

DRAFT 11-25-19

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION
445 HARVARD STREET
BOARD OF APPEALS CASE NO. 2019-0060**

Date: November 25, 2019
Re: Application of 445 HARVARD, LLC for a Comprehensive Permit
Location: Assessor's Atlas Map Sheet 067, Block 09, Lot 00, known and numbered as 445 Harvard Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On July 2, 2018, Massachusetts Housing Partnership (“MHP”) issued a Project Eligibility Letter (“PEL”) to 445 Harvard, LLC (the “Applicant”).
2. On July 23, 2018, the Applicant applied for a Comprehensive Permit, pursuant to G.L. Chapter 40B, Sections 20-23 (the “Act”), to construct 25 units of rental housing, approximately 1,900 square feet of retail space, and 20 parking spaces (the “Project”) on approximately 10,115 square feet of land located at 445 Harvard Street in Brookline, Massachusetts (the “Site”).
3. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application

Comprehensive Permit Plans for the Project dated July 23, 2018, and revised April 9, 2019, September 17, 2019, October 18, 2019 and revised again November 5, 2019, prepared as follows:

Sheet Numbers and Titles

| | |
|-----|--|
| EX1 | Existing Conditions Plan |
| C1 | Site Layout Plan |
| C2 | Grading & Utility Plan |
| C3 | Erosion Control Plan |
| CD1 | Construction Details |
| CD2 | Construction Details |
| CD3 | Construction Details |
| A1 | Previous Proposal |
| A2 | Site Context |
| A3 | Massing Diagrams |
| A4 | Site Plan Diagram |
| A5 | 3D Printed Model |
| A6 | Axon Diagram |
| A7 | Ground Floor Diagram |
| L1 | Landscape Plan |
| A8 | 2 nd & 3 rd Floor Plan |
| A9 | 4 th Floor Plan |
| A10 | Penthouse Floor Plan |
| A11 | Roof Plan |
| A12 | Building Elevations |

Comment [1]: Can we double check this date? I thought the application was dated 7/31/18.

Comment [2]: I do not believe that this is what was originally proposed. I think that there was originally 4,300 sf of retail. We may wish to define the original proposal as the “Original Proposal” and then include a new paragraph where we describe what the final proposal is and define that as the “Project”.

Comment [3]: Again, confirm date.

- A13 Building Elevations
- A14 Building Sections
- A15 3D Rendering
- A16 Material Diagram
- A17 3D Rendering
- A18 3D Rendering
- A19 Shadow Studies
- A20 Shadow Studies
- A21 Shadow Studies
- P1 Lighting Plan & Submittals

The drawings are stamped by Richard Hood, Bradley C. McKenzie, Dartagnan Brown, Katya Podsiadlo.

November 5, 2019 – Preliminary Drainage Calculations & Stormwater Management Plan, prepared by McKenzie Engineering Group

October 17, 2019 – Traffic Intersection Analysis, prepared by Vanasse & Associates, Inc.

October 2, 2019 – Transportation Impact Assessment Summary, prepared by Vanasse & Associates, Inc.

September 17, 2019 – Parking & Loading Plan, prepared by EMBARC Studio

September 17, 2019 -- CityLift Customized Parking Solutions, prepared by CityLift

July 12, 2019 and September 18, 2019 – Parking Peer Review Report, prepared by Walker Parking Consultants

August 16, 2019 – Response to Traffic Peer Review Report, prepared by Vanasse & Associates, Inc.

July 11, 2019 – Traffic Peer Review Report, prepared by Environmental Partners Group

May 26, 2019 (Amended October 22, 2019) – Design Peer Review Report, prepared by Davis Square Architects

October 4, 2019 – Brookline Transportation Board Letter & Attachment to Brookline ZBA

July 16, 2019 – Response to Environmental Technical Peer Review, prepared by Cooperstown Environmental

April 9, 2019 – Environmental Technical Peer Review, prepared by Fuss & O'Neill

4. The Applicant submitted a request for waivers from local by-laws and regulations dated July 23, 2018, and amended November 13, and November 25, 2019.
5. The Brookline Zoning Board of Appeals (the “Board” or the “ZBA”), with the consent of the Applicant, opened a duly advertised public hearing on January 16, 2019. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: March 6, 2019, May 29, 2019, July 17, 2019, September 25, 2019 (continued), October 23, 2019, November 13, 2019. All continuances beyond 180 days from January 16, 2019 were with the Applicant’s written consent.
6. The Board conducted a duly noticed site visit on June 6, 2019.
7. On November 25, 2019, the Board closed the public hearing.
8. The Board deliberated on the Application at a public meeting held on December 11, 2019 and voted to grant a Comprehensive Permit subject to the conditions listed below.
9. 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.

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10. During the course of the public hearing, the staff, boards, commissions, and local residents of the Town of Brookline (“Town”) submitted oral and written testimony with respect to the Project. The Board considered the technical review of Town department heads, an independent site and building design peer reviewer, an independent traffic and parking peer reviewer, and an independent environmental peer reviewer in regard to matters of public health and safety, environment, health and safety, traffic, site and building design, preliminary storm water management plans, and other issues of local concern.

11. The following consultants and independent peer reviewers assisted the Board in its review of the application:

Environmental
John Chambers
Fuss and O’Neill
Boston, Massachusetts

Traffic
James Fitzgerald, P.E.
Environmental Partners Group, Inc.
Quincy, Massachusetts

Parking
Walker Parking Consultants
Arthur Stadig, P.E.
Boston, Massachusetts

Site and Building Design
Clifford Boehmer, AIA, President
Davis Square Architects
Somerville, Massachusetts

12. During the course of the public hearing, Town staff and boards, peer reviewers, and local residents submitted extensive oral and written testimony with respect to the Original Project and the Amended Project on issues of height, scale, feasibility of the parking plan, safety, traffic, and site circulation.

FINDINGS

1. According to the Commonwealth of Massachusetts’s Department of Housing and Community Development Subsidized Housing Inventory (“SHI”), as defined in 760 CMR 56.02, as of September 14, 2017, 9.4 % 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. Massachusetts Housing Partnership determined that the Original Project was eligible under the Permanent Rental Financing Program , and that at least twenty percent (20%) of the units would be available to households earning at or below fifty percent (50%) of the Area Median Income (“AMI”), adjusted for household size, as published by the U.S. Department of Housing and Urban Development.

Comment [4]: Wasn't it Dan LaFrance?

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4. On July 23, 2018, the Applicant submitted the Project, which proposes that at least 20% of the units would be available to households earning at or below (50%) of the AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban and Development. The number of parking spaces was reduced to from 15 spaces (in the Original Project) to 9 spaces.
5. The 455 Harvard Street Site is on a corner lot at the intersection of Thorndike Street and Harvard Street. It is zoned as L-1.0 (Local Business District).
6. The Site is located on Harvard Street. Harvard Street extends from the Boston-Brookline municipal line to the area known as Brookline Village and consists in part of commercial structures that are mostly one-story tall. The Site is bordered by a two-family district, which includes single- and two-family structures and three-story apartment buildings and row-houses.
7. The Site currently features a gas station and auto repair shop with three existing curb cuts.
8. The Planning Board, independent design peer reviewer Clifford Boehmer, and local residents expressed in written and oral form comments during the public hearings. Neighbors expressed concerns that: the Original Project was too massive; its site configuration and parking plans were infeasible; the architectural style and building typology of the five-story apartment structure was incongruous with the residential neighborhood consisting primarily of older 2 ½ story single family houses; the architectural style and building typology of the five-story apartment structure was incongruous with the prevailing style of small-scale commercial properties on Harvard Street; and that the Original Project had inadequate front setbacks and an inadequate side setback to the abutting home on Thorndike Street.
9. ~~In~~ From January 2019 through November 2019, the Applicant met several times with abutters to propose and refine conceptual plans to address the height, massing, density, setbacks and parking plan on the Site.
10. At the November 13, 2019 public hearing the Applicant presented a final set of conceptual plans for the Project.
11. On November 13, 2019, the Applicant submitted an amended request for waivers from local regulations.
12. The Applicant stated that parking on the Site will not be available to customers of the commercial tenant or tenants. It will be exclusively for residential tenants.
13. 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 used in 760 CMR 56.02, as required by the Act.
14. 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.
15. The Board finds that granting certain waivers from local bylaws and regulations is acceptable even though granting any 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

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Comment [5]: A couple of things: I don't believe we have the concept of an "Original Project" in this document. The parking space information is not accurate.

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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.

16. 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.
17. The Board finds that many of the concerns expressed by abutters and other interested parties during the public hearing process involve pre-existing conditions on Thorndike and Harvard Streets and the surrounding area that are not directly related to or caused by the Project.
18. The Applicant has had the opportunity to review the following Conditions and has no objections.

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 25 units of rental housing and approximately 1,900 square feet of commercial space, and no fewer than 20 parking spaces as shown on the Site Plans, Architectural Plans, and Landscape Plans, subject to all of the conditions listed below.

CONDITIONS

1. The Project shall include no more than **25 units** of rental housing in one building as shown on the Site Plans and the Architectural Plans, approximately 1,900 square feet of retail in the building at the 445 Harvard Street lot, no fewer than 20 parking spaces, one of which is a handicap parking space as shown on the parking layout plan.
2. **Parking in the building** shall be exclusively for the use of residential tenants and four parking spaces shall be ~~provided available~~ for the residents of the affordable housing units as part of the rent. The parking for the market rate units shall be unbundled. If a resident of an affordable unit requires a space.
3. Parking in the building shall not be allowed for employees or users of the ground floor retail space and whoever leases the retail space must provide subsidized T passes to employees.
4. The loading zone on Harvard Street shall not be for the exclusive use of 445 Harvard Street tenants.
5. All **utilities** from the public way to the site shall be underground.
6. Any **use** of the Project's retail space which includes the preparation or sale of food or beverages shall conform to all building and health codes, including fire codes, sanitary codes, codes related to garbage disposal and including codes relating to adequate ventilation.
7. The Applicant shall maintain the property's **open space** off of Harvard Street and allow ~~limited~~ public access, subject to the operational needs of future retail tenants.
8. Five of the 25 units shall be available to households earning at or **below fifty (50) percent of the AMI**, adjusted for household size, as published by the U.S. Department of Housing and Urban Development.
9. The total maximum number of **bedrooms** shall be 37 and the maximum number of units shall be as listed in the following table.

Comment [6]: Not sure I follow why certain words in this section are bolded.

Comment [7]: Is there another way to say this? Maybe "four spaces shall be allocated to the affordable units" or "four spaces shall be available for residents of the affordable units"? Do we need to say anything about parking being unbundled?

Comment [8]: Not totally sure what this means? Do we mean that the Applicant will endeavor to make some or all of the space available to the public, subject to the operational needs of future retail tenant?

| Unit Type | Number of Units | Total Bedrooms per Unit Type |
|----------------|-----------------|------------------------------|
| 445 Harvard | | |
| One Bedroom | 16 | 16 |
| Two Bedroom | 6 | 12 |
| Three Bedroom* | 3 | 9 |
| | | TOTAL: 37 Bedrooms |

*One of the three bedroom units shall be an affordable unit in perpetuity

10. With respect to the Applicant's request for **waivers** from local by-laws and regulations dated July 23, 2018 as updated on November 25, 2019 and attached to this Decision as Exhibit 1, the Board approves those waivers. The Project must comply with all by-laws and regulations not waived.
11. Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans, materials, and elevations for the building, indicating façade design, materials, colors, window details and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the Plan of Record submitted November 5, 2019 to the Board. Color, windows, and materials **will be reviewed and approved on-site by the Assistant Director of Regulatory Planning, and Any changes to the Plan of Record submitted November 12, 2019 at the public hearing, shall be reviewed by the Board of Appeals at a public meeting to determine whether the changes are significant or not and approved on-site by the Assistant Director for Regulatory Planning within a reasonable timeframe. If the changes are significant, a public hearing will be held on the revisions.**
12. Prior to the issuance of a Building Permit, the Applicant shall submit **final site and landscaping plans** indicating: plant types and sizes and an adequate plan for maintaining, and replacing as necessary, the plantings on the Site; location of, height of, and materials for fences, walls, and patios; exterior lighting; location of utilities, mechanicals, parking spaces, and bicycle storage; location of trash, recycling, and snow storage, subject to the review and approval of the Assistant Director for Regulatory Planning.
13. The Applicant shall incorporate **vapor mitigation measures** to the extent that vapor intrusion may occur, subject to the review and approval of the Building Commissioner and the Director of Engineering and Transportation.
14. Prior to the issuance of a Building Permit, the Applicant shall submit a **lighting plan** to 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 and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with local by-laws.
15. Prior to Commencement of Construction, the Applicant shall meet with the **Town Arborist** to review the health of the existing nearby street trees. The Applicant shall provide a plan for protecting existing street trees during construction for the review and approval by the Town Arborist, with all costs borne by the Applicant and shall not remove any street trees, either before or after construction, without the authorization of the Town Arborist.
16. Prior to the issuance of a Building Permit, the Applicant shall submit a final **storm water management, sewage and drainage plan, and an erosion control plan** to the Director of Transportation and Engineering for review and approval.

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Comment [9]: I'm not entirely sure about this language. I think in prior decisions we have said that color, windows, etc will be reviewed/approved onsite by the ADRP. Changes to the Plan of Record probably need to go through the Board for a determination of substantial/insubstantial under 40B, no?

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17. **Traffic mitigation** shall be as follows:

- a. The Applicant shall contribute \$20,000 towards the cost of the **traffic and pedestrian improvement design plan** to be approved by the Director of Engineering and Transportation, including construction on the west side of Harvard Street of two curb extensions, two corner ramps, curbing, striping, and pavement markings for the crosswalks. The Applicant should be responsible for the cost of the installation of the loading zone signage allowing loading from 7 am to 10 am and having metered spaces for rest of day, subject to the approval of the Director of Engineering and Transportation.
- b. The Applicant shall ensure that the **Thorndike Street driveway** apron is at the same level as the sidewalk elevation and that the material for the driveway apron is the same as that of the sidewalk.

18. Prior to the issuance of a Building Permit, the Applicant shall submit a final **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 all rubbish and recycling generated from the Project's housing units and retail space at 445 Harvard Street shall be handled and disposed of in compliance with all applicable regulations by a private waste management services provider contracted by the Applicant, as follows:

- a. Approximately six 64-gallon bins for rubbish and six 64-gallon bins for recycling shall be provided for residential units and located in the trash room;
- b. Approximately four 64-gallon bins for rubbish and four 64-gallon bins for recycling shall be provided for commercial tenants and located in the trash room;
- c. The schedule for the property owner's rubbish and recycling pick-up shall be up to four times a week or more if needed and shall comply with Town by-laws;
- d. Rubbish receptacles and recycling containers shall not be stored in the public way on Harvard and/or Thorndike Streets at any time;

e. Rubbish produced by commercial tenants and rubbish produced by residential tenants shall be stored in separate receptacles;

e.f. Trash pick-up will be from the Project driveway on Thorndike Street.

f.g. The Applicant shall inform the Public Health Department when the Project's residential units are ninety (90) percent occupied so that the Chief of Environmental Health may review and approve the preliminary rubbish/recycling plan for compliance with this Decision.

19. 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; protection of street trees along the property line; 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; soil removal; security fencing; trash areas; construction trailer locations; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips. 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

Comment [10]: Did we want to specify that trash pickup would take place from the Project driveway on Thorndike?

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placing materials, machinery, supplies or construction equipment on the Site and removal or disconnection of utilities or water or sewer lines; or any alteration, demolition, repair or improvements to a building or structure. During construction, the Applicant shall conform to all local, state, and federal laws regarding removal of contaminated soil, if any; underground tanks; air quality; noise; vibration; dust; and blocking of any roads and 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; and Saturday from 8:30 am to 5:00 pm. Demolition of the existing structure requires prior approval and signoffs from Building, Public Health, Fire, DPW and Planning.

20. 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).
21. Upon the request of the Director of Engineering and Transportation and/or the Building Commissioner, the Applicant shall provide **written reports** to them during construction outlining the status of the Project.
22. The building owner for **fire safety** shall adhere to **NFPA 241** - Standard for Safeguarding Construction, Alteration, and Demolition Operations. As part of compliance the owner shall contract with a 3rd party review company to make sure that NFPA 241 is followed until a Certificate of Occupancy is issued.
23. Prior to Commencement of Construction, the 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.
24. 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 **as-built Project** complies with the Site Plans and the Architectural Plans, including the modifications required by this Decision.
25. During construction and initial leasing, the Applicant may post on Site no more than one (1) **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.
26. Either before or after the issuance of the final Certificate of Occupancy, if the Applicant wants to replace or **change 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 Plan of Record), unless the changes are deemed substantial by the Subsidizing Agency pursuant to 760 CMR 56.04(5). In which case, an approval of the modification from the Zoning Board of Appeals would be required.
27. Prior to the Commencement of Construction, the Applicant shall provide proof that **utility companies** shall permit existing utilities to be eliminated or relocated underground and that the Town shall not be financially responsible for the relocation of said utilities underground.

28. There shall be no **blasting** during the construction of the Project.
29. Prior to the issuance of a Building Permit, the Applicant shall submit a final **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 subject to the review and approval of the Director of Engineering and Transportation. Mitigation in the TAP shall include: providing twelve secure covered bicycle racks on the property, publicizing public transit, having at least ~~onetwo~~ EV parking spaces ~~as EV Ready and three spaces EV Ready~~ Charging Stations.
30. As a condition of any approval hereunder, at least five of the twenty-five units shall be and shall remain **affordable** and shall be marketed to eligible households whose annual income may not exceed 50% of Area Median Income (“AMI”), adjusted for household size, as determined by the United States Department of Housing and Urban Development (the “Affordable Units”). Subject to approval by the Subsidizing Agency, as defined in 760 CMR 56.02, as the project administrator, all of the Affordable Units and the Market Rate units shall be eligible to be included in the Town’s SHI.
31. Affordable units shall be evenly dispersed throughout the project and shall have the same bedroom “ratio” or “mix” as the Market Rate Units in the Project, subject to the approval of the Subsidizing Agency. At least one of these units shall have three bedrooms. The specific units in the Project designated as the Affordable Units may change from time to time, provided that there shall be no fewer than five Affordable units, one of which shall have three bedrooms.
- Affordable Units shall:
- Be indistinguishable from the Market Rate Units in external appearance
 - Have comparable interior finishes as the Market Rate Units
 - Contain the same square footage as the average size of the Project’s Market Rate Units containing the same number of bedrooms, and
 - Be evenly dispersed throughout the project.
32. Lease and occupancy agreements shall be for terms of not less than six months. Nightly rentals shall not be permitted.
33. Prior to the issuance of a Certificate of Occupancy by the Building Commissioner, the Director of Planning and Community Development will review and approve the distribution of Affordable and Market Rate Units to ensure that the floor plans and amenities of the Affordable Units relative to the Market Rate Units are consistent with the conditions of the Subsidizing Agency’s approval of the Project.
34. The Applicant shall work with the Assistant Director of Community Development to request that at least 70% of the Affordable Units be awarded to households with **local preference** during the initial lottery, as that term is defined by the Town and subject to the approval of the Subsidizing Agency.
35. The Assistant Director for Community Planning must review the **affirmative marketing plan** for the Affordable Units before it is submitted to the Subsidizing Agency for final approval. The Assistant Director for Community Planning will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.

Comment [11]: Other 40B decisions we’ve done have also required that the affordable units be evenly dispersed throughout the project.

36. For the period in which the Project is being monitored by the Subsidizing Agency, upon the Town's request, the owner shall share all **monitoring reports** with the Assistant Director for Community Planning, including annual rent increases and information verifying income eligibility for Affordable Units.
37. Five units in the Project shall **in perpetuity be Affordable Units**. Prior to the issuance of any Building Permit, a Regulatory Agreement, which shall include monitoring provisions if such provisions are not provided in a separate Monitoring Services Agreement, shall be executed by both the Applicant and the Subsidizing Agency, in form and content as approved by the Subsidizing Agency as Subsidizing Agency, and recorded with the Registry of Deeds by the Applicant against the Property. However, if a lender or governmental funding agency for the Project requires the issuance of a Building Permit prior to any construction loan closing, then the Building Permit may be issued, subject to the Building Commissioner's satisfaction with compliance with all other applicable legal requirements for issuance, and released to the construction lender's closing attorney. The lender's closing attorney may then provide the Building Permit to the Applicant upon the execution and recording of the Regulatory Agreement. Such restrictions shall take priority over all financing documents related to the Project and shall survive foreclosure. The Applicant/Owner shall provide copies of all monitoring reports to the Town. Moreover, 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, and approved by Town Counsel. The second Regulatory Agreement shall be executed and recorded and shall apply to 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.
38. The Applicant 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 the Regulatory Agreement shall be borne by the owner.
39. 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), 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 the Applicant to the Subsidizing Agency to revalue the Applicant's equity in the Project, made by the Applicant to the Subsidizing Agency 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 the Subsidizing Agency as set forth in the Subsidizing Agency's Regulatory Agreement), contemporaneously with the Applicant's delivery of such documents to the Subsidizing Agency. The Applicant shall be bound by all terms contained in the Subsidizing Agency Agreements, including the terms pertaining to limited dividends and the use of development revenues.
40. The Town will not issue a Building Permit for the Project without **review of final plans** by the Assistant Director for Community Planning and final approval from the Subsidizing Agency.

41. No more than four **certificates of occupancy** shall be issued by the Building Commissioner for units designated for rent at fair market rents (the "Market Rate Units") until at least one certificate of occupancy is issued for an Affordable Unit. No more than eight certificates of occupancy for Market Rate Units shall be issued until at least two occupancy permits for Affordable Units are issued. Notwithstanding the requirements pertaining to certificates of occupancy for any residential units, the certificate of occupancy for the commercial space may be issued prior to those of the residential units.
42. 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.
43. 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.
44. 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.
45. 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).
46. 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). Insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.
47. This Comprehensive Permit may be **transferred** by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
48. Applicant shall pay for the Town's **cost of police and fire details** for the Project, in accordance with the Town's standard practices.
49. Prior to 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.

ATTACHED:

Exhibit 1 Granted Waivers

Exhibit 2 Terms To Be Included in Replacement Town Regulatory Agreement

Exhibit 3 Public Hearing Notice – Published in the Brookline TAB on December 27, 2018 and January 3, 2019

RECORD OF VOTE ON 455 HARVARD STREET COMPREHENSIVE PERMIT

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

Johanna Schneider, Chairman, Brookline Zoning 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 _____.

ATTEST:

Patrick J. Ward
Clerk, Board of Appeals