

**BOARD OF APPEALS DECISION  
MODIFICATION TO BOARD OF APPEALS CASE NO. NO. 2016-0036  
CHAPTER 40B COMPREHENSIVE PERMIT  
1180 BOYLSTON STREET**

Date: October 16, 2019

**PROCEDURAL HISTORY**

1. The Brookline Zoning of Appeals (the “Board”) issued a comprehensive permit (the “Comprehensive Permit”) to Chestnut Hill Investments LLC (the “Applicant”) pursuant to M.G.L. c.40B by virtue of a Decision (the “Decision”) filed with the Brookline Town Clerk on DATE, for 1180 Boylston Street (the “Project”).
2. By letter dated November 8, 2018 (the “Request Letter”), the Applicant submitted a request to the Board to amend the Comprehensive Permit for the Project pursuant to 760 CMR 56.05(11) as follows: (i) increase lot size from 14,719 square feet (sf) to 17,690 square feet, (ii) increase living area from 65,007 sf to 73,033 sf, (iii) increase number of age-restricted (ages 55+) residential rental units from 45 to 50, (iv) increase living area from 4,833 sf to 6,569 sf, (v) increase number of parking spaces from 69 to 70, (vi) increase massing of the building at the southwest façade, (vii) change unit mix to add two one-bedroom units, add one two-bedroom units, and newly provide two three-bedroom units, (viii) change parking program from valet with stackers on one subgrade level to self-park ramped garage on two subgrade levels (“**Modified Comprehensive Permit**”).
3. At a public meeting on November 29, 2018, the Board voted unanimously that the proposed changes in the Request Letter are substantial pursuant to 760 CMR 56.05(11).
4. The materials submitted by the Applicant in its application for the Modified Comprehensive Permit and during the public hearing include:

Civil drawings dated February 27, 2019, and prepared by Nitsch Engineering, Boston, Mass., and stamped by professional engineer Deborah M. Danik.

[“Modified Site Plan”]

Memorandum in regard “Drainage Analysis” dated February 27, 2019, and prepared by Deborah M. Danik, P.E., and Brittney Veeck, P.E., Nitsch Engineering.

[“Modified Stormwater Management Plan”]

Architectural Drawings dated February 27, 2019, and updated September 11, 2019 prepared by CBT Architects, Boston, Massachusetts.

[“Modified Architectural Drawings”]

Memorandum in regard to “Revised Project Changes and Evaluation of Potential Geotechnical and Environmental Impacts” dated February 27, 2019 and prepared by Doug Aghjayan, P.E. and Catherine Johnson, P.G., LSP, GEI Consultants, Inc.

Memorandum in regard to “Environmental Conditions [Massachusetts Contingency Plan]” dated May 14, 2019 and prepared by Catherine Johnson, P.G., LSP, GEI Consultants, Inc.

Revised Geotechnical Report dated July 30, 2019 and prepared by Michael T. Flynn, P.E., and Francis D. Leather, P.E., GEI Consultants, Inc.

[Modified Geotechnical Report”]

Parking Update dated April 26, 2019 and prepared by Alan Simon, Simon Design Engineering.

[“Modified Parking Plan”]

Supplemental Traffic Information dated April 26, 2019 and prepared by Giles Ham, Vanasse and Associates, Inc.

[“Modified Traffic Study”]

Construction Management Plan dated July 21, 2019 and prepared by Nauset Construction Management.

[“Preliminary Construction Management Plan”]

Rubbish and Recycling Plan dated October 10, 2019 and prepared by NAME

[“Modified Rubbish and Recycling Plan”]

5. The Applicant submitted a list of Proposed Amended Waivers and Amended Waivers Key to Site Plan dated May 14, 2019 and amended September 26, 2019.
6. The Board, with the consent of the Applicant, opened a duly advertised public hearing on April 25, 2019. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: May 15, 2019, June 19 2019, August 20, 2019, September 11, 2019, and October 16, 2019. *All continuances beyond 180 days from April 25, 2019 were with the Applicant’s consent.*
7. On October 16, 2019, the Board closed the public hearing.
8. The Board deliberated on the Modified Comprehensive Permit at a public hearing held on October 16, 2019, and it voted to grant the Modified Comprehensive Permit subject to the following Conditions, which supplement, modify or amend the existing Conditions of the Comprehensive Permit.
9. During the course of the public hearing, The Town staff, boards, commissions, and local residents submitted oral and written testimony with respect to the Modified Comprehensive Permit. The Board considered in part the technical review of the Town department heads, an independent site and

building design reviewer, an independent traffic peer reviewer, an independent parking design peer reviewer, and an independent Licensed Site Professional in regard to matters of public health and safety, environmental health and safety, traffic, parking, site circulation, massing, stormwater, and rubbish and recycling.

10. The following consultants and independent peer reviewers assisted the Board in its review of the Modified Comprehensive Permit:

**Engineering and Traffic**

James Fitzgerald, P.E., LEED AP  
Director of Transportation  
Environmental Partners Group, Inc.  
Quincy, Massachusetts

**Parking Plan**

Arthur G. Stadig, P.E.  
Vice President / Managing Principal  
Walker Parking Consultants  
Boston, Massachusetts

**Geotechnical / Environmental Engineering**

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

**Site and Building Design**

Clifford Boehmer, AIA, President  
Davis Square Architects  
Somerville, Massachusetts

**MassHousing Partnership Fund**

Chapter 40B Advisor  
Judith Barrett, Principal  
Barrett Planning LLC  
Duxbury, Massachusetts

**SUPPLEMENTAL FINDINGS**

1. The Board's independent geotechnical consultant, Daniel LaFrance, stated in his August 20, 2019, letter to the Board that the building at 612-614 Hammond Street takes up most of the parcel and therefore, the Applicant would need to conduct soil characterization and soil testing after demolition of the building and prior to Commencement of Construction. Mr. LaFrance stated the Board should include a condition specifying the Applicant as the Responsible Party for remediation of any contaminated soil and water at the 612-614 Hammond Street.

2. The Board's independent traffic consultant, James D. Fitzgerald, stated in his June 18, 2019, letter to the Board that the modified project "is still expected to generate fewer trips than the previous [gas station use].
3. The Board's independent parking consultant, Arthur Stadig, stated that he "does not have enough information to regarding the retail use to comment on the [proposed] reduction in parking to spaces from 32 [required by zoning] to 20 [the remainder after one parking space is allocated for each of the 50 residential units]. If the development complies with zoning, providing 32 spaces to retail, leaving 38 spaces to residential the residential ratio is 0.76 spaces/unit which is near the bottom of the recommended range, but falls within it. This would not include the 10% visitor and tradespeople requirement [per zoning]. Mr. Stadig stated that "the retail tenants have not been determined in the application and it is difficult to estimate what the PHV [Peak Hour Volume] will be. PHVs for retail can vary between 30% to 60% for both in-bound and out-bound movements."

## **DECISION**

At a duly noticed public hearing held on October 16, 2019, the Board considered the request of the Applicant and voted 3-0 to approve the requested changes as insubstantial pursuant to 760 CMR 56.05(11), subject to the following Conditions, which supplement, modify or amend the existing Conditions in the Comprehensive Permit.

## **CONDITIONS**

1. The Project shall be constructed substantially as shown on the New Site Plan attached hereto as Schedule 1, and substantially as shown on the New Site Plan and the New Architectural Plans, which were approved by the Board, and related drawings, planning documents, and supplemental reports included in Schedule 1.
2. The gross floor area and commercial space, units and corresponding bedroom mix, and parking spaces shall be modified as set forth on the Proposed Modifications table attached hereto as Schedule 2.
3. The Conditions in the Comprehensive Permit shall be modified as set forth in the "New and Modified Conditions" attached hereto as Schedule 3.
4. The Waiver List in the Comprehensive Permit shall be modified as set forth in the "Modified Request for Waivers" attached hereto as Schedule 4.
5. Any damage to structures and parking areas within a 100-foot radius of 1180 Boylston and 612-614 Hammond Street, as listed in Schedule 5, 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.
6. The two lots known and addressed as 1180 Boylston Street and 612-614 Hammond Street shall remain in common ownership in perpetuity. *[Definitions of "Site" and "Project" shall include 612-614 Hammond Street]*



## **Schedule 1**

- A. New Site Plan
- B. New Civil Drawings and Supplemental Stormwater Report
- C. Supplemental Geotechnical Report
- D. Supplemental Traffic Study
- E. New Architectural Plans
- F. New Parking Plan
- G. New Rubbish and Recycling Plan
- H. Preliminary Construction Management Plan

**[INSERT ACTUAL PLANS AND REPORTS HERE]**

**Schedule 2**

**Comparison of Specifications**

	<b>Approved by ZBA March 2017</b>	<b>Proposed Modifications</b>
<b>Land Area</b>	14,719 sf	17,690 sf
<b>Living Area</b>	65,007 sf	73,033 sf
<b>Commercial Area</b>	4,833 sf	6,569 sf
<b>Units</b>	45	50
<b>Bedrooms</b>	16 one-bed 29 two-bed 0 three-bed Total: 74	18 one-bed 30 two-bed 2 three-bed Total: 84
<b>Parking Spaces</b>	66	70
<b>Parking Type</b>	Valet + stackers  (one level below grade)	Ramped self-park  (two levels below grade)
<b>Height</b>		No change (building commissioner to confirm)

### Schedule 3

#### New and Modified Conditions

NEW

1. Prior to the Commencement of Construction, the Applicant shall abate the existing structure at 612-614 Hammond Street for asbestos in accordance with State and local regulations.
2. Prior to Commencement of Construction, the Applicant shall conduct a pre-construction [see Condition 3] 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 Schedule 5, 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 Schedule 5;
  - e. maintain vibration monitors in working order for period(s) of construction required by the Building Commissioner;
  - f. cease a construction activity immediately if the construction activity is potentially causing new and/or increased cracking to an owner of a property within a 100-foot radius of the Site during periods of vibration monitoring;
  - g. immediately notify the Building Commissioner of any reports of damage to abutting structures; and
  - h. shall not resume a construction activity if the construction activity is potentially causing damage to an abutting structure until aforementioned damage is investigated and remedied to the satisfaction of the Building Commissioner.
3. Prior to the issuance of the final Certificate of Occupany, 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 Schedule 5. 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.

4. Prior to the issuance of a Building Permit, the Applicant shall submit for the review and approval of the Director of Engineering and Transportation for the 612-614 Hammond Street lot (a) a plan for soil and groundwater characterization program, (b) a plan for a soil testing regimen encompassing the list of regulated compounds required by soil disposal facilities, and (c) the results of all soil of and water testing.
5. The Applicant shall act as the Responsible Party for construction of the 612-614 Hammond Street lot, including but not limited to the excavation, management, and disposal of contaminated soil and water pursuant to the Massachusetts Contingency Plan and to dewatering activities pursuant to the United States Environmental Protection Agency (USEPA) Remediation General Permit.
6. 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. Plans for the drilled secant pile foundation method indicated in the Geotechnical Plan listed under Schedule 3; and
  - b. Thickness of foundation walls consistent with the Architectural Drawings and Parking Plan listed under Schedule 3.

### **Modified Conditions**

[See Schedule 3 attachment for redlined version of ZBA approved conditions]



**Schedule 4**

Modified Waivers

[See attachment for Schedule 4]

## Schedule 5

Abutters within 100 foot radius of 1180 Boylston Street and 612-614 Hammond Street.  
Prelim list follows. Final list will be include parcel id and address and will be certified by Town Assessor.

### 1180 Boylston

#### Target Parcels

Owner	Agent	Address	City
CHESTNUT HILL INVESTMENTS LLC,		166 HARVARD ST	BROOKLINE, MA 02446

#### Abutting Property Owner (16)

Owner	Agent	Address	City
1162-1164 BOYLSTON CONDOS,	C/O LANE REALTY,	312 WEBSTER ST	NEEDHAM, MA 02494
CALDERON, MARINA S		1162 BOYLSTON ST #2	BROOKLINE, MA 02467
CENTURY BANK AND TRUST CO,		400 MYSTIC AVE	MEDFORD, MA 02155-
CHEN, YONG YUAN & MEI YUN		1164 BOYLSTON ST #3	BROOKLINE, MA 02467
CHESTNUT HILL INVESTMENTS LLC,		1299 BEACON ST	BROOKLINE, MA 02446
CHESTNUT HILL INVESTMENTS LLC,		166 HARVARD ST	BROOKLINE, MA 02446
CONNOLLY TRS, JOHN M	BRIEN, MARJORIE	174 POINT RD	MARION, MA 02738
GERZON, ALEKSANDR & KATHERINE		1164 BOYLSTON ST #2	BROOKLINE, MA 02467
LEE, WAN JAE & KWANG JA		521 HEATH ST #1	CHESTNUT HILL, MA 02467
MICOZZI, TR, NINO	C/O MICOZZI MGMT CO,	159 CAMBRIDGE ST	ALLSTON, MA 02134
SHAFRANSKIY, SERGEY & NATALIYA		1164 BOYLSTON ST #1	BROOKLINE, MA 02467
TASO, SELIM		513 HEATH ST	CHESTNUT HILL, MA 02467
THE DELANY REAL ESTATE LP,		965 HAMMOND ST	CHESTNUT HILL, MA 02467
WONG, PAUL B & MAY W		1162 BOYLSTON ST #3	BROOKLINE, MA 02467
YEUNG, CHI WAH	YE, HUI SHI	1162 BOYLSTON ST #1	CHESTNUT HILL, MA 02467
YUH, DAVID J & FAITH H		517 HEATH ST	BROOKLINE, MA 02467-

### 612 Hammond

#### Target Parcels

Owner	Agent	Address	City
CHESTNUT HILL INVESTMENTS LLC,		1299 BEACON ST	BROOKLINE, MA 02446

#### Abutting Property Owner (15)

Owner	Agent	Address	City
1162-1164 BOYLSTON CONDOS,	C/O LANE REALTY,	312 WEBSTER ST	NEEDHAM, MA 02494
621 HAMMOND STREET LLC,		621 HAMMOND ST	CHESTNUT HILL, MA 02467
CALDERON, MARINA S		1162 BOYLSTON ST #2	BROOKLINE, MA 02467
CENTURY BANK AND TRUST CO,		400 MYSTIC AVE	MEDFORD, MA 02155-
CHEN, YONG YUAN & MEI YUN		1164 BOYLSTON ST #3	BROOKLINE, MA 02467
CHESTNUT HILL INVESTMENTS LLC,		1299 BEACON ST	BROOKLINE, MA 02446
CHESTNUT HILL INVESTMENTS LLC,		166 HARVARD ST	BROOKLINE, MA 02446
CONNOLLY TRS, JOHN M	BRIEN, MARJORIE	174 POINT RD	MARION, MA 02738
GERZON, ALEKSANDR & KATHERINE		1164 BOYLSTON ST #2	BROOKLINE, MA 02467
LEE, WAN JAE & KWANG JA		521 HEATH ST #1	CHESTNUT HILL, MA 02467
MICOZZI, TR, NINO	C/O MICOZZI MGMT CO,	159 CAMBRIDGE ST	ALLSTON, MA 02134
SHAFRANSKIY, SERGEY & NATALIYA		1164 BOYLSTON ST #1	BROOKLINE, MA 02467
WONG, PAUL B & MAY W		1162 BOYLSTON ST #3	BROOKLINE, MA 02467
YEUNG, CHI WAH	YE, HUI SHI	1162 BOYLSTON ST #1	CHESTNUT HILL, MA 02467
YUH, DAVID J & FAITH H		517 HEATH ST	BROOKLINE, MA 02467-

