DECISION ON REQUEST FOR FINDING OF INSUBSTANTIAL CHANGE
TO
CHAPTER 40B COMPREHENSIVE PERMIT
THE RESIDENCES OF SOUTH BROOKLINE

MODIFICATION TO BOARD OF APPEALS CASE NO. 2013-0094

Date: April 18, 2019

PROCEDURAL HISTORY

1. The Brookline Zoning Board of Appeals (the "Board") issued a comprehensive permit (the "Comprehensive Permit") to The Residences of South Brookline, LLC (the "Applicant") pursuant to M.G.L. c. 40B by virtue of a Decision (the "Decision") filed with the Brookline Town Clerk on February 20, 2015, for the Residences of South Brookline (the "Development").

2. The Town of Brookline, 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 Decision.[1]

3. The Court issued a Judgment dated September 14, 2018, in which it upheld the Board's Decision granting the Comprehensive Permit.[2]

4. By letter dated March 18, 2019 (the "Request Letter"), the Applicant requested the Board's approval as insubstantial changes to the Comprehensive Permit pursuant to 760 CMR 56.05(11), the following: (i) changes to the approved site plan as reflected on the Modified Site Plan attached to the Request Letter, and (ii) certain other modifications to the Comprehensive Permit as set forth in the Request Letter.

DECISION

At its regularly scheduled public meeting on March 25, 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. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Request Letter.

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[1] 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."

[2] 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.

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

CONDITIONS

1. The Development shall be constructed substantially as shown on the Modified Site Plan attached hereto as Schedule 1, and substantially as shown on the New Site Plan Drawings and the New Architectural Plans, which were submitted in connection with the Request Letter.

2. The number of buildings, units and corresponding bedroom mix, and parking spaces shall be modified as set forth on the Summary of Proposed Changes tables attached hereto as Schedule 2.

3. The Conditions in the Comprehensive Permit shall be modified as set forth in the Proposed Modification of Conditions attached hereto as Schedule 3.[3]

4. The Proposed Waiver List in the Comprehensive Permit shall be modified as set forth in the Revised Request for Waivers attached hereto as Schedule 4.[4]

5. Except as noted above, the terms and conditions of the Comprehensive Permit shall otherwise remain in full force and affect.

RECORD OF VOTE

The following members of the Board vote to approve the foregoing as insubstantial changes to the Development and the Comprehensive Permit:

Signed this 18th day of April, 2019

By: _____
Mark Zuroff, Acting Chairman
Lark Palermo, Associate Member
Randolph Meiklejohn, Associate Member

A True Copy
ATTEST:
_____
Patrick J. Ward
Clerk, Board pf Appeals
Date Received: April 30, 2019

2019 APR 30 A 10: 57
RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

A TRUE COPY
ATTEST:
_____
Town Clerk
Brookline

[3] This Decision is a clean version of the redline version of the Proposed Modification of Conditions, which was included as Exhibit E to the Request Letter.

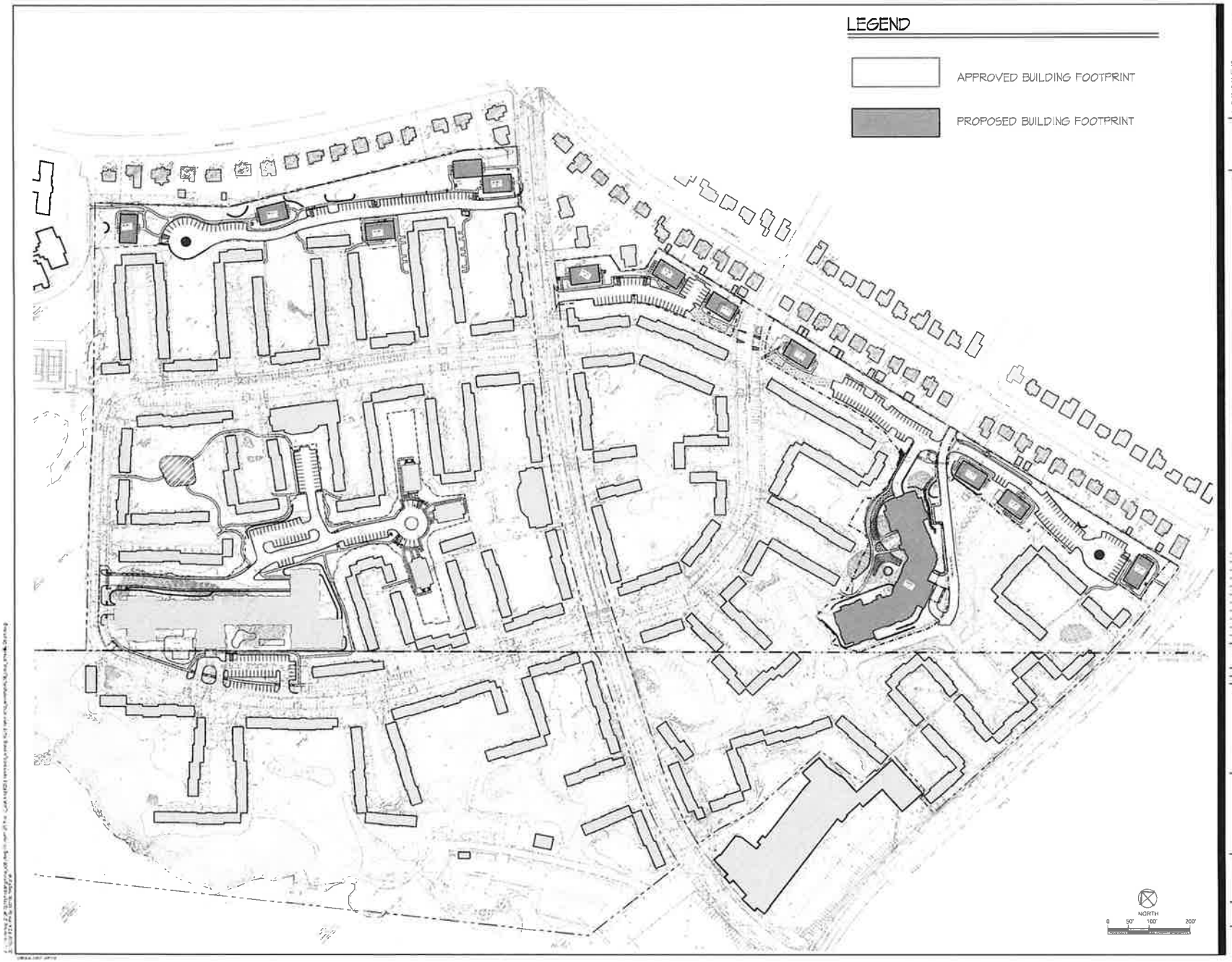
[4] Schedule 4 to this Decision is a clean version of the redline version of the Revised Request for Waivers, which was included as Exhibit F to the Request Letter.

4824-1336-8718.3

Schedule 1

MODIFIED SITE PLAN

(See Attached)



Stantec

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Consultants

[illegible]	[illegible]	[illegible]	[illegible]
Issued	[illegible]	[illegible]	[illegible]
File Name ROSB_base_asheville_opt1.dwg			
Date	Chkd	Dtgr	[illegible]

Permit-Seal

Client/Project

Chestnut Hill Realty

RESIDENCES OF SOUTH BROOKLINE
MINOR MODIFICATION
Brookline, MA

Title

OVERALL SITE PLAN

Project No. 210810271

Scale As Noted

Drawing No. L-100

Schedule 2

SUMMARY OF PROPOSED CHANGES

As set forth in the tables below, "Asheville" refers to units and bedrooms in the Asheville Building and "Infill" refers to units and bedrooms in to the S-7 Buildings, as such terms are defined in the Request Letter.

RESIDENCES OF SOUTH BROOKLINE PROJECT COMPARISON
40B AS APPROVED VS. 40B AS MODIFIED

Unit Mix Comparison

ROSB AS APPROVED 161 UNITS (109 Unit Asheville + 52 S-7 Units)

Unit Type	Asheville Units	Asheville Bdrms	S-7 Units	S-7 Bdrms	Total Units	Total Bdrms	Total 2nd, 3rd, 4th Bdrms	Total Aff Units	Total Mkt Rate Units
1 Bdrm	53	53	4	4	57	57	0	12	45
2 Bdrm	56	112	3	6	59	118	59	12	47
3 Bdrm	0	0	22	66	22	66	44	4	18
4 Bdrm	0	0	23	92	23	92	69	5	18
TOTALS	**109**	**165**	**52**	**168**	**161**	**333**	**172**	**33**	**128**

ROSB AS MODIFIED 175 UNITS (127 Unit Asheville and 48 S-7 units)

Unit Type	Asheville Units	Asheville Bdrms	S-7 Units	S-7 Bdrms	Total Units	Total Bdrms	Total 2nd, 3rd, 4th Bdrms	Total Aff Units	Total Mkt Rate Units
Studio	3	3	0	0	3	3	0	1	2
1 Bdrm	79	79	0	0	79	79	0	16	63
2 Bdrm	43	86	0	0	43	86	43	8	35
3 Bdrm	2	6	48	144	50	150	100	10	40
4 Bdrm	0	0	0	0	0	0	0	0	0
TOTALS	**127**	**174**	**48**	**144**	**175**	**318**	**143**	**35**	**140**
Difference	18	9	(4)	(24)	14	(15)	(29)	2	12

As set forth in the tables below, "Asheville" refers to units and bedrooms in the Asheville Building and "Infill" refers to units and bedrooms in to the S-7 Buildings, as such terms are defined in the Request Letter.

RESIDENCES OF SOUTH BROOKLINE PROJECT COMPARISON
40B AS APPROVED VS. 40B AS MODIFIED

Project Comparison		
	ROSB As Approved	**ROSB as Modified**
Number of Buildings	11	11
S-7 Building Stories	3	2
Asheville Building Stories	3.5	3.5
Surface Parking Spaces	193	193
Asheville Garage Parking Spaces	99	121

Building Volume Comparison			
	ROSB As Approved	**ROSB as Modified**	**Difference**
Total S-7 Cubic Feet	988,000	831,200	(156,800)
Total Asheville Cubic Feet	5,638,000	5,638,000	-
Total Project Cubic Feet	**6,626,000**	**6,469,200**	**(156,800)**

Gross Square Feet Comparison		
Building	**Approved 40B GSF**	**Minor Modification GSF**
1	7,258	5,912
2	7,258	5,912
3	7,258	5,912
4	14,412	11,824
5	10,434	5,912
6	7,258	5,912
7	6,946	5,912
8	6,946	5,912
9	7,258	5,912
10	7,258	5,912
11	7,258	6,246
Asheville	138,114	150,483
Total GSF	**227,658**	**221,761**
Difference in GSF	-	**(5,897)**

Schedule 3

PROPOSED MODIFICATION OF CONDITIONS

(See Attached)

CONDITIONS:

1. The Project shall be constructed in conformance with the Site Plans and the Architectural Plans listed above in item 4 under Procedural History and the Conditions in this Decision. The Applicant shall submit final site and architectural plans for review by the Planning Director to determine whether they conform to the Site Plans and Architectural Plans listed in Item 4 under Procedural History. Conformance with the Site Plans and/or the Architectural Plans includes conformance with all applicable laws including, unless waived by the Board [see Condition 4], local zoning and other bylaws and regulations.

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-one (121) garaged parking spaces and one hundred ninety-three (193) surface parking spaces.

3. The total maximum number of bedrooms shall be three hundred eighteen (318) 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
3	Studio
79	One
43	Two
50	Three
0	Four

4. With respect to the Applicant's Request for Waivers from local bylaws and regulations dated January 9, 2015 (revised March 18, 2019), the Board approves those waivers listed in Exhibit 1. The Project must comply with bylaws and regulations not waived.

5. Applicant shall implement and enforce a parking permit system to ensure that parking is restricted to tenants of the Project and their visitors. Parking under Building 12 (mid-rise apartment building) shall be assigned and restricted to the tenants of Building 12. Twenty-five (25) parking spaces shall be designated for visitors of tenants of the Project and distributed across the Site. "Handicapped spaces" shall be designated as required by state law.

Housing

6. All of the units in the Project shall be eligible for inclusion in the SHI as set forth in Section II.A.2.b.l of "Guidelines G.L.c. 40B Comprehensive Permit Projects Subsidized Housing Inventory," MA Department of Housing and Community Development ("Guidelines") in perpetuity.

7. At least twenty percent (20%) of the units in the Project shall be occupied and rented by households earning fifty percent (50%) or less of AMI as defined by the U.S. Department of Housing and Urban Development pursuant to section 3 of 42 U.S.C. 1437 [the Housing Act of 1937] or, alternatively, at least twenty-five percent (25%) of the units in the Project shall be occupied and rented by households earning eighty percent (80%) or less of AMI ("Affordable Units"). The Affordable Units shall be Low or Moderate Income Housing, as defined in 760 CMR 56.02, for rental and occupancy, in perpetuity, by Income Eligible Households, as defined in 760 CMR 56.02, and shall meet the criteria outlined in Section I of the "Guidelines." In accordance with Section ILA.2.b(1) of the Guidelines and unless otherwise required by the Subsidizing Agency, as defined in 760 CMR 56.02, twenty percent (20%) of one-hundred-seventy-five (175) units shall be thirty-five (35) units and twenty-five percent (25%) shall be forty-four (44) units.

8. In accordance with the Guidelines, and to the extent allowed by law, preference for renting up to seventy percent (70%) of the Affordable Units shall be given to residents of the Town, which for this purpose is defined as anyone currently living in the Town (at the time of application to rent a unit), employees of businesses located in Town, Town employees, or households with children attending school in the Brookline School District.

9. All leases for the units in the Project shall include language stating that tenants may not use any rooms other than bedrooms for sleeping purposes. Living rooms or dining rooms may not be used as bedrooms.

10. After the Subsidizing Agency has given written notice to the Town, as set forth in 760 CMR 56.05(13), that the Subsidy, as defined in 760 CMR 56.02, will expire and prior to the expiration of the Subsidy, the Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town (the "Town Regulatory Agreement"), which the Applicant shall record with the Norfolk County Registry of Deeds. The Town Regulatory Agreement shall require that (i) the Project shall remain a rental project in perpetuity, (ii) there shall be Affordable Units in perpetuity as set forth in Condition 7 above and (iii) all of the units in the Project shall be eligible for inclusion in the SRI in perpetuity. An outline of the terms of the Town Regulatory Agreement is attached as Exhibit 2.

11. When the Town Regulatory Agreement takes effect, the affordability requirements (which are set forth in Conditions 6, 7, and 8 above) shall be monitored and enforceable by the Town. From and after such time as the Town becomes responsible for monitoring the affordability requirements, the Applicant shall provide the Town with a reasonable fee to cover the costs of such monitoring and enforcement.

12. Subject to the requirements of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement) relative to limited dividends from the Project during the Subsidy Period (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement), the Applicant shall provide a copy to the

Board of Selectmen of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by Applicant to the Subsidizing Agency to revalue Applicant's equity in the Project, made by Applicant to the Subsidizing Agency (or its monitoring agent) relative to the Applicant's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g. all statements required to be submitted to MassDevelopment as set forth in the MassDevelopment regulatory agreement), contemporaneous with the Applicant's delivery of such documents to the Subsidizing Agency (or its monitoring agent). If, at any time during the Subsidy Period, the Subsidizing Agency determines that, in accordance with the Subsidizing Agency's limited dividend policies and the Guidelines, there is cash available for distribution in any year in excess of twenty percent (20%) of owner's equity, subject to payment of cumulative deficiencies as provided in the Guidelines ("Excess Profits") then the Applicant shall cooperate in good faith with any effort by the Town to have the Subsidizing Agency direct the Excess Profits to the Town's affordable housing trust fund.

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, 79 one-bedroom units in the Project or a ratio of 79:175, 43 two-bedroom units or a ratio of 43:175 and 50 three-bedroom units or a ratio of 50:175.

Architecture

14. The buildings in the Project and units in the buildings shall conform to the Architectural Plans. Applicant shall submit the final architectural plans for review by the Planning Director to determine whether they conform to the Architectural Plans listed in Item 4 under Procedural History and the Conditions of this Decision.

15. Air conditioning condensers and other mechanicals installed on the roof of Building 12 shall be screened so that they are not visible from the single-family homes abutting the Site. No structures or exterior architectural details (other than those shown on the Site Plans and Architectural Plans) shall be located within the side setback line parallel to Beverly and Russett roads on Lots W, El, E2, and E3, extending from the property line on Lot Wand to the property line on Lot E3. Notwithstanding the foregoing, air conditioning condensers may be installed and maintained within six (6) feet of any building.

Open Space and Landscaping

16. There shall be no structures or buildings or paved surfaces 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 760CMR 56.05(11), shall be allowed.

17. Applicant shall execute and cause to be recorded, prior to the issuance of a Certificate of Occupancy, a restriction (the "Restriction") in favor of the Town, acting through its Board of Selectmen. The Restriction shall run by its terms in perpetuity and shall prohibit

additional structures or buildings or paved surfaces on the Site. The language shall be subject to review and reasonable approval by Town Counsel. Applicant shall cooperate with Town Counsel to assure to the greatest extent possible that the Restriction runs in perpetuity, including, if determined necessary by Town Counsel, seeking applicable state approval for the Restriction. The Restriction shall not prohibit insubstantial changes to the Project as determined by the Board in accordance with 760 CMR 56.05(11). The Restriction shall provide that notices of extension shall be recorded as set forth in Ch. 184, Section 27.

18. Applicant shall demonstrate, to the satisfaction of the Planning Director, that (i) the structures comprising the Project and parking areas are reasonably screened from view from streets and abutting and other nearby properties, (ii) there is an adequate plan for maintaining, and replacing as necessary, the plantings on the Site, and (iii) where new plantings are proposed, there shall be at least three feet (3') of soil depth unless not feasible in which case another planting method shall be used, subject to review and approval by the Town Arborist that this "other method" will ensure that the new plantings thrive.

19. Applicant shall submit final landscaping plans to the Planning Director for review to determine (a) whether they include measures that adequately ensure that the trees and rock outcropping shown on the No Disturb Zones (sheets numbered EX110, EX111, and EX112) will be preserved, and (b) that they are consistent with the Site Plans listed in Item 4 under Procedural History.

20. 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 single-family homes and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with the Zoning Bylaw. The mounting height of the Site lights shall be no higher than fifteen feet (15') as shown on Exhibit 3 entitled Site Light Mounting Height.

Traffic and Vehicular and Pedestrian Circulation

21. Prior to application for a Building Permit, Applicant shall Submit final site plans to the Director of Transportation and Engineering so that he may determine whether they conform to the Site Plans listed in Item 4 under Procedural History and whether they depict or indicate, as required, that:
    a. A curbcut on the westbound side of Independence Drive (approximately two hundred fifty feet (250') west of Beverly Road) provides access to the driveway on Lot W to Independence Drive.
    b. A curbcut on the eastbound side of Independence Drive (approximately one hundred feet (100') east of Gerry Road) provides access to the driveway on Lot El to Independence Drive.
    c. The minimum width of the portion of Asheville Road that is in the Limit of Work area shown on Sheet EX112 and the driveways connecting to Independence Drive is twenty-three feet (23').

d. There are STOP signs (R1-1 series) and STOP pavement line markings on the driveways connecting to Independence Drive.
e. There are sidewalks and marked crosswalks (i) along the driveways connecting to Independence Drive, (ii) from Lot W to the Baker School, (iii) between the front entrance of Building 9 and the surface parking lot north of Building 12, (iv) from the driveway of Building 9 continuing southeast to the front entrance of Building 10, and (v) from the portion of Asheville Road that is in the Limit of Work area shown on Sheet EX112 from Building 12 to the sidewalks in Hancock Village.
f. Where surfaces are impervious, at a minimum there is 4" of black top, 12" of gravel, and a suitable sub-base that is not mud or peat. Where porous pavement will be used, at a minimum there shall be 4" of porous asphalt pavement, 3" of choker course, ¾" to 1 ½" of crushed stone reservoir course and 4" of PVC perforated under drain wrapped in geotextile fabric.

22. Upon written request by the Town at the time the Town seeks bids for construction of improvements to Independence Drive, the Applicant shall provide the Town with Three Hundred-Fifty Thousand Dollars ($350,000.), adjusted for inflation, which shall be held in a segregated account for use by the Town for constructing a redesigned Independence Drive (from the intersection of Beverly and Russett roads to the boundary between Brookline and Boston), the principal purpose of which is to mitigate the potential impacts of the Project on pedestrian safety. After construction of improvements to Independence Drive, any remaining balance shall be returned to Applicant.

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 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.

24. As quickly as feasible and in no event later than application for a Building Permit for the Project, Applicant shall take all commercially reasonable steps to secure a curb cut onto Lot E3 to provide access and egress to and from VFW Parkway to the Site (the "VFW Curbcut"). Applicant shall include, as it and the Town deem desirable, the Town in its meetings with the agencies having jurisdiction over the VFW Curbcut. The Town shall have the right to participate in all such meetings.

25. Upon approval of the VFW Curbcut, Applicant shall submit to the Board for its review and approval, revised site plans (including revised lease lot line and landscaping plans if necessary), which may show up to ten (10) additional parking spaces in the parking areas in Lots E2 and E3. A prerequisite to the construction and use of the ten (10) additional parking spaces is the Applicant's construction of the VFW Curbcut to the satisfaction of the Director of Transportation and Engineering.

26. After ninety (90) days have elapsed since the Town has issued Certificates of Occupancy for all buildings and the Applicant certifies that at least ninety percent (90%) of the units are occupied, the Applicant shall prepare a traffic study ("Traffic Study") for review and approval as to its scope by the Director of Transportation and Engineering and the Transportation Board, which study shall use existing traffic conditions as set forth in the Traffic Report (see Item 4 of Procedural History) as its baseline for determining the impacts of the- Project and evaluating the need for traffic calming and shall propose traffic calling measures needed to mitigate the adverse impacts of the Project, if any, on the public portion of Asheville, Russett, Bonad, and Beverly roads. Prior to issuance of a Building Permit, Applicant shall deposit sixty four thousand dollars ($64,000), adjusted for inflation, into a segregated account to be used by the Town for traffic calming purposes on those roads, any unused funds to be returned to the Applicant.

Fire safety

27. The Site Plans for Lot E2 shall be modified so that (i) the design of the driveway leading to the fire lane on Lot E2 is changed so that emergency vehicles can enter and egress the fire lane unimpeded by obstacles, and (ii) landscaping does not impede firefighter access to the lower windows of Building 12. The Applicant shall submit the final site plans to the Director of Transportation and Engineering so that he may determine whether (a) these modifications have been made and the purpose of each modification as set forth in (i) and (ii) above has been achieved, and (b) the Site circulation and the emergency access roadway system and signage conforms to the Site Plans listed in Item 4 under Procedural History.

28. Applicant shall provide emergency access and egress to and from the surface parking lot on Lot El to Thornton Road ("Lot E1/Thornton Road Fire Lane") and an easement in favor of the Town for such emergency access, which easement shall be subject to review and reasonable approval by Town Counsel.

29. Applicant shall install and maintain an Opticom gate, and replace, if and when necessary, such gate with a comparable gate acceptable to the Fire Chief, on the boundary line of the Site where Grassmere Road becomes Thornton Road.

30. In those areas where Applicant proposes to use grass concrete paving (at the rear of Building 12 on Lot E2 and on the surface parking lot on Lot E1 Thornton Road Fire Lane), the following apply:

a. Applicant's Engineer shall certify in writing the load bearing capacity of the grass concrete and demonstrate to the satisfaction of the Fire Chief that the grass concrete and any pedestrian pathways that cross areas paved with grass concrete will support the weight of emergency apparatus.
b. The final landscaping plans shall include visual clues around the grass concrete paving that indicate where emergency responders can drive their vehicles.
c. The areas shall be designated as Fire Lanes and restricted for use by emergency vehicles only.
d. Applicant shall maintain the Fire Lanes to ensure they are clear of snow, leaves, debris, or other obstacles.

31. Prior to application for a Building Permit, Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) all buildings in the Project have enhanced NFPA 13 designed sprinkler systems, (b) all buildings in the Project have direct alarm notification to the Fire Department designed in accordance with Building and Fire codes, and (c) Building 12 includes a Class I or III standpipe system.

Stormwater

32. Applicant shall submit a final stormwater management report and plans for review and approval by the Director of Transportation and Engineering to ensure that:
    a. The final stormwater management plans are consistent with the Site Plans and the Stormwater Management Report and the Conditions of this Decision. The final stormwater management report shall include a breakdown of the cost estimates for the maintenance of individual components of the stormwater management system and the manufacturer's specifications for the grass concrete paving.
    b. There will be no standing water on the low-lying areas of the Site.
    c. The detail for the Bio-Retention Basin includes material types and depths.
    d. Porous pavement on the parking lot north of Asheville Road is at least thirty feet (30') from any residential structure.

33. Applicant shall remove snow that cannot be stored on Site.

34. Where there is less than two feet (2') of cover over catch basin connections, ductile iron pipe shall be used.

35. Applicant shall take water quality samples at the intersections of the 27" and 18" drains in Independence Drive and the 27" and 42" drains in Gerry Road and at the outfall. If the results indicate cross-contamination between the sewer and the stormwater system caused by the Project or by the existing Hancock Village development, further investigation and mitigation shall be required as directed by the Commissioner of Public Works.

36. Prior to application for a Building Permit, the Applicant's engineer shall demonstrate in a written certification made to the satisfaction of the Fire Chief that for domestic and fire-fighting purposes there is adequate water flow and pressure (as set forth in applicable codes) for the Project.

37. Prior to issuance of a Certificate of Occupancy, Applicant shall submit, for review and approval by the Chief of Environmental Health, a mosquito control plan which shall include seasonal treatment of all storm drains with larvicide applied by a licensed Pest Control Operator, in accordance with standards and practices applicable to the Town with respect to Town property. After each larvicide application, Applicant shall submit a written report to the Health Department of such application.

Historic Preservation; Environmental Filings

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

Infrastructure

39. 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. Interior roadways, driveways and parking areas;
    c. Open space including landscaping and paths;
    d. Snow plowing and removal;
    e. All sewer, stormwater and water connections, lines and equipment required, from the public way to the buildings;
    f. Lighting;
    g. Trash disposal and recycling; and
    h. All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable system.

40. Applicant shall operate and maintain all of the foregoing in Condition 39 in good working condition and repair at all times at its sole cost.
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 Transportation and

Engineering.

42. During the construction of water, sewer and stormwater systems, the Applicant's Project Engineer shall be on-site at least weekly to inspect the installation of all such systems and, on a monthly basis, shall certify in writing to the Director of Transportation and Engineering that all aspects of such systems were properly installed in accordance with approved plans. At least forty-eight (48) hours prior to backfilling any utility, Applicant shall notify the Director of Transportation and Engineering so the Town may inspect to ensure compliance.

Pre-Building Permit Review

43. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:
    a. Final site plans and architectural plans have been reviewed by the Planning Director in accordance with Conditions 1, 14, 18, and 19.
    b. The Director of Transportation and Engineering has reviewed the final site plans in accordance Conditions 21 and 27, the TAP in accordance with Condition 23, the final stormwater management plans in accordance with Condition 32, the water; stormwater and sewage facility designs in accordance with Condition 41, the erosion control plans in accordance with Condition 48 and the pavement surfaces in accordance with Condition 52 and all other items requiring review by the Director of Transportation and Engineering as listed in these Conditions.
    c. It has paid all fees required pursuant to Conditions 26, 54 and 65, and, if timely, Condition 22.
    d. It 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 Transportation and Engineering and the Fire Chief.
    e. 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).
    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) and Applicant has provided evidence of recording of same.
    g. The Building Commissioner has approved the Construction Management Plan (Condition 45).
    h. The preliminary rubbish plan has been reviewed in accordance with Condition 69.
    i. The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(I).

44. 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 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 Saturday (excluding Federal and State holidays): 7:00 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.

45. For purposes of this Decision (with the exception of Condition 62 below) "Commencement of Construction" shall mean that the Applicant has begun clearing and grubbing (removal of stumps and topsoil). Prior to Commencement of Construction and subject to approval by the Building Commissioner, the Applicant shall provide a

Construction Management Plan that shall include but not be limited to: designation of truck routes (the condition of pavement surfaces of such routes before and after construction to be documented); a phasing plan prepared by Applicant's contractor that includes provisions to protect the crushed stone reservoir course and the one porous asphalt pavement lot north of Asheville Road during construction; a survey of existing trees and measures to ensure tree protection during construction; limit of work areas; 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; earthwork calculations to determine earth and rock removal; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips.

46. Ledge shall be removed at least four feet (4') below the Stormtank systems. Applicant shall notify the Director of Transportation and Engineering at least forty-eight (48) hours prior to installing Stormtank systems, so that Town may inspect to ensure compliance.

47. 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 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).

48. Applicant shall ensure that no erosion from the Site occurs that will cause deposition of soil or sediment upon adjacent properties or public ways. Prior to Commencement of Construction, Applicant shall provide the Director of Transportation and Engineering with plans showing the following:

    a. catch basins, with both silt sacks and hay bales;
    b. site perimeter controls and drainage structure inlet sediment protection measures;
    c. a temporary sediment basin at the proposed Bio-retention Basin at Building 4;
    d. construction drawings showing filter fabric at a temporary basin that is to be removed prior to the construction of the Bio-retention Basin;
    e. specific locations and construction details for the stabilized construction entrances;
    f. final locations of stockpile areas on erosion control plans; and
    g. construction detail for erosion controls at perimeter of stockpiles.

49. Applicant shall keep in optimum working order, through regular maintenance, any and all equipment that makes sounds.

50. During construction, Applicant shall provide the Director of Transportation and Engineering and the Building Commissioner with a written monthly report outlining the status of the Project. The monthly reports shall detail areas of noncompliance with this Decision, if any, and actions taken to resolve these issues.

51. During construction, Applicant may post on Site no more than one (1) temporary construction and/or development 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.

52. Prior to Commencement of Construction, Applicant shall provide the Director of Transportation and Engineering with a report and photographs of the condition of pavement surfaces along truck routes before Construction Commencement and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic does not adversely affect the pavement.

53. Prior to Commencement of Construction, Applicant shall provide a blasting/drilling plan, for review and approval by the Fire Chief and the Building Commissioner, with the assistance of the Town's geotechnical blasting consultant, that includes methods to protect buildings, residents, pedestrians, vehicles, and utilities on and off-site and provides for coordination with utility owners. All drilling and blasting pertaining to the Project and/or the Site, shall be in accordance with federal, state and local blasting permit laws and regulations and in accordance with the conditions contained therein as well as the conditions listed in Exhibit 4 attached.

54. Prior to Commencement of Construction, Applicant shall deposit funds in a segregated account to pay for the fees charged by a geotechnical consultant to be hired by the Town to review the blasting/drilling plan and oversee blasting and drilling performed by the Applicant on the Site.

Pre-Occupancy Permit Review

55. Prior to issuance of a Certificate of Occupancy for each building or portion thereof, the Applicant shall comply with the Public Works Department's Site Plan Review Checklist and with the Building Department's Certificate of Occupancy Process. Prior to the issuance of the initial 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 and the Architectural Plans, as modified as required by this Decision (e.g. Condition 27).

General

56. 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.

57. Any reference to Town staff shall include a designee (either another staff member or a consultant) of that person.

58. 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.

59. Upon execution by the members of the Board, the Clerk of the Board is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.

60. Any person aggrieved by this Decision may appeal pursuant to §21 of the Act.

61. Subsequent to the end of all applicable appeal periods and prior to the Commencement of Construction, 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.

62. 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 of760 CMR 56.05(l2)(c). For purposes of this paragraph only, *commencement of construction* is defined as the construction of the foundation of at least one of the Project's buildings. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).

63. If the Applicant revises any of the Plans (or other materials listed in Item 4 of Procedural History), it shall present the revised plans or other materials to the Board in accordance with 760 CMR 56.05(11).

64. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of760 CMR 56.05(12)(b).

65. Prior to making an application for a Building Permit, Applicant shall deposit twenty-eight thousand dollars ($28,000), adjusted for inflation, in a segregated account or accounts, the funds to be used by the Building Department and/or the Division of Engineering and Transportation to cover the cost of plumbing, gas and electrical inspections and engineering fees (for plan review and inspection), any balance remaining after the issuance of the final Certificate of Occupancy to be returned to Applicant.

66. All utilities shall be underground.

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.

68. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by the Act and the Regulations.

69. Prior to the issuance of a Building Permit, the Applicant shall submit a preliminary rubbish/recycling plan and schedule to the Chief of Environmental Health for review and a determination of compliance with Town regulations. After ninety (90) days have elapsed since the Town has issued Certificates of Occupancy for all buildings and the

Applicant certifies that at least ninety percent (90%) of the units are occupied, the Applicant shall submit a final rubbish/recycling plan and schedule to the Chief of Environmental Health for review and approval to determine that:

a. all rubbish generated from the Project will be handled and disposed of in compliance with all applicable regulations;
b. Applicant has provided sizes, number, and location of dumpsters, trash compactors, and recycling containers;
c. Applicant has provided a schedule for trash and recycling pick-up demonstrating compliance with Town bylaws;
d. dumpsters are fully screened on three sides with solid walls of a sufficient height with a solid front gate;
e. trash compactors are enclosed; and
f. Applicant has provided a rodent and insect control plan.

70. The Applicant has advised the Board that it does not intend to commence construction until the appeal in the lawsuit described in Paragraph 2 of the Procedural History (the "Appeal") is resolved. In the event the Applicant nonetheless does commence construction prior to resolution of the Appeal, any such construction shall be at the Applicant's sole risk, and if the result of the final disposition of the Appeal is that the PEL is rendered null and void, this Comprehensive Permit shall accordingly be rendered null and void as well, and in such case the Applicant, at its sole expense, shall restore the Project to the condition it was in prior to construction.

Schedule 4

REVISED REQUEST FOR WAIVERS

(See Attached)

THE RESIDENCES OF SOUTH BROOKLINE
PROPOSED WAIVER LIST
January 9, 2015
Revised March 18, 2019

Brookline Zoning Bylaws						
Bylaw Section	**Requirement**	**Applicable District(s)**	**Lot(s) Affected**	**Requested Waiver(s)**	**Details of Proposal Requiring Waiver**	**Waiver No.**
§4.04	Limitation of Area of Accessory Uses	S-7; M-0.5	W, El, E2, E3	Waiver to allow accessory uses (parking) within front and side setback areas.	The Development will include parking within required setback areas.	A
§4.07(6) - *Table of Use Regulations and §4.08*	Multifamily Uses	S-7	W, El, E2, E3	Waiver to allow multifamily uses within the S-7 zoning district. Special permit and local affordability requirements inapplicable.	The Development is a multifamily housing development containing 12 buildings and 175 dwelling units, of which 11 "infill" buildings and 48 dwelling units will be located in the S-7 zoning district.[1] The Comprehensive Permit, as may be granted by Zoning Board of Appeals, shall provide all local permits per M.G.L. c. 40B.	B
§4.07(22) and (55) - *Table of Use Regulations*	Residential Parking Areas	S-7; M-0.5	W, El, E2, E3	Waivers to allow residential parking areas with more than three spaces as a secondary use for storage of vehicles of residents on other lots in excess of 1,400' distant.	Except for the parking garage, which will be available to only residents of Building 12, the Development's parking spaces will be available to all of its residents, regardless of whether such residents live on the same lot, and regardless of the distance between the relevant parking space and lot.	C
§5.03	Spacing of Residential Uses on the Same Lot	S-7	E3	Waiver to allow construction of two or more main residential buildings without providing front, side, and rear yards between each building.	As shown on the Waiver Plan, in one location on the Site, Building 9 will be located approximately 53' from Building 10, within the required front yard of Building 10.	D
§5.04(1)	Residential Building on Rear of a Lot	S-7	E3	Waiver to allow residential buildings located on the rear of the lots to have less than an 80' rear yard.	As shown on the Waiver Plan, in one location on the Site, Building 10 will be located approximately 53' from Building 9, within the required rear yard of Building 9.	E

[1] Building 3 (containing four units) will technically be located within the portion of Lot W located within the M-0.5; however, except as expressly noted herein, for purposes of evaluating zoning compliance, the more restrictive use and dimensional regulations applicable in the S-7 have been applied to Building 3.

§5.09	Design Review	S-7; M-0.5	W, El, E2, E3	Design Review requirements not applicable under M.G.L. c. 40B.	Comprehensive Permit, as may be granted by Zoning Board of Appeals, shall provide all local permits per M.G.L. c. 40B.	F
§5.10, §5.12, and Table 5.01	Minimum Lot Size, Minimum Lot Area Per Dwelling Unit	M-0.5	E2, W	Waiver from minimum lot size of 3,000 sf for first dwelling unit and 2,000 sf for each additional dwelling unit,	On Lot E2, the Development will have a lot size of approximately 90,173 sf within the M-0.5 District, allowing 44 total units. On Lot W, the Development will have a lot size of approximately 7,396 sf within the M-0.5 District, allowing 3.20 total units. Within the M-0.5 District, the Development will include approximately 127 units on Lot E2 and 4 units on Lot W. The entire development will have a lot size of approximately 373,719 sf, allowing a total of 186 units (175 units are proposed).	G
§5.14	Lot Frontage	S-7	E2, E3	Waiver of the 40' street width requirement for computation of lot frontage.	The minimum 40' street width requirement for purposes of determining frontage is waived and reduced to not less than 23 feet. Lot E2 and Lot E3, as shown on Sheet EX 100 attached hereto, shall be deemed to have compliant road width to satisfy lot frontage on a road (Asheville Road) of not less than 23' wide for all purposes under the Town's Zoning Bylaws and rules and regulations of M.G.L. c. 41 and c. 40A.	H
§5.20 and Table 5.01	Maximum FAR	S-7 M-0.5	El, E2, W	Waiver from maximum ratios of gross floor area to lot area (0.5 in M-0.5 district and 0.35 in the S-7 District).	On Lot El, the Development will have a FAR of approximately 0.37. On Lot E2, within the M-0.5 District, the Development will have an FAR of approximately 1.55. On Lot W, within the M-0.5 District, the Development will have an FAR of approximately 0.80. The entire Development will have an FAR of approximately 0.56.	I
§5.30-5.32 and Table 5.01	Maximum Height of Buildings	S-7 M-0.5	W, El, E2	Waiver from maximum building height limitations, as calculated pursuant to Sections 5.30-5.32.[2]	On Lot W, Building 1 will have a height of approximately 202.58, which is approximately 1.95' over the allowed height of 200.63'. Building 2 will have a height of approximately 202.58', which is approximately 1.95' over the allowed height of 200.63'. On Lot E2, Building 12 will have a height of approximately 237.44', which is approximately 21.66' over the allowed height of 215.78'.	J

[2] See separate "Building Height Calculation Plan" prepared by Stantec dated January 9, 2015. All height measurements provided in this table represent the building's elevation above the Brookline Town Base Elevation.

§5.50, §5.52 and Table 5.01	Minimum Front Yard[3]	S-7; M-0.5	W, El, E2, E3	Waiver from 30'minimum front yard requirement.	Minimum 18.57' setback provided for Building 4. Minimum 34.47' setback provided for Building 5. Minimum 8' 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
§5.55	Front Yard for Rear Lot	S-7	W	Waiver to allow less than required front yard depth for building located on rear lot.	Building 3 will be set back approximately 6" from lot line parallel to Independence Drive.	L
§5.60, §5.62, 5.63, and Table 5.01	Minimum Side Yard[3]	M-0.5	E2	Waiver from minimum side yard requirement of 10 + L/10 (where "L" is the dimension of that portion of the wall required to be set back from the side lot line), and to allow light poles in excess of 15' in height within side yard.	Minimum 10' setback provided for Building 12. Light poles will be approximately 17' in height.	M
		S-7	W, El, E2, E3	Waiver from minimum side yard requirement of 20' and to allow retaining walls in excess of 7' in height within required side setback areas, and to allow light poles in excess of 15' in height within side yard.	Minimum 7.25' setback provided for Building 1. Minimum 6" setback provided for Building 3. Minimum 3.85' provided for Building 7. Minimum 20' provided for Building 8. Minimum 6' setback provided for Building 9. Minimum 4' setback provided for Building 10. Minimum 13' 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
§5.70, §5.72, §5.74 and Table 5.01	Minimum Rear Yard[3]	M-0.5	E2	Waiver from 30' minimum rear yard requirement, and to allow light poles in excess of 15' in height within rear yard.	Minimum 19' setback provided for Building 12. Light poles will be approximately 17' in height.	O
		S-7	El, E2, E3, W	Waiver from 40' minimum rear yard requirement and allow light poles in excess of 15' in height within rear yard.	Minimum 6" setback provided for Building 3. Minimum 3.75' provided for Building 7. Minimum 20' provided for Building 8. Minimum 13' setback provided for Building 11. Retaining walls within rear yards of Building 12 may exceed 7' in height. Light poles will be approximately 17' in height.	P

[3] Section 5.40 of the Zoning Bylaw allows for a less restrictive interpretation of minimum yard requirements where a structure is not parallel to the lot line; for the sake of clarity, all minimum yard requirements have been applied as if the buildings were parallel to lot lines.

§5.91 and Table 5.01	Minimum Usable Open Space	M-0.5	W, E2	Waiver from the requirement that at least 30% of the gross floor area on each lot will be usable open space.	On Lot W, within the M-0.5 District, 0 sf of Usable Open Space will be provided. On Lot E2, within the M-0.5 District, 14,361 sf of Usable Open Space will be provided, which is approximately 10% of the gross floor area of the structure on Lot E2 in the M-0.5 District.	Q
§6.02, Paragraph 1, Table of Off-Street Parking Requirements	Number of Parking Spaces per Dwelling Unit	M-0.5	E2	Waiver from the requirement to provide 2.0 spaces per 1 and 2 bedroom unit and 2.3 per 3-bedroom units.	On Lot E2 in the M-0.5 District, the Development will provide 0.95 parking spaces per studio, 1 or 2-bedroom dwelling unit.	R
§6.04.5.c.4	Parking area setback	S-7	W, El, E2, E3	Waiver from the requirement to setback parking spaces from the front lot line a distance equal to the greater of the required building setback (30') or the average of the setbacks of buildings on adjacent lots on either side.	On all lots within the S-7, parking areas will contain more than six spaces, but will be set back less than 30' from front, side, and rear lot lines.	S
§7.01.1, §7.02.1	Signage	S-7; M-0.5	W, El, E2, E3	Waiver from the limitations on the number, size, and types of permanent and construction signs allowed in the S-7.	The Project shall have identification signs measuring approximately 15 sf in area in the locations shown on Sheets L301, L302, and L303 of the Plans. During construction, each lot will have a temporary construction sign of approximately 20 square feet in area.	T

Brookline General Bylaws					
Bylaw Section	**Requirement**	**Lot(s) Affected**	**Requested Waiver or Waiver**	**Details of Proposal Requiring Waiver**	**Waiver No.**
§5.10.3.d	Neighborhood Conservation District	W, El, E2, E3	Waiver from conservation district permit requirements and applicable design standards and restrictions.	Comprehensive Permit as may be granted by Zoning Board of Appeals shall provide all local permits per MGL c. 40B.	U