4 Greater Boston area. That's how it's referred to  
5 technically. I'm sorry? Yeah, it's most of eastern  
6 -- it's the bulk of what we would call Greater  
7 Boston/Eastern Massachusetts not including, you know,  
8 the South -- South Shore or North Shore, clearly,  
9 Worcester County or west, but that's the whole area  
10 that we're talking about. If you drew a line pretty  
11 much, you know, from Quincy going up, probably to, you  
12 know, I would say Chelsea, you know, that area and  
13 kind of --

14 MR. ZUROFF: Inside 128, basically.

15 MR. SCHWARTZ: Inside 128. That's  
16 pretty much consistent.

17 MR. ZUROFF: My point in asking that is  
18 the calculations are based not on Brookline or Newton  
19 but on the entire area, which does make it a little  
20 bit more affordable comparatively to Brookline. I  
21 just wanted to be clear on that.

22 And my next question has to do with in  
23 paragraph eight it says that this is considered a  
24 single lot. Has there been already a subdivision?

1 Was there a need for approval for the subdivision that  
2 created this lot?

3 MR. SCHWARTZ: No, it's by a 99-year  
4 ground lease which is part of our -- under the  
5 Brookline zoning, 99 ground lease is considered to a  
6 separate lot for zoning purposes.

7 MS. SELKOE: But is there such as a  
8 ground lease there?

9 MR. SCHWARTZ: There is a proposal to  
10 enter into a ground lease which would be consummated  
11 before we start.

12 MR. ZUROFF: So that would have to be a  
13 precondition to the issuance of this permit, no? It's  
14 not in the conditions, but I think it should be added.

15 Okay. Moving on, any other -- I have a  
16 comment on number 12. Do you have anything?

17 MS. PALERMO: No.

18 MR. ZUROFF: This is the first reference  
19 in the decision to the alternative project, and I'm  
20 wondering whether this language actually depicts what  
21 was discussed and what we've all sort of understood,  
22 because I understand you intend to apply for the  
23 necessary permits for the alternative development. I  
24 did not understand originally, and maybe I missed it,

1 that that alternative plan was that you were creating  
2 36 new units, or you're renovating 36 new units?

3 MR. SCHWARTZ: Creating.

4 MR. ZUROFF: And where was that?

5 MR. LEVIN: In place of the Gerry  
6 garage.

7 MR. ZUROFF: Oh, so it's replacing the  
8 garage. All right. Maybe I missed that.

9 MR. SCHWARTZ: But it's the removal of  
10 what we call the infill building. So those three  
11 buildings --

12 MR. ZUROFF: No, I understand the three  
13 -- the twelve units are disappearing as part of that,  
14 but I didn't understand, and maybe I missed it, that  
15 you're adding thirty-six new units. But they're on  
16 another parcel, correct? Okay.

17 In paragraph one of the conditions,  
18 nowhere in here -- I know you're doing something with  
19 Boston -- you're demolishing a building in Boston.  
20 Should this not be subject to Boston approval for the  
21 demolition of a building there?

22 MR. SCHWARTZ: We added -- there was a  
23 condition added I believe that all the necessary  
24 approvals would be obtained from the city of Boston.

1 MS. SELKOE: Right. I think we added it  
2 towards the end.

3 MR. ZUROFF: I may have missed that. I  
4 do recall a paragraph that refers to all necessary  
5 approvals from all authorities.

6 MR. SCHWARTZ: Yeah, I think we added  
7 specifically a reference to the city of Boston in  
8 that, but I'll try and find it.

9 AUDIENCE MEMBER: It's on page 13, item  
10 J of 35J.

11 MR. SCHWARTZ: Yes. Thank you.

12 MR. ZUROFF: Oh, okay. It is covered.  
13 Thank you. Sorry. All right. Let's keep going.

14 My question on number seven, I know you  
15 give preference to Brookline residents for the  
16 affordable units. It says up to 70 percent. Is that  
17 standard or can we require 70 percent?

18 MS. SELKOE: Which number are you on?

19 MR. ZUROFF: Number -- paragraph seven,  
20 top of page seven.

21 MS. SELKOE: Alison, I don't know you  
22 answered that.

23 MS. STEINFELD: I believe it's standard  
24 language that we used in the past.

1 MR. ZUROFF: So it's a preference, but  
2 it's not a requirement?

3 MR. SCHWARTZ: Yeah.

4 MS. STEINFELD: It can't be a  
5 requirement.

6 MR. SCHWARTZ: If I could just -- DHCD -  
7 - the town -- the process is the town needs to submit  
8 kind of a justification for a local preference, and  
9 then DHCD or the subsidizing agency has to approve  
10 that, and, you know, what the rationale is and how  
11 local preference is defined. And I think it's  
12 typically up to 70 percent, so it's not a mandate for  
13 70 percent. But the concern that the state has is  
14 that fair housing -- in coming up with a local  
15 preference -- that fair housing requirements are met,  
16 so in terms of, you know, diversity of the population  
17 that lives in the affordable units. So they will  
18 review the town submission. I'm not sure if the town  
19 has made a submission for local preference in the  
20 past.

21 MS. STEINFELD: Yes.

22 MR. SCHWARTZ: For permit projects but  
23 presumably it will be a similar exercise. But this is  
24 the standard language that is used.

1 MS. STEINFELD: It's a difficult  
2 threshold to make, but we've been able to make it so  
3 far.

4 MR. ZUROFF: Oh, all right.

5 MS. STEINFELD: But, obviously, there  
6 are no assurances, but the state is very strict about  
7 it.

8 MR. ZUROFF: All right. I appreciate  
9 that it's standard, and, you know, obviously, it's my  
10 preference that as much of the population can be local  
11 as could be.

12 On number 13, I know that it says that  
13 the buildings in the project shall conform to the  
14 architectural plans. Is that specific enough? Or  
15 should we say that the building plans will conform as  
16 closely as possible to the architectural  
17 preservation --

18 MS. SELKOE: Well, actually, I mean, I  
19 think you've raised a good point. Perhaps we should  
20 have a date to review the plan.

21 MR. ZUROFF: In as much specificity as  
22 possible.

23 MR. SCHWARTZ: Well, the architectural  
24 plans are actually defined on page two of the

1 decision. So there's a specific reference to in the  
2 plan set of July 13, 2018 as the final plan set for  
3 the architectural. So those are defined.

4 MR. ZUROFF: Those are the last ones  
5 that we have seen?

6 MR. SCHWARTZ: Correct.

7 MR. ZUROFF: But, again, I think for  
8 clarification, it should be that rather than saying  
9 the buildings in the project and the units in the  
10 building shall conform to the architectural plans,  
11 that the building plans themselves will be in  
12 compliance with the architectural presentations that  
13 we've had, those plans. I mean, all we have is the  
14 pictures, which are nice, but, you know, the building  
15 plans themselves, which you're actually getting a  
16 permit for, should be -- could be -- should be the  
17 same or matchup with the architectural plans. I would  
18 assume that's not a problem, but it doesn't actually  
19 say that.

20 MR. SCHWARTZ: I have no objection. We  
21 don't have an objection to doing that. I think the  
22 intent of this language is the first sentence says,  
23 "When you build these buildings, they have to be in  
24 accordance with these plans that you've submitted."

1 MR. ZUROFF: Which implies that --

2 MR. SCHWARTZ: Well, then the second  
3 sentence, "Well, how is the town going to assure  
4 itself that that's the case?" And what the second  
5 sentence in this condition says is, "The way the town  
6 is going to assure itself that that's the case is that  
7 the applicant has to submit final plans for review for  
8 consistency with the plans that we submitted as part  
9 of this process." So that was the intent. But if you  
10 want to change the language along the lines of what  
11 you said, we certainly have no objection.

12 MR. ZUROFF: I'm open --

13 MS. STEINFELD: I would suggest that's  
14 it's stronger -- it's written in the buildings, the  
15 actual buildings as opposed to just the plans.

16 MR. ZUROFF: Yeah, but they're going for  
17 a permit to build, and the only thing that they get  
18 approval for is the plans for those buildings. I  
19 understand the end result is the same, but, you know,  
20 after they've built it, it's too late to say, well,  
21 they don't comply. I'm just trying to be as clear as  
22 possible.

23 At the same point on number 17, the  
24 final landscaping plans, are they subject to

1 somebody's approval? They're consistent, but who  
2 actually signs off on them?

3 MR. SCHWARTZ: That would be the  
4 planning director.

5 MS. STEINFELD: For review and approval?

6 MR. ZUROFF: Yes.

7 MS. PALERMO: Yes, to determine that  
8 they're consistent with the plans that were presented  
9 to us, which is typical.

10 MR. ZUROFF: And it's typical. Again,  
11 point of clarification on paragraph 23, "Applicant to  
12 certify by the fire chief and building commissioner  
13 that the buildings have been enhanced with sprinkler  
14 systems, et cetera." Does it go beyond that? Do they  
15 actually inspect it to make sure that they do actually  
16 have -- are certifying that they have?

17 MR. HUSSEY: They do that to sign off on  
18 the building permit closed out the building department  
19 does do inspection.

20 MS. SELKOE: For certificate of  
21 occupancy, they'll come in.

22 MR. ZUROFF: No, I know that's probably  
23 the case but I didn't see it here. Just whether it  
24 should be subject to the final inspection by the fire

1 department or chief inspector or whomever has  
2 jurisdiction.

3 MR. SCHWARTZ: Just as a point of  
4 information, for a project like this, we kind of use  
5 the term in the trade it's going to be controlled  
6 construction, which Chris may be aware of that term.  
7 So what that means is that it's reliant on  
8 certifications from qualified professionals to the  
9 town on a regular basis as to compliance, and the town  
10 -- not to say that they don't have their own  
11 inspectors and inspections, they do, but they rely on  
12 those certifications. They're really affidavits under,  
13 you know, serious --

14 MR. ZUROFF: If that's normal practice,  
15 that's fine. I just figured --

16 MR. HUSSEY: It is a normal practice in  
17 my experience.

18 MR. ZUROFF: Okay. Then it doesn't need  
19 any further clarification.

20 I already asked that question about the  
21 demolition.

22 You can jump in at any time. I'm moving  
23 through my notes. Number 29, I just I know it applies  
24 to storm drains and control and mosquito control. I

1 don't know, and maybe the people in charge do, whether  
2 that includes monitoring the horse sanctuary to make  
3 sure that there's no runoff -- unnecessary runoff,  
4 over-runoff of pesticides or whatever.

5 MS. SELKOE: Specifically, you mean for  
6 the pesticides --

7 MR. ZUROFF: Right.

8 MS. SELKOE: -- not for the water.

9 MR. ZUROFF: And drainage. I mean, it's  
10 all part of the plan.

11 MS. SELKOE: Right.

12 MR. ZUROFF: And, again, if it's not  
13 necessary I'm just asking the question.

14 MS. SELKOE: Well, I think the point is  
15 if it runs off, it would runoff in the water as you  
16 said, and the drainage plan is going to be reviewed to  
17 make sure -- and it's already been --

18 MR. ZUROFF: It's been vetted.

19 MS. SELKOE: -- vetted by the peer  
20 consultant.

21 MR. ZUROFF: Okay. So there's no further  
22 testing necessary. Any other comments? I'm moving  
23 ahead.

24 On paragraph 44 having to do with

1 monitoring the wear-and-tear on the roads. Is there  
2 an affirmative duty on the part of the developer  
3 should there be discovered that there's damage to the  
4 roadways that they repair them?

5 MS. SELKOE: There typically is. It  
6 says, "Then again prior to issuance of a Certificate  
7 of Occupancy to ensure construction traffic does not  
8 adversely affect the pavement." So at that time they  
9 wouldn't get the CEO unless the pavement was --

10 MR. ZUROFF: Okay. Again, for  
11 clarification, I just wanted to make sure even though  
12 it's implied, and it's held over their heads that they  
13 have an affirmative duty to make repairs as necessary.

14 MS. SELKOE: Yes.

15 MR. ZUROFF: But we'll leave it alone.

16 MS. SELKOE: Yeah, I think, you know,  
17 they won't get the CEO unless it's done.

18 MR. ZUROFF: On paragraph 61. Just as a  
19 matter of clarification, again, I'm presuming that  
20 because the developer is in theory proposing an  
21 alternative plan that whatever construction is  
22 commenced will commence with the big building before  
23 they start building the infill buildings because their  
24 at least expressed intent is not to build the infill

1 buildings.

2 MS. SELKOE: I think that was their  
3 intent.

4 MR. LEVIN: The big -- the so-called  
5 the --

6 MR. ZUROFF: The Sherman building.

7 MR. LEVIN: The Sherman building. You're  
8 asking --

9 MR. ZUROFF: I mean, you're going to be  
10 doing -- I don't know if the timing of the relative --  
11 you haven't filed yet, as I understand it. So you're  
12 going to start the project once you get this permit.

13 MR. LEVIN: Yes.

14 MR. SCHWARTZ: So it is theoretically at  
15 least possible that we be -- build the Sherman  
16 building before starting and quite possible before  
17 starting the alternative project, in which case that's  
18 what we would do and once --

19 MR. ZUROFF: I mean, it makes sense for  
20 you, if you're pursuing the other project, not to  
21 start construction on buildings that may not be built  
22 soon.

23 MR. LEVIN: Correct.

24 MR. SCHWARTZ: Oh, yeah, if your

1 question is would we build the project that you're  
2 approving while we're still pursuing the alternative  
3 project, the answer is clearly no.

4 MR. LEVIN: You mean the 12 units.

5 MR. SCHWARTZ: Yeah, the 12 units. I  
6 mean, respectfully, I don't think you need to say that  
7 because we would --

8 MR. ZUROFF: No, it's a question for  
9 clarification. Theoretically, this permit gives you  
10 the right to start construction everywhere. You may  
11 be clearing the site where it may not have to be  
12 cleared, and, again, I don't know that it needs to be  
13 specified because as you say it doesn't make sense for  
14 you to do things. On the other hand, it doesn't say  
15 that.

16 MR. SCHWARTZ: Well, in part the way  
17 they ended up with this language was trying to be  
18 responsive to something you said at a prior hearing  
19 which is that you want to be careful that the board  
20 was not directing the applicant to pursue the other  
21 project, or just acknowledging that we were pursuing  
22 the other project, and if we obtained the approvals  
23 for it, then we would be coming back here for  
24 modification of this term.

1 MR. ZUROFF: For modification.

2 MR. SCHWARTZ: So that's where we ended  
3 up, which I think is fine. If you had seen fit to  
4 say, well, we direct you to pursue that other  
5 project --

6 MR. ZUROFF: I wouldn't presume to do  
7 that.

8 MR. SCHWARTZ: Then it could have led to  
9 you're saying, and you won't build this first project  
10 until you finish the process of the other one.

11 MR. ZUROFF: Because as a practical  
12 matter, I am sure you will do what is practical but,  
13 again, this permit allows you to do whatever you want  
14 under this permit. Maybe I'm just expressing  
15 thoughts, but anyway.

16 On number 63 having to do with the  
17 playgrounds. Now, this is the alternative plan versus  
18 the presented plan.

19 MR. LEVIN: Actually, there are small  
20 images here. I have them on the big screen.

21 MR. ZUROFF: The plans?

22 MR. LEVIN: Yeah, but they are in the  
23 back.

24 MS. SELKOE: They're in an attachment.

1 MR. ZUROFF: No, no, I've seen the plan.  
2 I'm fine with that. I'm just wondering it says,  
3 "Construction of such playground shall be  
4 substantially completed within one year of the date of  
5 the issuance to the final certificate of occupancy."  
6 By that time presumably you will determine which  
7 playground you're going to build, but my question is  
8 what if it's not built within a year?

9 MR. LEVIN: Well, I think that that  
10 question applies to a number of these conditions. For  
11 instance, what comes to mind is within reaching 90  
12 percent occupancy I think it is, we have to conduct a  
13 traffic study, and then if issues are raised in that  
14 study that there's some money to mitigate, you know,  
15 you can ask the same question, what if we didn't do  
16 that after you have your CEO. There's a few of those  
17 in there. We're supposed to do post --

18 MR. ZUROFF: Yeah, I see them as  
19 potential dead ends.

20 MS. SELKOE: This isn't prior to the  
21 issuance of a building permit.

22 MS. PALERMO: No, it's prior to the  
23 issuance -- well, I would assume if they failed to  
24 perform any of these conditions that the town would

1 have a cause of action against the developer.

2 MR. LEVIN: Would that not be true with  
3 any?

4 MR. ZUROFF: No, I'm sure it is. I'm  
5 just wondering what kind of enforcements, and maybe  
6 I'm just, again, asking questions I don't know the  
7 answers to. I'm just interested to know.

8 MS. SELKOE: The enforcement is by the  
9 building commissioner, and, I mean, let's say that  
10 they haven't rented all the units, then the building  
11 commissioner would make them stop until this was  
12 completely fulfilled.

13 MR. ZUROFF: Okay. Again, it was a what-  
14 if question.

15 MR. LEVIN: So we don't like to cross  
16 the building commissioner because he's got all kinds  
17 of tools that he can apply that enforce --

18 THE COURT REPORTER: Can you just speak  
19 up a little bit?

20 MR. LEVIN: I said we don't like to  
21 cross the building inspector because he has all kinds  
22 of mechanisms to make our lives miserable if we do  
23 something like that.

24 MR. ZUROFF: And I also know his plate

1 is fairly full, so he doesn't want to be involved in  
2 the enforcement of these things.

3 MR. LEVIN: Nor do we.

4 MR. ZUROFF: All right. That's the  
5 summation of my findings. I appreciate your clarifying  
6 some of my questions, but beyond those matters, I  
7 really don't have any issues.

8 MS. SELKOE: Do you want me to sum up  
9 what needs to be altered or modified?

10 MR. ZUROFF: If you would like to, I  
11 would appreciate it.

12 MS. SELKOE: I think under the  
13 conditions you want us to add the findings under  
14 number eight. Under number eight the findings, you  
15 want us to put that in as a condition and that is a  
16 99-year lease has to be completed before they start  
17 building.

18 MR. ZUROFF: Right. As a question, a  
19 99-year lease should it be recorded in the registry of  
20 deeds?

21 MR. SCHWARTZ: Well, a notice of the  
22 lease would be recorded --

23 MS. STEINFELD: Could the attorneys in  
24 the room draft that condition right now?

1 MR. ZUROFF: Can we drop that condition?

2 MS. STEINFELD: Draft -- write it.  
3 Provide the actual language.

4 MR. SCHWARTZ: Yep.

5 MS. STEINFELD: We could go back to it  
6 if you want.

7 MR. ZUROFF: We know what it is.

8 MS. SELKOE: We could have town  
9 counsel --

10 MR. ZUROFF: So language could be  
11 provided by the petitioner's counsel.

12 MS. STEINFELD: Does that satisfy you?

13 MR. ZUROFF: I think so. As long as we  
14 know we're dealing with the same issue, and it's  
15 fairly clear.

16 MS. STEINFELD: Okay. I just want to  
17 make sure you're comfortable that they draft the  
18 language.

19 MS. SELKOE: And then condition of  
20 number 13 which was under architecture, do you want us  
21 to add the word plans under buildings, building plans?

22 MR. ZUROFF: Yes.

23 MS. SELKOE: And under number 17.

24 MS. PALERMO: Can I stop for --

1 MS. SELKOE: Sure.

2 MR. ZUROFF: Of course.

3 MS. PALERMO: Now, number 13, I thought  
4 we left it as is because we want the buildings to  
5 conform to the plans.

6 MR. ZUROFF: Oh, we want the buildings  
7 and the plans.

8 MS. PALERMO: But the second sentence,  
9 as Alison pointed out, provides that the plans have to  
10 be submitted to her, and then she has to determine  
11 that they conform to the plans, so we've covered --

12 MR. ZUROFF: Chris, correct me if I'm  
13 wrong, the building plans are more comprehensive than  
14 simply the architectural plans.

15 MR. HUSSEY: No, well, the architectural  
16 plans are submitted to the various boards like the  
17 building inspector to get approval.

18 MR. ZUROFF: So they have all the  
19 details in them?

20 MR. HUSSEY: Yeah.

21 MR. LEVIN: So the way I understand this  
22 to work --

23 MS. STEINFELD: Can you talk louder?

24 MR. LEVIN: The way I understand this to

1 work is that you have a set of schematic plans that  
2 we've taken it to a schematic level, and that we've  
3 all agreed that this is the building that is going to  
4 be built. The next step would be to do construction  
5 documents, CDs and we submit those CDs not only for  
6 the building inspector to see if they comply with code  
7 but to the planning director to make sure that the  
8 plans conform to the plan set that goes along with  
9 this.

10 MR. ZUROFF: So altogether, are those  
11 considered the architectural plans?

12 MR. LEVIN: Yes.

13 MR. ZUROFF: They are.

14 MS. SELKOE: I mean, in a way you  
15 wouldn't need that first sentence at all because the  
16 second sentence covers --

17 MS. PALERMO: I think if for some reason  
18 this is necessary for the building inspector, I  
19 wouldn't take the sentence out because the building  
20 inspector inspects the building and says, actually,  
21 this didn't come out exactly. You've put in three  
22 staircases instead of two. I'm just saying  
23 hypothetically.

24 MR. LEVIN: They would look at it before

1 to make sure it's conformed.

2 MS. PALERMO: And they'll look at it  
3 during construction.

4 MS. SELKOE: So we're not adding plans  
5 to the first sentence.

6 MS. PALERMO: I would not.

7 MS. SELKOE: Because it's in the second,  
8 is that agreed?

9 MR. ZUROFF: I'm fine with that if  
10 that's encompassed within the definition.

11 MS. SELKOE: And on number 17, we are  
12 adding the word and approval. So the applicant shall  
13 submit final landscaping plans to the planning  
14 director who will review an approval to determine that  
15 they are consistent with site plans listed in item 3  
16 under procedural history.

17 MR. ZUROFF: Yes. That's it? So that's  
18 the end of the board's comments.

19 MR. LEVIN: I'm just finishing the  
20 condition that Alison ...

21 MR. ZUROFF: Well, you can take your  
22 time. We can go to the public.

23 MS. SELKOE: He's fast.

24 MS. STEINFELD: Could you read it to the

1 board? Just make sure that they --

2 MS. SELKOE: Of course.

3 MR. SCHWARTZ: If you want me to --

4 MS. SELKOE: It's pretty clear. I think  
5 I could have read his handwriting.

6 MR. SCHWARTZ: Well, thank you. That's  
7 very nice of you to say. "Prior to the commencement  
8 of construction, the applicants shall have entered  
9 into a ground lease of the site creating the lot  
10 referenced in item 8 of the findings, and shall record  
11 with Norfolk Registry of Deeds a notice of said ground  
12 lease. The applicant shall provide evidence to the  
13 planning director of the recording of the notice of  
14 ground lease."

15 MR. ZUROFF: Yeah, I guess that will  
16 work.

17 All right. Thank you. Public comments  
18 about the decision or the waivers? There are none.  
19 Okay.

20 MS. ALLAIRE: I'm Saralynn Allaire from  
21 the town meeting, and I just want to reiterate the  
22 town meeting members' objection to the project based  
23 on size, that's in term of the number of units. And I  
24 think you're wanting to take a whole Hancock Village

1 approach, so you need to think about the other  
2 developments that are going on and proposed in  
3 addition to this one.

4           Also, the infill buildings, you know,  
5 are just completely out of place. Your consultant, as  
6 I recall, said that they interfered with the flow of  
7 the whole project. I realize they may go at some  
8 point. And then the single building is just massive  
9 in size, both in terms of footprint and height. So I  
10 just would -- and Steve has previously said that there  
11 is precedent for reducing the size of a project by a  
12 group such as yours, and so I just ask that you  
13 consider that.

14           MR. ZUROFF: Well, I appreciate your  
15 comment. We've always been aware of the public's  
16 feeling about the project, but I do think that we have  
17 had our peer reviewers review everything. The density  
18 of the project, the number of units and the size of  
19 the project is something that we did consider, we did  
20 get it to be smaller, but in my opinion, we have taken  
21 all of that into consideration given the mandate that  
22 was given to us by the statute. And in my opinion, in  
23 spite of the fact that I may also have objections to  
24 excise, the statute mandates what we have gone

1 through. Our peer reviewers have given us the  
2 feedback that we were required to get, and I think  
3 that we have reached an amicable decision based on  
4 what we have been given to work with.

5 What my personal feelings are, what your  
6 personal feelings are have some bearing, but not  
7 enough to overturn the statute. That's my opinion.

8 Based on what we have, I think that  
9 unless we have something else to deal with this  
10 evening, and subject to the revisions that have been  
11 proposed for the final decision, the board can express  
12 their opinions on whether they want to accept this as  
13 the decision of the board or not, and it has to be  
14 unanimous or majority. It's a majority.

15 MR. SCHWARTZ: My understanding is that  
16 in a 40B decision -- in a 40A decision when you have a  
17 three-member board it has to be unanimous. In a 40B  
18 decision, it can be two out of the three.

19 MR. HUSSEY: I stand corrected.

20 THE COURT REPORTER: I can't hear you.

21 MR. HUSSEY: I stand corrected. Mr.  
22 Schwartz is right.

23 MR. ZUROFF: So, Chris?

24 MR. HUSSEY: Yes.

1 MR. ZUROFF: Yes or no?

2 MR. HUSSEY: I would vote in favor.

3 MR. ZUROFF: Lark?

4 MS. PALERMO: Yes, I also vote in favor  
5 of the grant.

6 MR. ZUROFF: And based on your  
7 interpretation of the law, notwithstanding the fact  
8 that my vote doesn't matter, I also am willing to  
9 approve the project as presented, and I do appreciate  
10 that the developer made some compromises. I sincerely  
11 hope that the alternative project is pursued as has  
12 been promised because, again, the peer reviewer did  
13 recommend that the infill buildings would be -- it  
14 would be better served if they weren't there. That  
15 will be subject to the sitting board, whoever it is,  
16 in your pursuit of that project.

17 MS. SELKOE: So you'll have to close the  
18 hearing --

19 MS. STEINFELD: Excuse me, two things?

20 MR. ZUROFF: Alison, of course.

21 MS. STEINFELD: Before you close the  
22 hearing. One is I just want to in the past the board  
23 I believe has always voted the waivers. I don't know  
24 if that's necessary. Attorney Schwartz?

1 MR. ZUROFF: We have gone through the  
2 waivers already.

3 MS. STEINFELD: But there was no vote.  
4 I don't know if it's necessary.

5 MR. ZUROFF: I'll put it to the board.  
6 It'll be on the record. Personally, I vote that we've  
7 gone through the waivers. I have no objection to the  
8 waivers. They're pretty much the same waivers that  
9 were granted on a similar project, and they have been  
10 vetted by the planning and building departments.

11 MS. SELKOE: But the building  
12 commissioner who had actually asked to add one which  
13 they did about the width of the (inaudible.)

14 MR. ZUROFF: So with that being said, I  
15 vote in favor of granting the waivers that are  
16 presented as part of the decision.

17 MR. HUSSEY: I concur.

18 MS. PALERMO: I concur.

19 MR. ZUROFF: So the record will show  
20 that it is voted on, the waivers are approved. The  
21 decision to be modified is approved.

22 MS. STEINFELD: As modified -- has been  
23 modified. Oh, I'm sorry, yes.

24 MR. ZUROFF: There are a couple of small

1 tweaks.

2 MS. SELKOE: Yeah, I would think a vote  
3 to authorize you to sign it when it's in final form.

4 MR. ZUROFF: Well, that's why I said  
5 it's subject to those modifications. I guess I should  
6 ask the board for approval. Will the board approve my  
7 signing the decision as modified at the end?

8 MR. HUSSEY: I will.

9 MS. PALERMO: I will.

10 MR. ZUROFF: So that is a final vote of  
11 the board. Mr. Levin.

12 MR. LEVIN: I would just like to thank,  
13 in particular, you and your board, the planning staff,  
14 especially as well, the neighbors and everyone who  
15 contributed to the consideration of our project, both  
16 in terms of constructive, you know, criticism and  
17 other that I, you know, I sincerely believe we ended  
18 up with a better project than what we came in with as  
19 far ago as we did. I don't remember. It's been a  
20 couple of years now.

21 MR. ZUROFF: 2016.

22 MR. LEVIN: 2016. So a couple of years  
23 ago with a pause, but nonetheless, it was a long  
24 enough process to hatch a better plan, and I want to

1 thank everyone for that.

2 MR. ZUROFF: And I appreciate the  
3 developer working with us. That being said, the fact  
4 that it took me so long to get here is evidence that  
5 the traffic is getting worse, and I wish there were  
6 less buildings going on in Brookline, but we are  
7 compelled to do our duty. So I thank you all for  
8 coming. I thank the public for its input.

9 MS. SELKOE: You're officially closing  
10 the hearing.

11 MR. ZUROFF: I am officially closing the  
12 hearing, and this meeting is now adjourned. Thank you  
13 very much.

14  
15 (Whereupon the hearing was concluded at  
16 7:50 p.m.)

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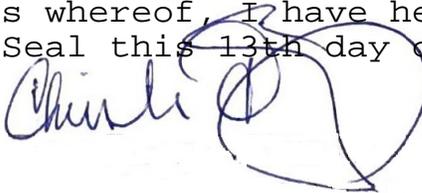
C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF NORFOLK, SS

I, Christine D. Blankenship, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing hearing was taken before me on October 24, 2018. The said testimony was taken audiographically by myself and then transcribed under my direction. To the best of my knowledge, the within transcript is a complete, true and accurate record of said deposition.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter of controversy.

In witness whereof, I have hereunto set my hand and Notary Seal this 13<sup>th</sup> day of December, 2018.



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Christine D. Blankenship  
Notary Public  
My Commission Expires:  
August 3, 2023

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