

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

Decision Filed with Town Clerk  
[timestamp]

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 August 14, 2019, 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”]

**Trash and Recycling Plan dated May 29, 2019; plan for Trash and Recycling Rooms dated May 24, 2019; Loading dock and trash and recycling pick-up area diagram dated May 30, 2019.**

[“Rubbish and Recycling Plan”]

5. The Applicant submitted a request for waivers from local by-laws and regulations dated July 12, 2019 and amended September 19, 2019 and Waiver-Key site plan dated August 14, 2019 and amended September 19, 2019 (“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 September 19, 2019 Town submitted a letter to the subsidizing agency, Mass Housing, requesting a review of draft Housing Conditions and the terms to be included in a second Regulatory Agreement and a Monitoring Services Agreement (“Exhibit 2”). On September 19, 2019, Jessica Malcolm, Legal Specialist at Mass Housing, approved the Housing Conditions of this Decision and Exhibit 2.
14. **REVISED AND MOVED TO FINDINGS: ~~ZBA members expressed their displeasure that despite their concerns about the excessive scale and overbuilt commercial space and non-residential space of the Project, it remains oversized for its context. Although the Applicant met the recommended parking ratios for the Project’s program, the ZBA was critical of the Applicant’s decision to increase the size of the units, retain a large commercial space, and inversely reduce the number of affordable units, despite the purpose of the c.40B mechanism.~~**

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. The Transportation Board in its March 18, 2019, letter to the ZBA requested that the driveway curb cuts be designed to leave to retain the maximum possible number of parking spaces on Sewall Avenue.
17. 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 1309-1317 Beacon Street (“Center Place”), which in part leases space to Trader Joe’s grocery store.
18. The Applicant currently leases parking spaces on the Site to Trader Joe’s grocery store for use of its customers.
19. 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.”
20. 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.”
21. 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.
22. After consulting with Building Commissioner Daniel Bennett and c.40B consultant Judith Barrett, ZBA confirmed it does not have jurisdiction over the Massachusetts Building Code. MassHousing did not respond to the Town’s request for a legal opinion.
- 23. At the ZBA’s request, the Applicant conducted tests to determine of the height of the groundwater table. Tests were conducted in December 2018 and May 2019 and indicated that the maximum height of 26 feet below grade.**
- 24. The ZBA’s independent geotechnical peer review, Daniel LaFrance, confirmed in his July 9, 2019, letter the maximum depth of the foundation and footings of the design would be approximately 22 feet below grade and would avoid intersecting the high groundwater table and therefore would eliminate the need for dewatering and groundwater monitoring.**
- 25. Mr. LaFrance stated in his July 9, 2019, letter to the ZBA that the Applicant should conduct ongoing environmental quality and soil testing during construction and be obligated to report and assume responsibility for any remediation of the Site pursuant to the Massachusetts Contingency Plan.**
- 26. The Fire Chief in his testimony to the ZBA on July 15, 2019, stated that he would not approve reducing the width of Sewall Avenue during construction to create a temporary lane for construction vehicles because a temporary construction lane on Sewall Avenue will not**

accommodate staging of fire apparatus and will not meet OSHA standards for firefighters in the case of an emergency.

27. The Fire Chief recommended closing Sewall Avenue during construction with police detail, as is the Town's typical practice for major impact projects.
28. The ZBA's independent parking peer reviewer, Arthur Stadig, P.E., stated in his March 28, 2019, and May 29, 2019, letters to the ZBA that "the two-way [parking garage] ramp is 23 feet wide with chamfered inside corners and slopes ranging from 7.5% to 12%. Slopes are in a reasonable range and should be confirmed in final design."
29. The ZBA's independent parking peer reviewer, Arthur Stadig, P.E., in his June 28, 2018, letter to the ZBA recommended a parking ratio of 0.7 to 0.9 for the Project's residential component and another 0.1 for visitor parking and that if these spaces are market rate for the area with nearby transit service, [Walker Consultants] suggests an appropriate parking supply be between 0.7 to 0.9 spaces per unit....the upper end of the range would be more appropriate." Mr. Stadig maintained this opinion during the public hearing.
30. Arthur Stadig stated in his June 28, 2018, letter to the ZBA "the retail tenants have not been determined in the application and it is difficult to estimate what the Peak Hour Volume (PHV) will be. PHVs for retail/restaurant can vary between 30% to 60% for both inbound and outbound movements. If the tenant happens to be a restaurant or specialty grocer, for example, the PHV could be as much as 50% or 22 vehicles within the hour, both in and out. Of course, the real traffic will be more random and a Peak Hour Factor (PHF) which addresses a peak during the peak hour will increase the intensity."
31. In testimony before the ZBA, the Applicant agreed to exclude grocery and all food-related uses in the commercial space of the Project.
32. The Board heard the concerns of Town staff, boards, commissions, and residents and weighed them against local needs. The Board finds that the Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.
33. The Board finds that the Conditions imposed in this Decision are necessary in order to address Local Concerns, as that term is defined in 760 CMR 56.02. The Board finds that such conditions will not render the Project uneconomic. To the extent that such conditions may render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.
34. The Board finds that granting certain waivers from local by-laws and regulations is acceptable even though granting such waivers may have an adverse impact on Local Concerns. Nevertheless, the Board finds that the Local Concerns affected thereby do not outweigh the regional need for affordable housing, especially given the changes the Applicant has agreed to make, specifically the redesign of the building and improvements to the site layout in direct response to concerns of the Board and other parties in interest.
35. The Board acknowledges concerns raised by abutters and other interested parties. The Board finds that despite these concerns, the Project addresses local and regional housing needs.
36. The Applicant has had the opportunity to review the following Conditions and has no objections.



**37. [RECOMMEND MOVING BACK TO PROCEDURAL HISTORY] The Project is oversized for its context, with excessive scale and overbuilt non-residential space. Although the Project conforms to the recommended parking ratios for the proposed uses within the building, the Applicant’s decision to increase the size of the units, retain a large commercial space, and inversely reduce the number of affordable units is a cynical use of the Chapter 40B comprehensive permit, the purpose of which is to create low-income housing. The Project purports to create affordability, but the Applicant has used Chapter 40B merely to subvert the Brookline Zoning Bylaw.**

**37-38. Mr. Fitzgerald stated in his March 29 2019, letter to the ZBA: “on-street parked vehicles will impact sight distance for exiting vehicles...while AASHTO [American Association of State Highway and Transportation Officials] sight distance requirements should be followed, it is challenging to achieve in many urban environments such as this section of Brookline. According to the Town’s Transportation Division, ‘Transportation Board and the Transportation Division staff have consistently opposed the removal of the public parking supply (especially in high demand areas as Sewall Ave) for sightlines alone’” [Transportation Board’s March 18, 2019, letter to ZBA].**

**DECISION**

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, grants a Comprehensive Permit to the Applicant for the construction of 55 units of rental housing, 4,950 sf of commercial space, and 57 underground parking spaces as shown on the Site Plans, Stormwater Management Plan, Architectural Plans, Parking Narrative, Geotechnical Report, Rubbish and Recycling Plan, Preliminary Construction Management Plan, and Landscape Plans, subject to all of the conditions listed below.

**CONDITIONS**

1. The Project shall include no more than 55 units of rental housing in no more than one building, which is shown on the Site Plans and the Architectural Plans, with no fewer than 57 below-grade parking spaces, and a loading area and two drop-off/pick-up surface parking spaces on the Site, as shown on the Site Plans and Architecture Plans listed under Item 4 under Procedural History.
2. Twenty percent of the units shall be available to households earning at or below 50% percent of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development from time to time.
3. The total maximum number of bedrooms shall be 97 and the maximum number of units shall be 55, as listed in the following table.

Unit Type	Number of Units	Total Bedrooms per Unit Type
One Bedroom	13	13
Two Bedroom	42	84
<b>TOTAL 97 Bedrooms</b>		



4. With respect to the Applicant's request for waivers from local by-laws and regulations dated September 19, 2019, the Board approves those waivers listed in **Exhibit 1**. The Project must comply with by-laws and regulations not waived.
5. The retail uses of the Project shall exclude grocery stores and all food-related businesses.

### Housing

6. As a condition of any approval hereunder, at least 20% of the units shall be and shall remain affordable in perpetuity and shall be marketed to eligible households whose annual income may not exceed 50% of AMI , adjusted for household size, as determined by the United States Department of Housing and Urban Development (the "Affordable Units"); and subject to approval by the Subsidizing Agency, as defined in 760 CMR 56.02, as the project administrator, the Affordable Units and the units priced at market rates (the "Market Rate Units") shall be eligible to be included in the Town's SHI.
7. Lease and occupancy agreements shall be for terms of not less than six (6) months with the exception of extensions. No more than two such extensions of an existing lease for a period of less than six (6) months shall be permitted. Nightly rentals shall not be permitted. Airbnb and similar lodging services shall not be permitted.
8. Local Preference: The Applicant shall work with the Assistant Director for Community Planning to request that no less than 70% of the Affordable Units be awarded to households with local preference during the initial lottery, as defined by the Town and subject to the approval of the Subsidizing Agency.
9. Eleven units in the Project shall in perpetuity be Affordable Units.
10. A second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in **Exhibit 2**) shall be prepared prior to expiration of the initial Regulatory Agreement, approved by Town Counsel, executed and recorded and in effect for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent to continue such restrictions. Such agreement shall be consistent with the terms of this Decision and with the customary terms of Town's Regulatory Agreements.
11. The Owner shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with any applicable Regulatory Agreement during this period shall be borne by the Owner.
12. The Town will not issue a Building Permit for the Project without final approval from the Subsidizing Agency.
13. No more than three Certificates of Occupancy shall be issued by the Building Commissioner for Market Rate Units until at least one Certificate of Occupancy is issued for an Affordable Unit. No more than one Certificate of Occupancy for an Affordable Unit shall be issued for every three Market Rate Unit Certificates of Occupancy issued by the Building Commissioner.

### Fire Safety

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

Pre-Construction / Environmental / Geotechnical

18. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with plans showing that no erosion from the Site will cause deposition of soil or sediment upon adjacent properties or public ways. For purposes of this Decision, "Commencement of Construction" shall mean: the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities; the placement of or mobilization for construction activities including but not limited to placing materials, machinery, supplies or construction equipment on the Site and removing or disconnecting of utilities or water or sewer lines; and/or any alteration, demolition, repair or improvements to a building or structure ("Commencement of Construction").
19. Prior to Commencement of Construction and subject to approval by the Building Commissioner in conjunction with the Director of Engineering and Transportation, the Health Commissioner, and the Fire Chief, the Applicant shall provide a Final Construction Management Plan that shall include but not be limited to: designation of truck routes; sequencing of truck traffic; limit of work areas; staging areas; the locations where construction vehicles, materials, and equipment will be stored; parking hours and locations for construction workers' vehicles; location of portable toilets; rodent and insect control plan; dust/airborne particle control; security fencing; trash areas; construction trailer locations; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips.
20. The Applicant shall include the Final Construction Management Plan in the contract with the Project's general contractor and be binding on all subcontractors for the duration of construction.

21. Prior to Commencement of Construction, the Applicant shall submit a plan to be included in the Final Construction Management Plan subject to the review and approval of the Building Commissioner and the Director of Engineering and Transportation for trucking and hauling soil from the Site during excavation, including but not limited to:
  - a. Duration of the excavation period;
  - b. Capacity of the dump trucks;
  - c. Number of dump trucks; and
  - d. Plan to avoid queueing of dump trucks.
  
22. Prior to the Commencement of Construction, the Applicant shall submit a plan to be included in the Final Construction Management Plan for the review and approval of the Building Commissioner for the usage of crane equipment in overhead movements, including but not limited to:
  - a. How the crane will be maintained on the Site during usage;
  - b. The radius of the crane's overhead movements;
  - c. Protection of the roofs of structures and the parking areas of abutting parcels; and
  - d. Protection of public infrastructure, utilities, and street trees.

Any damage to structures and parking areas causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair, and the Applicant shall indemnify and hold harmless the Town to repair said damage.
  
23. Prior to the Commencement of Construction, the Applicant shall confirm that utilities including but not limited to storm drainage infrastructure, sewer connections, electrical power lines do not cross the Site's property lines prior to disconnection. Should electrical power lines be relocated for construction of the Project, the Applicant shall coordinate activities with the Town and the utility.
  
24. The Applicant shall provide back-up generators in the event power is shut off or disconnected for the construction of the Project with all costs thereunder borne by the Applicant.
  
25. During excavation, the Applicant shall not stockpile soil and debris on the Site at any time. The Applicant shall provide the Director of Engineering and Transportation with ten days written notice prior to any excavation on the Site.
  
26. Prior to Commencement of Construction, the Applicant shall submit a plan for ongoing environmental quality and soil testing during construction for the review and approval of Director of Engineering and Transportation. The Applicant shall assume obligations for reporting and cleanup under the Massachusetts Contingency Plan (MCP; 310 CMR 40.0000).
  
27. Construction vehicles shall load and unload within the limit of the work area designated in the Final Construction Management Plan, approved by the Building Commissioner and the Director of Engineering and Transportation. Construction equipment and vehicles shall not impede the access, staging, and passage of emergency vehicles on Beacon Street and Sewall Avenue.
  
28. For the days services for Rosh Hashanah and Yom Kippur are held at Temple Sinai located at the intersection of Sewall Avenue and Charles Street, the Applicant shall observe a schedule for activities related to the construction of the Project as required by the Building Commissioner and the Director of Engineering and Transportation.

29. Prior to Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with a report, still photographs, and video recording of the condition of pavement surfaces of streets and sidewalks along truck routes designated in the Final Construction Management Plan before Commencement of Construction and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic does not adversely affect the pavement. Any damage to streets and sidewalks causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair.
30. Prior to Commencement of Construction, the Applicant shall conduct a pre-construction ~~and post-construction~~ [see Condition 50] surveys with visual documentation (by video or still photography) of the above and below grade structures, including the interiors and exteriors of the foundations, at properties located within 100 feet of the Site's property lines as listed in Exhibit 4, subject to receipt from abutters of rights of access. Any damage to structures and parking areas within this area causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair, and the Applicant shall indemnify and hold harmless the Town to repair said damage. The Applicant shall:
- a. perform test pits or probes to expose or locate the foundations of these structures, if as-built foundation drawings of structures within a 100-foot radius of the Site are not available;
  - b. install crack gauges in pre-existing cracks documented in the pre-construction conditions survey;
  - c. install vibration monitors at structures within a 100-foot radius of the Site;
  - d. shall submit reports of pre-construction surveys to the Building Commissioner and proof that the Applicant submitted a copy of said surveys to each owner of the properties listed in Exhibit 4;
  - ~~e.~~ maintain vibration monitors in working order for period(s) of construction required by the Building Commissioner;
  - ~~e.~~ cease construction work immediately if the owner of a property within a 100-foot radius of the Site reports new and/or increased cracking during periods of vibration monitoring;
  - ~~f.~~ immediately notify the Building Commissioner of any reports of damage to abutting structures; and
  - ~~g.~~ shall not resume construction until aforementioned damage is investigated and remedied to the satisfaction of the Building Commissioner.
31. There shall be no blasting during the construction of the Project.
32. The Applicant shall not construct any portion of the Project in the groundwater table. Prior to the issuance of a Building Permit, the Applicant shall (i) conduct a bearing analysis study stamped and signed by a professional geotechnical engineer to assess the building load and to inform the final design for the foundation; (ii) submit the aforementioned study for the review and approval of the Building Commissioner and Director of Engineering and Transportation; (iii) submit plans for the excavation support and foundation design stamped and signed by a professional geotechnical engineer for the review and approval of the Building Commissioner and the Director of Engineering and Transportation. The excavation support and foundation design shall include but is not limited to the following:

- a. Confirmation that the depth of the foundation is no greater than 25 feet below grade to remain above the groundwater table readings recorded in the Geotechnical Plan listed under Item 4 of Procedural History;
- b. Plans for the drilled secant pile foundation method indicated in the Geotechnical Plan listed under Item 4 of Procedural History; and
- c. Thickness of foundation walls consistent with the Architectural Drawings and Parking Plan listed under Item 4 of Procedural History

Should the Town hire a third party consultant to conduct said review, all costs for this review shall be borne by the Applicant.

- 33. Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of the existing street trees and shall submit a plan for protecting the roots, limbs, and canopies of existing street trees on Beacon Street and Sewall Avenue during construction for the review and approval by the Town Arborist and with all costs for performance thereunder borne by the Applicant. Any proposed removal of street trees shall be subject to M.G.L. c.87, the “Shade Tree Act.”
- 34. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the building, indicating façade design and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the plans listed under Item 4 under Procedural History. Color, windows, and materials shall be reviewed and approved on site by the Assistant Director for Regulatory Planning within a reasonable time frame.
- 35. The Applicant shall delineate pedestrian pathways on the Site from the driveways leading to the loading area and to the parking garage. Prior to the issuance of a Building Permit, the Applicant shall submit plans for the design of the ground plane, subject to the review and approval of the Assistant Director for Regulatory Planning.
- 36. The Applicant shall install a decorative treatment on the first floor of the west façade and on the loading area garage door and on the parking garage door. Prior to the issuance of a Building Permit, the Applicant shall submit renderings and sample materials, subject to the review and approval of the Assistant Director for Regulatory Planning and the Chair of the Planning Board.
- 37. Prior to the issuance of a Building Permit, the Applicant shall submit final site and landscaping plans indicating: plant types and sizes at planting and location of plants; proposed design of garage and loading area doors; proposed design of the first floor of the west façade; location of and materials for fences, walls, walkways, and driveway; height of fences and elevation at top of walls in relation to grade; exterior lighting; location of utilities, mechanicals, parking spaces, and bicycle storage; and the location of trash, recycling, and snow storage, subject to the review and approval of the Assistant Director for Regulatory Planning.
- 38. Prior to the issuance of a Building Permit, the Applicant shall submit a photometric lighting plan to the Director of Engineering and Transportation and the Building Commissioner for review and approval. All exterior lighting on the Site shall be installed and maintained so that no direct light or glare shines on any street or any nearby homes. Headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance ~~with local by laws~~ to the maximum extent possible.

39. Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan to the Director of Engineering and Transportation for review and approval.

40. Prior to the issuance of a Building Permit for the building on the Site or a portion thereof the Applicant shall comply with the Public Works Department's Site Plan Review Checklist as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.

41. Prior to issuance of a Building Permit, all water, stormwater and sewage facility designs shall be subject to review and approval by the Director of Engineering and Transportation.

41-42. Contemporaneously with sending or within ten (10) days of receiving any and all correspondence to and/or from the Massachusetts Historical Commission and/or the Massachusetts Secretary of Energy & Environmental Affairs concerning the Project, the Applicant shall provide the Board and the Brookline Preservation Commission with copies.

### Construction

42-43. During construction, the Applicant shall conform to all local, state, and federal laws regarding air quality, noise, vibration, dust, and blocking of any roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents and businesses in the general area. The Applicant shall provide the Police Department with the name and 24-hour telephone number for the project manager responsible for construction. The hours for operation of construction equipment, deliveries and personnel are limited to: Monday through Friday (excluding Federal and State holidays) from 7:00 am to 5:00 pm; Saturday from 8:30 am to 5:00 pm; and Sunday from 8:30 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.

43-44. During construction and initial leasing, the Applicant may post on the Site no more than one temporary sign for the Project, no greater than twenty square feet (20 sf), with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.

44-45. The Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than thirty (30) months except subject to causes beyond the Applicant's reasonable control. Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11). The Applicant shall work with the Town to coordinate construction activity with improvements the Town schedules to the public way.

45-46. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.

46-47. Upon the request of the Director of Engineering and Transportation and/or the Building Commissioner, the Applicant shall provide written reports during construction outlining the status of the Project.

### Certificate of Occupancy [will fix extra indent in this subsection in final draft]

47-48. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit as-built floor plans certified by a registered architect to the Building Commissioner for his review and determination of conformance with the approved plans and the Conditions of the Decision. Prior to the issuance of the first Certificate of Occupancy for the building on the Site or a portion



thereof, the Applicant shall comply with the Building Department's Certificate of Occupancy Process as verified by the review and approval of the Building Commissioner.

49. Prior to the issuance of the final Certificate of Occupancy for the Project, the Applicant's registered architect and professional engineer shall certify in writing to the Building Commissioner that the Project complies with the Site Plans, the Architectural Plans, and Landscaping Plans, including the modifications required by this Decision.

~~48.~~50. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall conduct a post-construction survey of properties with a 100-foot radius of the Site as listed in Exhibit 4 and submit to the Building Commissioner a report of the post-construction survey and proof that the Applicant has submitted a copy of the aforementioned survey reports to owners of the properties listed in Exhibit 4. Any damage to structures and parking areas within this area causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair, and the Applicant shall indemnify and hold harmless the Town to repair said damage.

~~49.~~51. When fifty (50) percent of the Certificates of Occupancy are issued, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law.

~~50.~~52. After the issuance of the final Certificate of Occupancy and before the Applicant replaces or changes any exterior materials, the Applicant shall submit plans showing replacement materials, colors, and window profiles for the review and approval of the Assistant Director for Regulatory Planning (if they are other than those indicated on the plans listed in Conditions 34, 35, 36, and 37), unless the changes are deemed substantial by the Subsidizing Agency and/or the ZBA pursuant to 760 CMR 56.04(5).

#### Transportation and Parking Management

~~51.~~53. Traffic mitigation shall be all as follows:

- a. The Applicant shall ensure that the Sewall Avenue driveway aprons are at the same level as the sidewalk elevation and that the material for the driveway aprons is the same as that of the sidewalk;
- b. The Applicant shall leave 20 feet between the two driveway curb cuts to accommodate one parking space in the public way on Sewall Avenue;
- c. The Applicant, in consultation with the Director of Engineering and Transportation, shall purchase and install a STOP sign and a stop line consisting of concrete pavers at the driveway exits with all costs borne by the Applicant;
- d. The Applicant shall use best efforts to prevent vehicles entering the Site from queuing onto Sewall Avenue;
- e. No vehicles shall idle in the driveway or the garage in accordance with the Town Idling of Motor Vehicles By-Law;
- f. The Applicant shall post a No Idling sign in the Project's garage;



- g. The Applicant shall keep sidewalks in front of the Site on Beacon Street and Sewall Avenue clear of snow and ice and shall remove snow mounds that collect on Sewall Avenue to the left and right of the driveways to ensure that drivers entering and exiting the Site have a clear view of pedestrians and approaching vehicles. The Applicant shall not store snow in the public way;
- h. The Applicant shall not store snow and/or other materials on the driveway;
- i. Prior to the issuance of a Building Permit, the Director of Engineering and Transportation shall review landscaping plans including fences and walls to ensure that driver visibility is not impeded;
- j. Prior to the issuance of a Building Permit, the Applicant shall submit a Transportation Access Plan (“TAP”) for reducing the number of vehicular trips to and from the Project, to be prepared in accordance with the Transportation Access Plan Guidelines of the Town (Sec. 5.09.3.c.6 of the Town Zoning By-Law), and which shall be subject to the review and approval of the Director of Engineering and Transportation. Mitigation measures in the TAP shall include the Applicant (i) providing subsidies for its employees’ public transit costs; (ii) providing on-site sale of MBTA passes; (iii) providing no fewer than eighteen bicycle racks for secure and covered bicycle storage; (iv) publicizing transit options; (v) including in leases for the commercial spaces language mandating MBTA pass subsidies be provided to employees by the commercial tenants; (vi) installing transit screens in the building lobby for use by residents, visitors, and staff, to display the on-time arrival of nearby MBTA buses and trains; (vii) installing in at least two parking spaces an Electric Vehicle Charging Station as defined in the edition of the Massachusetts Building Code in effect at the time a Building Permit is issued, and making another 15% of the Project’s parking spaces EV Ready as defined in the edition of the State Building Code in effect at the time a Building Permit is issued; (viii) unbundling parking spaces from the leases for the residential units; (ix) traffic monitoring and annual reports as specified in the TAP to the Director of Engineering and Transportation; and (x) funding a shared bicycle station in the public way for two years.
- k. Prior to the **issuance of a Building Permit**, the Applicant shall provide a contribution in the amount of \$176,455 to the Town, for deposit into a segregated Town account to be used by the Town for the installation of curb extensions, ADA compliant handicap ramps, and crosswalks to improve safety at the intersection of Sewall Avenue and Longwood Avenue (“Sewall-Longwood Improvements”). If the funds are not used within three years from the date of the issuance of the last Certificate of Occupancy for the Sewall-Longwood Improvements, the funds shall be returned to the Applicant.

### Rubbish and Recycling

- 52-54. Prior to the issuance of a Building Permit, the Applicant shall submit a rubbish/recycling plan and schedule to the Chief of Environmental Health for review and a determination of compliance with Town regulations. Said plan shall include provisions guaranteeing that:
  - a. The Applicant shall use best efforts to have all rubbish and recyclables generated from the Project’s residential and commercial spaces picked up a **minimum of once per week and a** maximum of twice per week contemporaneously by the Applicant’s private waste management service(s), and in any event, in compliance with all applicable regulations;
  - b. The Project shall provide for the residential and commercial uses the number and specifications for the trash and recycling rooms, bi-sorter chute systems, trash compactor,

cardboard baler and compactor, trash tug mechanism, two-cubic-yard containers, and 96-gallon totes as described in the Rubbish and Recycling Plan listed under Item 4 of Procedural History;

- c. The motor of the compactors shall have a decibel rating in compliance with the Town Noise By-Law;
- d. The pick-up location shall be in the loading area of the Site as shown on the Rubbish and Recycling Plan listed under Item 4 of Procedural History. At no time shall rubbish and/or recycling containers be stored outside of the footprint of the Project's building.
- e. At no time shall rubbish and recycling be stored in either of the Site's front yards or in the public way or along property lines shared with abutters;
- f. The private waste management truck(s) shall not back out of the Site's driveways for pick-up;
- g. The private waste management truck(s) shall not park on Beacon Street and/or Sewall Avenue for pick-up;
- h. The rubbish and recycling collection rooms in the Project's garage must be maintained in compliance with State Sanitary Code requirements;
- i. The Applicant shall install noise reducing sheet rock (i.e. quiet rock), or other material that reduces noise impact, from the trash compactor room; and
- j. The Applicant shall inform the Public Health Department when the Project's residential units are 90 percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance with this Decision.

### Infrastructure

53-55. The following portions of the Project shall be and shall remain forever private and the Town shall not have, now or ever, any legal responsibility for their operation, maintenance, repair, or replacement:

- (a) The on-site stormwater management system;
- (b) All sewer, stormwater and water connections, lines and equipment required, from the public way to the building; and
- (c) All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable systems.

54-56. The Applicant shall operate and maintain all of the foregoing specified in Condition 53 in good working condition and repair at all times at its sole cost.

57. After the final Certificate of Occupancy is issued, no additional stormwater and/or wastewater load to the municipal system shall be allowed without the Director of Engineering and Transportation's approval.

58. All utilities shall be underground.

General

- ~~55-59.~~ The provisions of this Comprehensive Permit shall be binding upon the heirs, successors and assigns of the Applicant and the obligations shall run with the land.
- ~~56-60.~~ Any reference to Town staff shall be read to include a designee (either other staff member(s) or a consultant) of that person or of the head of the respective Town department or division.
- ~~57-61.~~ If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.
- ~~58-62.~~ Upon execution by the Board, the Director of Planning and Community Development or her designee is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.
- ~~59-63.~~ Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.
- ~~60-64.~~ This Comprehensive Permit shall expire if construction is not commenced within three (3) years from the date this Decision becomes final as provided in 760 CMR 56.05(12)(c), subject to the tolling provisions of 760 CMR 56.05(12)(c). For purposes of this paragraph only, Commencement of Construction is defined as the construction of the foundation of the Project's building. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).
- ~~61-65.~~ If the Applicant revises any of the Plans, it shall present the revised plans to the Board in accordance with 760 CMR 56.05(11).
- ~~62-66.~~ This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
- ~~63.~~ ~~All utilities shall be underground.~~
- ~~64-67.~~ Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
- ~~65-68.~~ All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations thereunder.
- ~~66-69.~~ Prior to thirty (30) days subsequent to the end of all applicable appeal periods, the Applicant shall record this Decision in the Norfolk County Registry of Deeds and shall provide the Board and the Building Commissioner with a copy of this Decision endorsed with the applicable recording information.
- ~~67-70.~~ There shall be no structures or buildings or paved surfaces or other improvements on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.

~~68~~.71. As a courtesy to neighbors, the Applicant shall use best efforts to notify abutters with 100 feet of the Site's property lines of the Commencement of Construction and of the issuance of the Building Permit (the "Courtesy Notice"). Action of the Applicant pursuant to this Decision shall in no event be conditioned on such Courtesy Notice nor shall failure of receipt of any Courtesy Notice be a default of the Applicant under this Decision.

Summary of Pre-Building Permit Review, Approvals, and Conditions

~~69~~.72. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:

- a. Final site plans, architectural plans, and landscaping plans have been reviewed and approved by the Assistant Director for Regulatory Planning in accordance with Conditions 34, 35, 36, and 37.
- b. The Director of Engineering and Transportation has reviewed and approved the survey conditions of public pavement surfaces; the environmental quality and soil testing plan; excavation support and foundation design, the final site and photometric lighting plans; the final stormwater management and drainage plans; the water, stormwater and sewage facility designs; the erosion control plans in accordance; and all other items requiring review, verification, or approval by or to the satisfaction of the Director of Engineering and Transportation as listed in these Conditions.
- c. The Applicant has initiated and participated in a pre-construction meeting to discuss the proposed construction schedule with its contractor and the Town, including but not limited to the Building Commissioner, Director of Engineering and Transportation, Town Arborist and the Fire Chief.
- d. All required local, state and federal approvals and permits have been obtained and it has obtained Final Approval from the Subsidizing Agency as provided in 760 CMR 56.05(8)(c)(2) and (3).
- e. The Building Commissioner and the Director of Engineering and Transportation have approved the Final Construction Management Plan in accordance with Conditions 19, 20, 21, 22, 27, and 29.
- f. The Chief of Environmental Health has reviewed and approved the rubbish and recycling plan in accordance with Condition 52.
- g. The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).
- h. The Fire Chief or his designee has reviewed and approved the final site plan and other fire safety measures in accordance with Conditions 14, 15, 16, 17, and 19.
- i. The Applicant has provided proof to the Director of Planning and Community Development that the Decision was filed with the Norfolk County Registry of Deeds in accordance with Condition 67.

ATTACHED:

Exhibit 1 (Granted Waivers – September 19, 2019)

Exhibit 2 (Terms To Be Included in Replacement Town Regulatory Agreement

Exhibit 3 (Public Hearing Notice – March 29, 2018 and April 5, 2018)

Exhibit 4 (List of abutters within a 100-foot radius of the Site – certified by Assessor on DATE)

RECORD OF VOTE

The Board of Appeals voted unanimously to grant a Comprehensive Permit subject to the above-stated conditions:

\_\_\_\_\_ (signed)  
**Jesse Geller**, Chairman, Brookline Board of Appeals

Wherefore a Comprehensive Permit, consistent with the conditions of this Decision, is granted to the Applicant.

Filed with the Town Clerk on DATE.

ATTEST:

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**Patrick J. Ward**  
Town Clerk

Twenty-Day Appeal Period Ended (Town Clerk stamp)

APPLICANT

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