

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

Date: December 12, 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 31, 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 4,380 square feet of retail space, 20 below grade parking spaces and one short term space adjacent to the car elevator (the "Original Project") in a five story building on approximately 10,115 square feet of land located at 445 Harvard Street in Brookline, Massachusetts (the "Site"). During the Zoning Board of Appeals process, the Original Project was amended to construct 25 units of rental housing, 1,900 square feet of retail space, twenty parking spaces (nineteen at grade level in a mechanical parking system and one accessible non-mechanical space), in a five story building, no taller than 59 feet, including rooftop mechanicals. This is now the "Project".
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 31, 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
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
PI	Lighting Plan & Submittals

[Collectively, the “Site Plans and Architectural Plans”]

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 31, 2018, and amended November 13, and November 25, 2019 on the site plan, dated November 5, 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, November 25, 2019 and December 12, 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 December 12 2019, the Board closed the public hearing.
8. The Board deliberated on the Application at a public hearing held on December 12, 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.
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 Original Project and 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
Dan LaFrance &
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 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.
4. On July 31, 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.
5. The Site is on a corner lot at the intersection of Thorndike Street and Harvard Street and has two front yards as defined by the Zoning By-Law. It is zoned as L-1.0 (Local Business District).
6. Harvard Street extends from the Boston-Brookline municipal line to the area known as Brookline Village and consists primarily of three to four story residential structures and commercial structures that are mostly one-story. 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 is used as a gas station and auto repair shop with the unimproved parts of the lot paved and with three existing curb cuts.
8. The site is located in the Coolidge Corner neighborhood of Brookline and is a highly walkable area with a public bus route that travels Harvard Street and within walking distance of two public rapid transit lines (Green Line B branch and Green line C branch).
9. 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; and with the prevailing style of small-scale commercial properties on Harvard Street; and that the Original Project had inadequate front yard setbacks on both Harvard Street and particularly on Thorndike Street and an inadequate side yard setback to the abutting home on Thorndike Street.
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. In response to comments, the Applicant revised the parking plan from below grade parking to ground floor parking with a mechanical parking system for the residential tenants (one non-mechanical accessible space) and no parking for the commercial use.
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 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 exacerbated 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, no more than 1,900 square feet of commercial space, and no fewer than 20 parking spaces as shown on the Site and Architectural 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 and Architectural Plans, no more than 1,900 square feet of retail in the building at the 445 Harvard Street lot, and 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 available for the residents of the affordable housing units with vehicles as part of the rent for the units. The parking for the market rate units shall be unbundled.
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 as provided in condition #33 below.
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 codes relating to adequate ventilation.
7. The retail space shall not be used as a **marijuana facility**.
8. The Applicant shall maintain as **open space** the area adjacent to the proposed commercial area off of Harvard Street to provide a largely unobstructed view of the existing mural, so long as it is in

existence. The open space shall be available to residential tenants and commercial tenants and customers of the commercial tenants.

9. 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.
10. The total maximum number of **bedrooms** shall be 37 and the maximum number of units shall be as listed in the following table.

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

11. 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.
12. 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 Site Plan and Architectural Plan submitted November 5, 2019 to the Board. Color, windows, and materials shall be reviewed and approved on site by the Assistant Director of Regulatory Planning.
13. 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 covered and secure bicycle storage; location of trash, recycling, and a snow removal plan with storage of snow not permitted on the site); subject to the review and approval of the Assistant Director for Regulatory Planning.
14. Prior to Commencement of Construction, the Applicant shall submit: 1) a "Closure Assessment" in connection with the underground storage tanks, in conformance with 310 CMR 80.43, and other relevant MassDEP guidance and regulations; and 2) a report characterizing the soil generated for off-site disposal and management of soil in conformance with MassDEP guidance and regulations. If volatile organic compounds or volatile petroleum hydrocarbon fractions are detected during either of the above in a manner triggering reporting subject to 310 CMR 40.0300 et. seq., the Town may hire a Licensed Site Professional, with costs borne by the Applicant, to make a recommendation for appropriate **vapor barrier and/or vapor mitigation measures**, subject to the approval of the Building Commissioner, Director of Health, and Director of Engineering and Transportation.
15. 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.

16. 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. The Applicant shall use best efforts to preserve and protect the street tree on Harvard Street.
17. Prior to Commencement of Construction, the Applicant shall meet with the Building Commissioner to review the best method of **protecting the mural** at 435 Harvard Street during construction. The Applicant shall provide a written plan for how it will be protected during construction, for the review and approval by the Building Commissioner, with all costs borne by the Applicant.
18. 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.

19. **Traffic mitigation, in addition to the condition 33 below**, shall be as follows:

The Applicant shall either contribute \$86,000 or be responsible for the design and construction of the **traffic and pedestrian improvement 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, pavement markings for the crosswalks and installation of the loading zone signage allowing loading from 7 am to 10 am, subject to the approval of the Director of Engineering and Transportation. However, if the applicant has contributed \$86,000, and the funds are not used within two years after the building permit is issued, or if all the funding is not used, the developer would get the remaining funds back.

- a. 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.
 - b. The applicant shall be responsible for removing snow from the loading zone area.
20. 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;
 - f. Trash pick-up will be from the Project driveway on Thorndike Street so as not to impede traffic on Thorndike Street or pedestrians from the use of the adjacent sidewalk and within restricted hours avoiding traffic rush hours . The trash truck should be of an appropriate size to fit in the driveway, while still keeping one lane of the driveway open for use by residents.
 - 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.
21. 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; protection of the mural; 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; vibration monitoring and mitigation; the timetable for excavation and overall earthwork operation; delineation of pedestrian pathways, and the number of necessary truck trips. For purposes of this Decision, "Commencement of Construction" shall mean: the initial disturbance of soils or surface materials associated with clearing, grading, or excavating activities or other construction activities; the placement of or mobilization for construction activities, including but not limited to placing materials, machinery, supplies or construction equipment on the Site and 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 the Town Building, Public Health, Fire, DPW and Planning Departments.
22. 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).
23. 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.
24. The Developer/General Contractor shall meet with the Brookline Fire Department prior to the delivery of the various life safety submittals.
25. The NFPA 241 Plan developed specifically for this project shall be recommended for acceptance by one of the

three third-party firms approved by the Brookline Fire Department. The Developer/General Contractor shall contract with the same third party firm for monthly inspections to ensure adherence to the 241 Plan. Reports of which shall be made available to the Brookline Fire Department upon request.

26. The Developer/General Contractor shall submit to an approved Third Party review firm a full set of Tier 1 engineered life safety plans. These plans shall be recommended for acceptance to the Brookline Fire Department prior to approval. The issuance of the building permit is contingent on having approved plans. Prior to the installation of the life safety systems, Tier 2 Shop drawings shall also be recommended for acceptance prior to a building permit being issued.
27. Prior to Commencement of Construction, the Applicant shall provide the Director of Transportation and Engineering with a **pre-construction report** with video and/or still **photographs of the condition** of pavement surfaces along truck routes before Construction and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic has not adversely affected the pavement. The Applicant shall be responsible for the cost to repair any and all damage.
28. Prior to Commencement of Construction, the Applicant shall provide the Building Commissioner with a pre-construction report with video and/or still **photographs of the condition** of structures of properties (interior and exterior) within 100 feet of the site and then again prior to issuance of a Certificate of Occupancy to ensure that construction of the project has not adversely affected the structures. **The Applicant shall be responsible for the cost to repair any and all damage.**
29. 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.
30. 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.
31. 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.
32. There shall be no **blasting** during the construction of the Project.
33. 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. All leases and occupancy agreements to the commercial space shall require the tenant thereunder to offer subsidized T-passes to employees. Additional mitigation in the TAP shall include: providing twelve secure and covered bicycle racks on the property, publicizing public transit (including screens displaying real time information for busses, and MBTA rapid transit trains), having at least one EV parking space and three spaces EV Ready in compliance with the Town's Transportation Access Guidelines.
34. As a condition of any approval hereunder, at least 20% of the units shall be and shall remain affordable in perpetuity and shall be marketed to eligible households whose annual income may not exceed 50% of AMI, adjusted for household size, as determined by the United States Department of

Housing and Urban Development (the "Affordable Units"); and subject to approval by the Subsidizing Agency, as defined in 760 CMR 56.02, as the project administrator, the Affordable Units and the units priced at market rates (the "Market Rate Units") shall be eligible to be included in the Town's SHL.

35. **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.
36. Lease and occupancy agreements shall be for terms of not less than six (6) months with the exception of extensions. No more than two such extensions of an existing lease for a period of less than six (6) months shall be permitted. Nightly rentals shall not be permitted. Airbnb and similar lodging services shall not be permitted.
37. Local Preference: The Applicant shall work with the Assistant Director for Community Planning to request that no less than 70% of the Affordable Units be awarded to households with local preference during the initial lottery, subject to the approval of the Subsidizing Agency.
38. Five units in the Project shall in perpetuity be Affordable Units.
39. A second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in **Exhibit 2**) shall be prepared approved by Town Counsel, executed and recorded prior to expiration of the initial Regulatory Agreement, and in effect for the period after the expiration of the affordability restrictions imposed by the Subsidizing Agency. The Applicant shall enter into said Regulatory Agreement and Monitoring Services Agreement with the Town and the Monitoring Agent to continue such restrictions. Such agreement shall be consistent with the terms of this Decision and with the customary terms of Town's Regulatory Agreements.
40. The Owner shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for the period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency. All costs associated with monitoring for consistency with any applicable Regulatory Agreement during this period shall be borne by the Owner.
41. The Town will not issue a Building Permit for the Project without final approval from the Subsidizing Agency.
42. The Town will not issue a Building Permit for the Project without **review of final plans** by the Assistant Director for Community Planning and verification that they comply with this Decision and are consistent with the Site Plans and Architectural Plans and final approval from the Subsidizing Agency.

43. The provisions of this Comprehensive Permit decision shall be **binding upon the heirs**, successors and assigns of the Applicant and the obligations shall run with the land.
44. 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.
45. 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.
46. 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).
47. If the Applicant revises any of the Site and Architectural 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.
48. This Comprehensive Permit may be **transferred** by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
49. Applicant shall pay for the Town's **cost of police and fire details** for the Project, in accordance with the Town's standard practices.
50. 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:

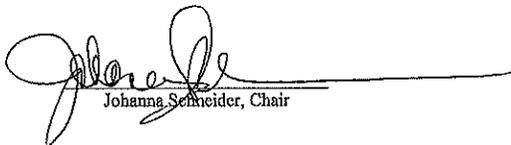
Exhibit 1 Granted Waivers

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, Chair

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

Filed with the Town Clerk on 12/17/19

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2019 DEC 17 A 11:31

EXHIBIT 1

**445 HARVARD STREET
WAIVER LIST
L-1 ZONING DISTRICT
NOVEMBER 25, 2019**

BROOKLINE ZONING BY-LAWS				
Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
§4.07(6) – Table of Use Regulations	Multi-Family Uses	Waiver to allow the property to be used as a multi-family dwelling with more than 40% of frontage along a street devoted to residential use, including associated parking and lobby use.	The Development is a multi-family housing development containing 25 units. More than 40% of the frontage of the ground floor along Thorndike Street will be used for residential parking. The Comprehensive Permit, as may be granted by Zoning Board of Appeals, shall provide all local permits per M.G.L. c. 40B § 20-23.	A
§4.08	Affordable Housing	Waiver to allow affordable housing requirements under M.G.L. c.40B, rather than under 4.08.	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	B
§5.07	Dwelling in Business District	Waiver to allow usable open space, side and rear yard, and floor area ratio requirements under M.G.L. c.40B, rather than under §5.07.	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	C
§5.09	Design Review	Waiver to allow Design Review requirement under M.G.L c.40B, rather than under §5.09, except: 3.c.2 – Existing Conditions Plan; 3.c.3 – Drawing of Proposal; 3.c.4 – Photographs; 4.e – Circulation;	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	D

BROOKLINE ZONING BY-LAWS				
Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
		4.f – Stormwater Drainage; 4.g – Utility Service; 4.h – Advertising Features; 4.j – Safety and Security; 4.m – Energy Efficiency.		
§5.20 & Table §5.01	Maximum Floor Area	Waiver from maximum ratio of gross floor area to lot area. (1.0 in L-1.0 District)	The Development is on a 10,115 s.f. lot and the building will have 28,580 gross s.f., not including parking gross floor area of 3,900 s.f., for a total floor area ratio of approximately 2.83.	E
§5.30-5.31 & Table §5.01	Maximum Height of Buildings	Waiver from maximum building height limitations. (40 ft. in L-1.0 District)	The height of the Development will exceed the 40' height limit, as the building will be 59'0" at its roof, with no roof top mechanicals and the elevator overruns above roof elevation when measured from the first floor slab.	F
§5.44	Accessory Underground Structures	Waivers from setback requirement for underground structures.	The Development will have below grade parking pits and mechanical spaces.	G
§5.45	Traffic Visibility Across Corners	Waiver from §5.45.	The Development has structure within the triangular plane, specified in Sec. 5.45, will be constructed at Harvard-Thorndike corner.	H
§5.50 & Table §5.01	Minimum Front Yard (Harvard Street)	Waiver from 10' minimum front yard requirement.	The Development has two front yards and will have a minimum front yard setback of 0' along Harvard Street.	I
§5.50 & Table §5.01	Minimum Front Yard (Thorndike Street)	Waiver from 10' minimum front yard requirement.	The Development has two front yards and will have a minimum front yard setback of 0' along Thorndike Street.	J
§5.07, §5.60, §5.64, & Table §5.01	Minimum Side Yard	Waiver from 10' minimum side yard requirement.	The minimum side yard setback for the Development will be 8'1.5". This is a corner lot where the side lot line will be	K

BROOKLINE ZONING BY-LAWS				
Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
		(77 Thorndike)	that shared with 77 Thorndike Street and 435 Harvard Street, and the rear lot line will be that shared with 64 Coolidge Street and 70 Coolidge Street.	
§5.07, §5.70 & Table §5.01	Minimum Rear Yard	Waiver from 20' minimum rear yard requirement. (0 ft. in L-1.0 District)	The Development will have a minimum rear yard setback of 0' abutting 64 Coolidge Street, and 10' abutting 70 Coolidge Street. This is a corner lot where the side lot line will be that shared with 77 Thorndike Street and 435 Harvard Street, and the rear lot line will be that shared with 64 Coolidge Street, and 70 Coolidge Street.	L
§2.15(3), §5.90 & Table §5.01	Minimum Landscaped Open Space	Waiver from minimum landscaped open space requirements under M.G.L. c.40B, rather than under §2.15(3), §5.90 & Table 5.01. (Min 0% Landscaped Open Space)	The Development is on a 10,115 sf. lot and will have 800 sf. of landscaped open space, with a landscaped open space percentage of approximately 7.9%.	M
§5.07, §5.91 & Table §5.01	Minimum Usable Open Space	Waiver from the usable open space requirement of 5,716 s.f. (20% of residential gross floor area).	The Development is on a 10,115 sf. lot and will have 1,214 sf. of usable open space (12.0% of residential gross floor area).	N
§6.02, Table §6.02	Off-Street Parking Space Regulations	Waiver from the required 41 parking spaces (31 residential and 10 commercial).	The Development will have a total of 20 residential parking spaces, 19 of which will be automated lift spaces, and 0 commercial parking spaces.	O

BROOKLINE ZONING BY-LAWS				
Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
§6.02.2.f	Off-Street Parking Space Regulations	Waiver from required off-street parking space for visitors and tradespeople under M.G.L. c.40B, rather than under §6.02.2.f. (10.0%)	The Development will have 0 parking spaces for visitors and tradespeople.	P
§6.04	Design of All Off-Street Parking Facilities	The applicant requests a waiver from this section to allow the parking garage and associated parking spaces to be built in conformance to the Plan Set of Record dated November 5, 2019.	The Development's parking design is shown on the plan labeled Ground Floor Plan. 19 parking spaces will be automated lift spaces. Additionally, the minimum aisle width will be 24 feet.	Q

BROOKLINE TOWN BY-LAWS				
Bylaw Section	Requirement	Requested Waiver(s)	Details of Proposal Requiring Waiver	Waiver Number
§5.3	Demolition Delay By-law	Waiver from Preservation Commission review to protect and preserve Significant Buildings.	The existing structure will be demolished with this proposal. Comprehensive Permit, as may be granted by Zoning Board of Appeals, shall provide all local permits per M.G.L. c. 40B § 20-23.	R

Exhibit 2 – JFK PLACE 445 Harvard Street Comprehensive Permit

TERMS TO BE INCLUDED IN REPLACEMENT REGULATORY AGREEMENT

1. Subsidizing Agency Regulatory Agreement. Construction and/or permanent financing for the Project will be obtained from Massachusetts Housing Partnership or another qualified subsidizing agency (the “Subsidizing Agency”). As a component of such financing, the Applicant will be entering into a regulatory agreement and other agreements with respect to the Project which, inter alia, will set forth the certain restrictions as to low or moderate income housing to be provided as part of the Project as the same may be hereafter extended or amended (the “Subsidizing Agency Agreement”).

2. Regulatory Agreements. It is the intention of the Comprehensive Permit that the Project will, in perpetuity and without interruption, be subject to a suitable regulatory agreement consistent with the Comprehensive Permit governing the low or moderate income housing (the “Affordable Units”) in the Project. For so long as the Subsidizing Agency Agreements are in effect, the Subsidizing Agency Agreements satisfy in full the requirements set forth in Conditions 37 and 38 of the Comprehensive Permit for a regulatory agreement. From and immediately after the expiration or termination of the Subsidizing Agency Agreements, the Town shall enter into an agreement containing the terms of this exhibit to satisfy the requirements of Conditions 37 and 38 of the Comprehensive Permit (the “Town Regulatory Agreement”).

3. Affordability Requirements. Pursuant to the terms of Condition 30 of the Comprehensive Permit, the Applicant will restrict certain units in the Project (the “Affordable Units”) as follows: twenty percent (20%) of the units in the Project to be occupied and rented by households earning not more than fifty percent (50%) of the AMI. During the Subsidy Period (as defined below), rents for the Affordable Units shall be no greater than those permitted by the Subsidizing Agency Agreements, all in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency. Without derogating from the provisions of Paragraph 4 below relative to the exclusive jurisdiction of the Subsidizing Agency to monitor and enforce the affordability requirements, during the period (hereinafter, the “Subsidy Period”) that the Subsidizing Agency Agreements are in force and effect, the Applicant shall provide a copy to the Town, care of the Board of Selectmen, of any statements, reports, notices, or certifications made by the Developer to the Subsidizing Agency (or its monitoring agent) relative to the Applicant’s compliance with the affordability requirements in the Subsidizing Agency Agreements contemporaneously with the Applicant’s delivery of the documents to the Subsidizing Agency.

From and after the Subsidy Period, the Affordable Units shall continue to be restricted as set forth in the preceding paragraph in accordance with the applicable rules, regulations, and guidelines of the Subsidizing Agency (or its successor agency) that existed prior to the expiration or termination of the Subsidizing Agency Agreements, all as though the Subsidizing Agency Agreements were still in force and effect. To the extent that the Subsidizing Agency (or its

successor agency) has ceased to promulgate such applicable rules, regulations, and policies, then the Affordable Units shall be determined based on substitute regulations of a federal or state governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by the Applicant and the Town, in order to ensure the continued availability of the Affordable Units for the purposes set forth herein and in the Comprehensive Permit for the entire term of the agreement. Further, if after the Subsidy Period, M.G.L. c.40B (or its successor statute) still provides a mandate for municipalities to provide low or moderate income housing, the Applicant agrees to continue to operate and manage the Project as would permit the Project to be credited toward the Town's Subsidized Housing Inventory for purpose of Chapter 40B.

The Board of Selectmen shall establish reasonable rules and protocols to govern the monitoring of the affordability requirements, including any reporting and notice obligations, and may designate an entity to serve as its monitoring agency to monitor the Applicant's compliance with the affordability requirements. The selection of tenants in the event of unit vacancies shall be governed by the applicable rules of the Subsidizing Agency just prior to the expiration or termination of the Subsidizing Agency Agreements, and in the absence of such rules, by the rules of another subsidizing agency that are reasonably acceptable to the Town and the Applicant.

4. Monitoring and Enforcement. During the Subsidy Period, the Subsidizing Agency shall have exclusive authority and jurisdiction for all monitoring, oversight, and enforcement functions with respect to the Affordable Units, including without limitation, provision of the Affordable Units, monitoring eligibility for tenancy, calculation of affordable rentals and all matters related to limited dividend restrictions.

From and after the Subsidy Period, the Town shall have the right to monitor the Applicant's compliance with the terms of Paragraph 3 above. The Town may retain a monitoring agent (the "Town Monitoring Agent") the reasonable fees for which shall be paid by the Applicant (as provided in Condition 38 of the Comprehensive Permit), to monitor the Applicant's compliance with requirements of the Town Regulatory Agreement. The Applicant agrees to submit to the Town Monitoring Agent all certifications in the same form, and with the same level of detail, as were made the Applicant to the Subsidizing Agency during the Subsidy Period relative to its compliance with the provisions of Paragraph 3 above.

5. Term of Town Regulatory Agreement. The Town Regulatory Agreement and all of the covenants, agreements, and restrictions contained therein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184 § 31 and as that term is used in G.L. c. 184, § 26, 31, 32, and 33. The Town Regulatory Agreement shall be made for the benefit of the Town, and the Town shall be deemed to be the holder of the affordable housing restriction created thereby. The Town has determined that the acquiring of such affordable housing restriction is in the public interest. The term of the Town Regulatory Agreement, the rental restrictions, and other requirements provided therein shall remain effective for so long as the Project exists.

The Town Regulatory Agreement and the covenants, agreements, and restrictions contained herein shall be covenants running with the land, encumbering the Project for the term thereof, and shall be (i) binding upon the Applicant's successors in title, (ii) not merely personal covenants of the Applicant, and (iii) binding on the Applicant, its successors and assigns for the term thereof, and shall inure to the benefit of the parties thereto and their respective successors and assigns. Any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of the Town Regulatory Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and any requirements of privileges of estate shall also be deemed to be satisfied in full. Promptly upon the execution thereof, the Applicant shall cause the Town Regulatory Agreement to be recorded in the Norfolk Registry of Deeds (or, if the Property consists of registered land, to be filed in the Norfolk Registry District of the Land Court). The Applicant shall pay all fees and charges incurred in connection with such recording or filing.



EXHIBIT 3

TOWN OF BROOKLINE

Notice of Hearing

The Brookline Zoning Board of Appeals will hold a public hearing on **January 16, 2019 at 7 pm** in the **6th Floor Select Board's Hearing Room** to open a hearing on an application for a Comprehensive Permit submitted to the Town of Brookline by 445 Harvard LLC in accordance with M.G.L c.40B to construct a five story building with 25 rental residential units, 4,380 sf of commercial space, and 20 parking spaces in a subgrade garage at **445 Harvard Street**.
(Precinct 9)

A detailed agenda for this Zoning Board of Appeals case can be found on the monthly Town Calendar closer to the hearing date (<http://www.brooklinema.gov/>).

Project plans and application are available on the Brookline Town website at:

<http://www.brooklinema.gov/1458/445-HARVARD>

Please direct any questions to:

Polly Selkoe, Assistant Director for Regulatory Planning

pselkoe@brooklinema.gov

617- 730-2126

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

Jesse Geller, ZBA Chair

PUBLISH: 12/27/18 and 1/3/19