

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION  
1299 BEACON STREET  
BOARD OF APPEALS CASE NO. XXXX-XXXX**

Decision Filed with Town Clerk [timestamp]
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Date: DATE

Re: Application of Brighton Allston Properties, LLC for a Comprehensive Permit

Location: Town Assessor’s Atlas Map Sheet 33, Block 161, Lot 02-01, known and numbered as 1299 Beacon Street, Brookline, Massachusetts

**PROCEDURAL HISTORY**

1. On March 27, 2017, Massachusetts Housing Finance agency (“MassHousing”) issued a Project Eligibility Letter (“PEL”) to Brighton Allston Properties, LLC (the “Applicant”).
2. On March 23, 2018, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Section 20-23 (the “Act”), to construct an eight- and ten-story building with 74 units of age-restricted rental housing within 99,497 square feet of living area and with approximately 12,285 square feet of commercial space on the first two floors and with 99 underground parking spaces that include parking valet service and parking stackers for the use of occupants of the residential units and the customers and employees of the tenants of the commercial space (the “Original Project”) on approximately 18,632 square feet of land located at the eastbound side of Beacon Street between Harvard Street and Charles Street known and numbered as 1299 Beacon Street, Brookline, Massachusetts (the “Site”).
3. On July 10, 2019 and July 15, 2019, the Applicant submitted a revised Comprehensive Permit Application (the “Application”) to the Town of Brookline (the “Town”) to construct an eight- and nine-story building with 55 units of age-restricted rental housing within 95,256 square feet of living area and with approximately 4,950 square feet of commercial spaces on the first two floors and 57 parking spaces on two underground levels for the use of occupants of the residential units and employees of the tenants of the commercial space and two surface parking spaces for drop-off and pick-up, and a loading area (the “Project”) on the Site.
4. The materials submitted by the Applicant in the application and during the public hearing include:

**Comprehensive Permit Application**

Comprehensive Permit Plans for 1299 Beacon Street dated August 14, 2019, prepared as follows:

**Sheet Numbers and Titles**

**Site Plans dated January 11, 2019, and updated August 15, 2019, and stamped by Deborah M. Danik, P.E., Nitsch Engineering, Boston. Mass.**

Sheet C000	Civil notes, legend, abbreviation
Sheet C100	Site Layout Plan
Sheet C200	Site Utility Plan
Sheet EX-1	Existing Conditions Plan (dated June 27, 2018, and prepared by RJ O’Connell & Associates, Inc., Stoneham, Mass. and stamped by Kevin J. Kiernan, professional land surveyor)

["Site Plans"]

**Architectural Drawings dated X and prepared by Haril Pandya, registered architect, CBT, Boston, Mass.**

Sheet A101	Parking level 2
Sheet A102	Parking level 1
Sheet A103	Level 1
Sheet A104	Level 2
Sheet A105	Level 3
Sheet A106	Typical Floor Layout (levels 4-7)
Sheet A107	Level 8
Sheet A108	Level 9
Sheet A109	Roof plan
Sheet A110	Section 1 – Transverse Section
Sheet A111	Section 2 – Longitudinal Section
Sheet A112	Elevation 1 – North (Beacon Street)
Sheet A113	Elevation 2 – South (Sewall Avenue)
Sheet A114	Elevation 3 – East
Sheet A115	Elevation 4 – West

["Architectural Drawings"]

**Construction Management Plan dated July 30, 2019, and prepared Jamie Hass, Hass Construction Company, Inc., Newton, Mass.**

["Preliminary CMP"]

**Parking Narrative Memorandum dated August 13, 2019, and prepared by Rachna Balakrishna, Esq., in consultation with Darian Medeiros, Simon Design Engineering, LLC, Wellesley, Mass.**

["Parking Narrative"]

**Traffic Impact Assessment dated November 26, 2018, and updated May 26, 2019, and prepared by Giles Ham, P.E., Vanasse and Associates, Inc. Senior Housing Land Use Code versus Apartment Land Use Code dated May 24, 2019, and prepared by Giles Ham, P.E., Vanasse and Associates, Inc.**

["Traffic Study"]

**Geotechnical Report dated January 2019 and prepared by Douglas Aghjayan, P.E., and Michael A. Yako, P.E., GEI Consultants, Woburn, Mass. Summary of Findings: Environmental Soil Testing dated August 2, 2019 and prepared Catherine G. Johnson, P.G., LSP, and Ileen S. Gladstone, P.E., LSP.**

["Geotechnical Report"]

**Stormwater Management report dated January 11, 2019, and prepared by Deborah M. Danik, P.E., and Brittney Veeck, P.E., Nitsch Engineering, Boston, Mass.**

["Stormwater Management"]

Rubbish and Recycling Plan dated

5. The Applicant submitted a request for waivers from local by-laws and regulations dated July 12, 2019 and amended DATE and Waiver-Key site plan dated August 14, 2019 and amended DATE (“Waivers”).
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 18, 2018. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: April 25, 2018 (continued), May 9, 2018, Jun 13, 2018, July 11, 2018, September 5, 2018, October 17, 2018 (continued), November 28, 2018 (continued), January 14, 2019 (continued), January 30, 2019, February 13, 2019 (continued), February 27, 2019 (continued), April 3, 2019 (continued), April 24, 2019, May 1, 2019, June 3, 2019, July 10, 2019, July 15, 2019, September 16, 2019 (continued), September 18, 2019, October 2, 2019. All continuances beyond 180 days from April 18, 2018 were with the Applicant’s written consent and filed with the Town Clerk.
7. The Board conducted a duly noticed site visit on May 30, 2018.
8. On October 2, 2019 the Board closed the public hearing.
9. The Board deliberated on the Application at a public hearing/meeting held on DATE 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, Town staff and boards, peer reviewers, local residents, and technical experts submitted extensive oral and written testimony with respect to the Original Project and the Project on issues of height, yard setbacks, massing, scale, architectural style, pedestrian scale, Beacon Street and Sewall Avenue streetscapes/public realms and character-defining features of the Beacon Street National Register District; feasibility of the parking plan; geotechnical studies including but not limited to foundation method, construction means and methods, groundwater impact, soil conditions and testing for hazardous materials, groundwater impacts, construction management planning, protection of abutters’ properties during construction, emergency access during construction; parking demand, parking design and management, and parking ratios; studies to assess intensity of use related to the mixed use program; abutters’ viewsheds, shadow impacts, public and environmental health and safety, traffic and pedestrian safety, rubbish and recycling management; site circulation, access/egress, stopping site distance, and integration and coordination of functions occurring in the ground plane including but not limited to truck deliveries, trash/recycling pickup, ride share drop-off and pick-up, snow removal; stormwater management, and including matters of local concern identified in the PEL under “MassHousing Determination.”
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 Design and Parking Demand Management**

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

**Geotechnical / Environmental Engineering and Construction Management Planning**

Daniel LaFrance, Environmental Engineer and Licensed Site Professional  
Fuss & O'Neill  
Boston, Massachusetts

**MassHousing Partnership Technical Assistance Fund - Chapter 40B Advisor**

Judith Barrett, Principal  
Barrett Planning Group LLC  
Duxbury, Massachusetts

13. On DATE, the Town submitted a letter to the subsidizing agency, Mass Housing, requesting a review of draft Conditions X pertaining to terms to be included in a second Regulatory Agreement and a Monitoring Services Agreement (Exhibit 2). On DATE, NAME, TITLE, of Mass Housing approved Condition X and Exhibit 2.

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 March 23, 2018, 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 20% of the units would be available to households earning at or below 50% of the Area Median Income ("AMI"), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
4. Existing conditions of the Site consist of a one- to two-story brick building with approximately 12,459 square feet of living area and an asphalt-paved surface lot with 29 parking spaces. The Site has no Usable Open Space as defined in the Brookline Zoning By-Law dated May 24, 2017 ("Zoning By-Law").

5. The Site is located on the eastbound side of Beacon Street. The entirety of the two-mile portion of Beacon Street that runs in Brookline is in the National Register of Historic Places. The typical development pattern of the Beacon Street streetscape consists of primarily four-story residential buildings with three commercial nodes featuring mostly one-story retail spaces, a character-defining feature of the Beacon Street National Register district as recorded in the Massachusetts Historic Commission database (MACRIS).
6. The Site has two Front Yards as defined in the Zoning By-Law: the Beacon Street Front Yard to the north and the Sewall Avenue Front Yard to the south.
7. The Site is a pan-handle shaped lot approximately 60 feet wide at the Beacon Street Front Yard and approximately 95 feet wide at the Sewall Avenue Front Yard.
8. The Site falls within an established commercial corridor that the Brookline Housing Production Plan (HPP) identifies as an opportunity for additional mixed-use, higher density housing development. The HPP was approved by the Brookline Planning Board and the Brookline Select Board in September 2017 and approved by the Massachusetts Department of Housing and Community Development (DHCD) on November 9, 2016.
9. The Site is located in the Coolidge Corner neighborhood of Brookline on a commercial block of Beacon Street zoned as a General Business, G-1.75(CC), zoning district.
10. The Site abuts a multifamily zoning district, M-2.0, to the south on Sewall Avenue, a one-way street.
11. The Site is located in a highly walkable urban area on the public transit train service known as the Green Line C-Branch on Beacon Street and a bus route that travels Harvard Street.
12. The Federal Highway Safety Improvement Program (HSIP) Crash Cluster ranks severity of crash incidences within the top 5% of each Regional Planning Agency. HSIP crash clusters are different from crash rate in that they take into consideration the severity of the experienced crashes and identify areas or “clusters” that fall within the top 5% crashes in the region.
13. In its March 29, 2019, report to the ZBA, independent traffic peer reviewer James Fitzgerald, P.E. stated that several of the Traffic Study intersections fall within both the 2006-2015 Highway Safety Improvement Program (HSIP) Bicycle Crash Cluster and Pedestrian Crash Cluster.
14. The Site is on the same block as Temple Sinai, which has an active religious program for children.
15. The Project proposes moving one curb cut and adding a second curb cut.
16. To meet AASHTO standards the no street parking
17. The T-Board ok with one parking space?
18. The Site is directly across the eight-story Pelham Hall rental apartments known and numbered as 1284 Beacon Street, which is on a X square foot site bounded on three sides by Beacon Street, Waldo Street, and Pleasant Street.
19. The Site shares a property line with three direct abutters. At the time of the public hearing, the abutters to the east are the United States Postal Service distribution center and a dental office, and the

abutter to the west is a site known and numbered as 1309 Beacon Street (“Center Place”), which leases space to Trader Joe’s grocery store.

20. The Applicant currently leases parking spaces on the Site to Trader Joe’s grocery store for use of its customers.
21. A 2006 ZBA Decision granting a Special Permit to Trader Joe’s includes a condition:

“Parking for customers of 1309 Beacon Street shall be made available at 1299 and 1319 Beacon Street when possible, and new and appropriate signage shall indicate the availability of the additional parking. The new signage for the parking lot shall be approved by the Planning Board.”
22. In its June 29, 2018, letter to the ZBA, the Planning Department “found no evidence that an elimination of the leased parking spaces at the Project Site will create an infectious invalidity or other zoning violation for either the Project or Center Place” and that “Building Commissioner Daniel Bennett does not interpret the condition above as definitively requiring Trader Joe’s to secure parking at 1299 Beacon Street [the Site] for the operation of its retail establishment as a result of the Special Permit relief granted in 2006. To our knowledge, the parking arrangement is in existence by a private agreement and a change to such an agreement will not create a new zoning nonconformity or make the lot at either [the Site] or at [Center Place] more nonconforming with regard to parking requirements.”
23. There exists a longstanding means of egress and potential trespass issue between the Site and the abutter to the east known and numbered as 1297 Beacon Street that remains unresolved. A second means egress for 1297 Beacon Street is located in a rear wall that is approximately 12 inches off the property line of the Site. Anyone exiting this rear egress at 1297 Beacon will trespass onto the Site.
24. In his July 10, 2018, letter to the ZBA the Building Commissioner stated he was uncertain of the impact [the Project] would have on the second means of egress at 1297 Beacon Street and what, if any, responsibility the ZBA has with respect to this situation.
25. Judith Barrett, the ZBA’s c.40B consultant, confirmed that the ZBA does not have jurisdiction over the Massachusetts Building Code.
26. The Planning Department asked the subsidizing agency MassHousing for a legal opinion to guide the ZBA. MassHousing did not respond to this request.
27. *Geotech technical, water table*
28. *Geotech soil testing*
29. The ZBA’s independent parking peer reviewer, Arthur Stadig, P.E., recommended a parking ratio of 0.7 to 0.9 for the Project’s residential component and another 10% of total parking reserved for visitors. Mr. Stadig stated that meeting the Zoning Bylaw requirements for minimum parking was appropriate for the specified retail uses.
30. Members of the ZBA generally agreed that in meeting the ZBA’s charge to mitigate the Project’s intensity of use, the Applicant maintained a large retail component at the expense of affordable units, which were reduced.