

September 26, 2019

Brookline Zoning Board of Appeals  
Town Hall  
333 Washington Street  
Brookline, Massachusetts 02445

Re: The Residences of South Brookline (the “Development”)  
Comprehensive Permit – Request for Insubstantial Change

Dear Members of the Board:

On behalf of The Residences of South Brookline, LLC (the “Applicant”), this letter is a request that the Brookline Zoning Board of Appeals (the “Board”) determine that the proposed changes described below are insubstantial changes to the Development (as defined below) pursuant to 760 CMR 56.05(11) of the regulations governing comprehensive permits issued under M.G.L. c. 40B. Submitted herewith are plans relative to the proposed changes. A reduced version of the new site plan is attached to this letter as Exhibit A (the “Modified Site Plan”). A list of new site plan drawings is attached as Exhibit B (the “New Site Plan Drawings”). A list of new architectural plans which are being submitted with this letter is attached hereto as Exhibit C (the “New Architectural Plans”, and together with the Modified Site Plan and the New Site Plan Drawings, the “Modified Plans”).

Please note that the submission of this letter and the requested changes are without prejudice to the Applicant’s rights under the existing Comprehensive Permit (as defined below) for the Development, all of which the Applicant reserves. Without limiting the generality of the foregoing, the Applicant (i) does not abandon any of its rights under the existing Comprehensive Permit, and (ii) reserves the right at any time to withdraw the requested changes and to proceed with the Development as set forth in the existing Comprehensive Permit as previously modified for whatever reason, including, without limitation, if the requested changes are not permitted by the Board, if an appeal is taken by any party with respect to such changes, if other necessary permits, approvals and consents for the requested changes are not approved, or if the Applicant does not proceed with the Development.

## ***I. BACKGROUND***

1. The Board issued a comprehensive permit (the “Comprehensive Permit”) pursuant to M.G.L. c. 40B by virtue of a Decision (the “2015 Decision”) filed with the Brookline Town Clerk on February 20, 2015.

2. The Town, by and through its Board of Selectman, filed a complaint on March 11, 2015, in the Massachusetts Land Court (the “Court”) to appeal the Board’s 2015 Decision.<sup>1</sup>
3. The Court issued a Judgment dated September 14, 2018, in which it upheld the Board’s 2015 Decision granting the Comprehensive Permit.<sup>2</sup>
4. On March 18, 2019, the Applicant submitted a letter to the Board requesting a finding of certain insubstantial changes to the Comprehensive Permit. The Board approved the requested changes as insubstantial by virtue of a Decision (the “2019 Decision”) dated April 18, 2019 and filed with the Brookline Town Clerk on April 30, 2019.
5. As set forth in the 2019 Decision, the Development consists of one hundred seventy-five (175) rental units in twelve (12) buildings located in the Hancock Village neighborhood of Brookline along Independence Drive. Of these units, one hundred twenty-seven (127) units are to be located in a 3- and 4-story building (the “Asheville Building”), and forty-eight (48) units are to be located in the remaining eleven (11) buildings (each an “S-7 Building” and, together, the “S-7 Buildings”).
6. By this letter, the Applicant requests the following as insubstantial changes to the Comprehensive Permit: (i) changes to the approved plans as reflected on the Modified Plans; and (ii) certain other modifications to the Comprehensive Permit as set forth below.

## ***II. PROPOSED MODIFICATIONS***

1. Changes to the Plans: The Modified Plans include the following minor changes:

(a) In connection with developing the final plans for the Development, the location and orientation of two S-7 Buildings will be adjusted in a very minor fashion as shown on the Modified Site Plan. S-7 Building #1 will be shifted in orientation and S-7 Building #4 will be moved slightly, off of an existing water line. The unit type of S-7 Building #1 will be adjusted to include two flats and two townhomes and the unit type in Building #11 will be adjusted to all town homes, with no change in bedroom mix. The entrance locations for Buildings #6, #7 and #10 will be moved to the short side of the building for improved accessibility. The side yard setback for Buildings #2, #3, #4, #5 and #8 will be adjusted to accommodate a sprinkler closet that projects three feet (3’) further towards the lot line. In addition, the setback for Building #6 will be adjusted to

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<sup>1</sup> Pursuant to 760 CMR 56.05(12)(c), “[i]f construction authorized by a Comprehensive Permit has not begun within three years of the date on which the permit becomes final except for good cause, the permit shall lapse. This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the Project.”

<sup>2</sup> Accordingly, the three-year time period set forth in 760 CMR 56.05(12)(c) was tolled from March 11, 2015, through October 14, 2018, which includes the thirty-day appeal period from the date the Judgment was issued on September 14, 2018.

accommodate an entryway overhang that projects six feet (6') toward the lot line. There are no changes to the building architecture as a result of these adjustments.

(b) There is a proposed minor change in the Development's unit mix as a result of changes within the Asheville building. The changes include: (i) converting three studios on floors 2-4 to 1-bedroom units; (ii) converting two 2-bedroom units on floor 1 to four 1-bedroom units; (iii) converting three 1-bedroom units on floors 2-3 to two 2-bedroom units and by converting one 1-bedroom unit to a 2-bedroom unit in the upper garage level. These changes result in an increase of two total bedrooms for the project.

(c) As shown on the Modified Plans, the grade of the Asheville Building will be adjusted slightly to improve constructability and the grade immediately surrounding the Asheville Building will be adjusted to allow for improved emergency vehicle access and site planning. A portion of the roof deck above the first-floor amenity area will be enclosed, which will result in the addition of approximately 1,250 square feet of interior amenity space to better accommodate current design standards for these spaces. There is no change to the footprint of the Asheville Building.

(d) The number of garage parking spaces at the Asheville Building will be reduced from one hundred twenty-one (121) to one hundred six (106) resulting in an overall reduction in the total number of parking spaces at the Development from three hundred fourteen (314) to two hundred ninety-nine (299) parking spaces.

## 2. Changes to Conditions and Waivers.

(a) The Applicant requests changes to Condition #3 and Condition #13 of the Comprehensive Permit based on the aforementioned very minor changes to the unit mix of the Development. The following shows these proposed changes to the conditions redlined against the Comprehensive Permit's original conditions as amended by the 2019 Decision.

3. The total maximum number of bedrooms shall be three hundred ~~eighty~~<sup>eighty</sup> (~~318~~<sup>320</sup>) and the maximum number of units and the maximum number of bedrooms shall be as listed in the following table:

Number of Units Number of Bedrooms

Number of Units	Number of Bedrooms
<del>3</del>	<del>Studio</del>
<del>79</del> <sup>80</sup>	One
<del>43</del> <sup>45</sup>	Two
50	Three
0	Four

13. Unless otherwise required by the Subsidizing Agency, the Affordable Units shall be dispersed throughout the Project and shall have the same bedroom "ratio" or "mix" as the other units in the Project. For example, there are ~~3 studio units in the Project or in a ratio of 3:175, 7980~~ one-bedroom units in the Project or a ratio of ~~7980~~:175, ~~4345~~ two-bedroom units or a ratio of ~~4345~~:175 and 50 three-bedroom units or a ratio of 50:175.

(b) The Applicant requests changes to Condition #2 and Condition #23 of the Comprehensive Permit based on the aforementioned reduction in the garage parking spaces at the Asheville Building. The following shows these proposed changes to the conditions redlined against the Comprehensive Permit's original conditions as amended by the 2019 Decision.

2. The Project shall include no more than one hundred seventy-five (175) units of rental housing in no more than twelve (12) buildings, which buildings are shown on the Site Plans and the Architectural Plans, and no more than one hundred ~~twenty-onesix (121106)~~ garaged parking spaces and one hundred ninety-three (193) surface parking spaces.
23. Prior to 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 (§5.09.3.c.6 of the Zoning Bylaw), and which shall be subject to review by the Director of Transportation and Engineering. Mitigation measures in the TAP shall include the Applicant (i) providing employee and resident parking stickers or tags; (ii) providing fifty percent (50%) subsidies for its employees' public transit costs; (iii) providing on-site sale of MBTA passes; (iv) expanding the existing car-sharing service at Hancock Village to include the Project and including car-sharing spaces among the ~~314 two hundred ninety-nine (299)~~ parking spaces that the Board has approved as part of the Project; (v) providing on-site secure bicycle storage including two inverted U-racks per every four units (for Buildings 1-11) and one or more storage areas in the basement of Building 12 to accommodate at least fifty (50) bicycles; (vi) expanding the existing shuttle service to include the Project, and based on the demand identified in the post-occupancy Traffic Study referenced in Condition 26, increasing the number of trips and/or stops; and (vii) publicizing transit options.

(c) The Applicant requests the following changes to Condition #43(f) of the Comprehensive Permit to clarify the timing for recording the emergency access easement (referenced in Condition #28 of the Comprehensive Permit) and the Restriction on further development (referenced in Condition #17 of the Comprehensive Permit):

- f. Town Counsel has approved; (i) an easement for emergency access and egress (referenced in Condition 28) ~~and Applicant has provided evidence of recording of same~~, and (ii) the Restriction on further development (referenced in Condition 17) Upon receipt of such approval from Town Counsel, the easement and Restriction shall each be submitted to Town Meeting for acceptance and, subject to such acceptance, shall be recorded prior to issuance of a final Certificate of Occupancy for the Project (and Applicant ~~has provided~~ shall provide the Building Commissioner with evidence of recording of same).

(d) The changes to the Proposed Plans outlined above also require modifying Waivers D, E, K, N and R of the Request for Waivers previously approved by the Board

as part of the Comprehensive Permit. The following shows the proposed changes to the details of Waivers D, E, K, N and R, redlined against the Request for Waivers as amended by the 2019 Decision:

As shown on the Waiver Plan, in one location on the Site, Building 9 will be located approximately <del>53</del> <u>41</u> ' from Building 10, within the required front yard of Building 10.	D
As shown on the Waiver Plan, in one location on the Site, Building 10 will be located approximately <del>53</del> <u>41</u> ' from Building 9, within the required rear yard of Building 9.	E
Minimum <del>18.57</del> <u>17.11</u> ' setback provided for Building 4. Minimum <del>34.47</del> <u>23.03</u> ' setback provided for Building 5. Minimum <del>8</del> <u>7</u> ' setback provided for Building 12. Minimum 6.57' setback provided for Building 9. Retaining walls within front yards of Buildings 9 and 12 may exceed 7' in height.	K
Minimum 6'' setback provided for Building 3. <u>Minimum 12' provided for Building 6.</u> Minimum <del>3.85</del> <u>17</u> ' provided for Building 7. Minimum <del>20</del> <u>17</u> ' provided for Building 8. Minimum 6' setback provided for Building 9. Minimum 4' setback provided for Building 10. Minimum <del>13</del> <u>7</u> ' setback provided for Building 11. Retaining walls within side yards of Buildings 9 and 12 may exceed 7' in height. Light poles will be approximately 17' in height.	N
On Lot E2 in the M-0.5 District, the Development will provide <del>0.95</del> <u>1.08</u> parking spaces per <del>studio</del> , 1 or 2-bedroom dwelling unit.	R

### III. DISCUSSION

As set forth in 760 CMR 56.05(11), after the issuance of a comprehensive permit granted by a zoning board, an applicant desiring to change aspects of its proposal may notify the board in writing. The factors to consider when determining whether a change is substantial or insubstantial are set forth in 760 CMR 56.07(4)(c) and (d), respectively. The proposed modifications to the Development, as described above, clearly do not involve the types of material changes set forth in 760 CMR 56.07(4)(c). Rather, with regard to the plan changes, the proposed modifications to the Development are the types of changes that are consistent with those described as insubstantial changes in 760 CMR 56.07(4)(d), as follows:

- (1) there is no change in the height of the Asheville Building or the S-7 Buildings;
- (2) there is no change in the number of units at the Development;
- (3) there is no reduction in the size of the Development site;
- (4) there is no change in the building types;
- (5) there is no change from rental property to home ownership; and
- (6) the change in the number of bedrooms within individual units does not alter the overall bedroom count by more than 10%.

As set forth above, the revised Development consists of substantially the same development previously approved, with only very minor changes. The reduction in the number of garage parking spaces at the Asheville Building by fifteen (15) spaces results in less than a five percent (5%) reduction in the overall number of parking spaces at the Development approved under the 2019 Decision. The Applicant is confident that there is a sufficient number of parking spaces at the Development and that this minor reduction in the overall number of parking spaces is not material nor will it impact the operations at the Development. Furthermore, the requested changes to the Conditions and Waivers of the Comprehensive Permit are based on the very minor changes to the unit mix, the reduction in garage parking spaces at the Asheville Building and the Modified Plans. Otherwise, the existing Development, including the number of units, and the current Conditions and approved Waivers all remain as set forth in the 2019 Decision and the Exhibits incorporated therein.

The Applicant anticipates submitting its application for Final Approval to Massachusetts Development Finance Agency (“MassDevelopment”), the subsidizing agency that issued the Project Eligibility Letter for the Development, promptly after receiving the approval of the Board of the changes requested in this letter. In accordance with 760 CMR 56.05(12)(b), as part of the Final Approval, the Applicant will obtain the approval of MassDevelopment as to the limited dividend status of the Applicant and that the Development is “fundable” under a qualifying subsidy program. The Applicant does not anticipate any barriers to obtaining Final Approval.

The Applicant respectfully requests that the Board consider this matter at its next regularly scheduled meeting. Thank you very much for your consideration.

Very truly yours,



Steven Schwartz  
Attorney for the Applicant

cc: Alison Steinfeld – Director of Planning and Community Development  
Polly Selkoe – Assistant Director for Regulatory Planning  
Marc Levin – Chestnut Hill Realty  
Andrew Martineau – Chestnut Hill Realty

EXHIBIT A

REDUCED VERSION OF MODIFIED SITE PLAN

(See Attached.)

## EXHIBIT B

### LIST OF NEW SITE PLAN DRAWINGS

Site Plans provided by Stantec Planning and Landscape Architecture P.C. dated September 5, 2019

1. L-100 Overall Site Plan
2. L-200 West Site Plan
3. L-300 East Site Plan

## EXHIBIT C

### LIST OF NEW ARCHITECTURAL PLANS

Architectural Plans Provided by The Architectural Team, Inc. dated August 29, 2019 and updated on September 24, 2019

1. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 1
2. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 2
3. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 3
4. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 4
5. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 5
6. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 6
7. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 7
8. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 8
9. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 9
10. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 10
11. Residences of South Brookline, Townhouse Infill Buildings, Townhouse Building 11
12. Residences of South Brookline, Asheville Building 12, Overall Floor Plan – Level 0
13. Residences of South Brookline, Asheville Building 12, Overall Floor Plan – Level 1
14. Residences of South Brookline, Asheville Building 12, Overall Floor Plan – Level 2
15. Residences of South Brookline, Asheville Building 12, Overall Floor Plan – Level 3
16. Residences of South Brookline, Asheville Building 12, Overall Floor Plan – Level 4
17. Residences of South Brookline, Asheville Building 12, Overall Floor Plan – Level 5

Architectural Plans Provided by the Architectural Team, Inc. dated September 5, 2019

1. The Residences of South Brookline, Building 1 Elevations, A-1
2. The Residences of South Brookline, Building 2, 5-10 Elevations, A-2
3. The Residences of South Brookline, Building 3 Elevations, A-3
4. The Residences of South Brookline, Building 11 Elevations, A-4
5. The Residences of South Brookline, Building 4 Elevations, A-5

Architectural Plans Provided by Stantec Planning and Landscape Architecture, P.C dated September 6, 2019 and updated on September 19, 2019

1. The Residences of South Brookline, Elevations Apartment Building, A-1
2. The Residences of South Brookline, Elevations Apartment Building, A-2
3. The Residences of South Brookline, Elevations Apartment Building, A-3
4. The Residences of South Brookline, Elevations Apartment Building, A-4
5. The Residences of South Brookline, Elevations Apartment Building, A-5
6. The Residences of South Brookline, Elevations Apartment Building, A-6
7. The Residences of South Brookline, Elevations Apartment Building, A-7
8. The Residences of South Brookline, Elevations Apartment Building, A-8
9. The Residences of South Brookline, Elevations Apartment Building, A-9

