

TOWN OF BROOKLINE
MASSACHUSETTS

DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT
500 HARVARD STREET
BOARD OF APPEALS CASE NO. 0000-0000

Date: _____

Re: Application of 500 HARVARD ST, LLC for a Comprehensive Permit

Location: Town Assessor's Atlas Map Sheet 14 Block 072 Lot 01-00, known and numbered as 500 Harvard Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On January 31, 2019, Massachusetts Housing Finance agency ("MassHousing") issued a Project Eligibility Letter ("PEL") to 500 HARVARD ST LLC (the "Applicant").
2. Jessica Malcolm of MassHousing issued a supplemental PEL dated January 16, 2020, one year after the PEL, to correct a clerical error as follows: "the six (6) affordable units will in fact be restricted as affordable to households earning at or below 50% [not 80%] of the Area Media Income" ("Supplemental PEL").
3. MassHousing under its Determination in the PEL letter ("MassHousing Determination") stated in part: *"The Applicant should be prepared to discuss concerns relative to the proposed size, scale, and architectural style of the proposed multi-family building and its impact on the neighborhood and direct abutters. The Applicant should discuss its initial study and fully describe proposed measures to mitigate these concerns."*
4. On October 29, 2019, the Applicant applied for a Comprehensive Permit pursuant to G.L. Chapter 40 Section 20-23 (the "Act"), to construct a six story building with 30 units of rental housing within 29,917 square feet of living area on floors two through six and with approximately 600 square feet of amenity space and approximately 1700 square feet of commercial space on the ground floor and with six parking spaces on the ground floor for use of the occupants of the rental residential units (the "Original Project") on approximately 6,969 square feet of land located on the southbound side of Harvard Street at the corner of Harvard Street and Kenwood Street known and numbered as 500 Harvard Street, Brookline, Massachusetts (the "Site").
- 4.5. To address the ZBA's charge to the Applicant to mitigate the scale and massing of the proposed building on the Site, Town of Brookline Senior Planner Maria Morelli convened working group meetings on the following dates and attended by the ZBA's architecture peer reviewer, Clifford Boehmer; the Applicant's attorney, Jennifer Dopazo Gilbert; the

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Applicant's principals, Danny Danesh and David Danesh; and the Applicant's architect, John Harding: October 7, 2020, October 23, 2020, November 10, 2020, January 26, 2021, February 5, 2021, March 4, 2021, and March 25, 2021.

6. On November 4, 2020, the Applicant submitted a revised Comprehensive Permit Application to the Town of Brookline (the "Town") to construct a six story building with 25 units of rental housing within ~~X~~ square feet of living area on floors two through six and approximately 1770 square feet of amenity space and no commercial space on the ground floor and with 10 parking spaces with stackers on the ground floor for use of the occupants of the rental residential units (the "November 2020 Revised Project") on the Site.

5-7. On February 17, 2021, the Applicant directed its architect to change the plans and submitted revised plans to the Town to construct a six story building with 25 units of rental housing within 27,592 square feet of living area on floors two through six and approximately 1770 square feet of amenity space and no commercial space on the ground floor and with 10 parking spaces with stackers on the ground floor for use of the occupants of the rental residential units (the "February 2021 Revised Project") on the Site.

8. On March 10, 2021, the Applicant directed its architect to change the plans and submitted revised plans to the Town to construct a six story building with 25 units of rental housing within 27,036 living area on floors two through six and approximately 520 square feet of amenity space and 1,220 square feet of commercial space on the ground floor and with 10 parking spaces with stackers on the ground floor for use of the occupants of the rental residential units (the "March 2021 Revised Project" or the "Project") on the Site.

6-9. On April 14, 2021, the Applicant offered the Board four options for the building materials and colors for the Project's ground floor and cornice line on the fourth and fifth stories and three options for the building materials and colors for the bays on the Project's west façade in ten combinations to complement the red brick as shown on the Architectural Drawings and Building Materials as defined in Item 10 under Procedural History. The Board selected Base Option 1 (dark gray simulated stone) with dark gray cornice and Kenwood Option A (gray tones).

10. The materials submitted by the Applicant in the Application and during the public hearing include: ~~{fill in all relevant drawings and plans}~~

Comprehensive Permit Application: Comprehensive Permit Plans for 500 Harvard Street dated DATE, prepared as follows:

Sheet Numbers and Titles

Boundary and Utility Survey dated November 14, 2018 and stamped by Gerry L. Holdright, Professional Land Surveyor, Control Point Associates, Inc., Southborough, Mass.

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Civil drawings dated January 29, 2021, and stamped by Carlton M. Quinn, Professional Engineer, Allen and Major Associates, Inc., Woburn, Mass.:

C-100 Erosion Control and Demolition Plan
C-101 Site Plan – Ground Floor
C-102 Grading & Drainage Plan
C-103 Utility Plan
C-501 Details
C-502 Details
C-503 Details

["Site Plans"]

Architectural Drawings Dated March 6, 2021, and prepared by John Harding AIA, Cube3:

Note: See Waivers for Maximum Height and Maximum Floor Area and Conditions X and Y, which limit the number of stories but do not mandate the Project's programming (either multifamily or mixed use and with or without off-street parking). Drawings, sections, and plans showing a sixth floor are listed under the definition for Comprehensive Plans to indicate a programming option and not in any way the Board's approval of a Project with six stories.

Ground Floor Plan
Typical Floor Plan (2-4)
Fifth Floor Plan
Sixth Floor Plan
Unit Layouts
Elevations

Site Section Through Harvard Street dated March 3, 2021
Site Section Through Kenwood Street dated March 3, 2021
3D Views dated March 5, 2021

Parking Plan

["Architectural Drawings"]

Building Materials Base Option 1 and Kenwood Option A on pages 1 and 5 dated March 23, 2021.

["Building Materials"]

Traffic and Parking Narrative Dated March 2019

["Parking Narrative"]

Updated Traffic Impact Study dated March 13, 2020 and revised May 8, 2020, and Appendix and Figures 1-7 prepared by Scott W. Thornton, P.E., Associate, and Derek Roach E.I.T, Transportation Engineer, Vanasse & Associates, Inc., Andover, Mass.

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Parking and Transportation Management Plan

["Traffic Impact Study"]

Drainage Summary Report report dated October 13, 2020, and revised January 29, 2021, and prepared and stamped by Carlton M. Quinn, Professional Engineer, Allen & Major Associates, Inc., Woburn, Mass.

Sewer and Water Generation Spreadsheet dated January 29, 2021

Janury 29, 2021, Response prepared by Carlton M. Quinn, Allen & Major Associates ,Inc., to November 21, 2020, Brookline Public Works Memorandum

["Stormwater Management Plan"]

Trash and Recycling Plan Version 4 Revised March 30, 2021

["Trash and Recycling Plan"]

7-11. The Applicant submitted a request for waivers from local by-laws and regulations dated September 4, 2019, and amended March 30, 2021, and a Waiver-Key site plan submitted March 19, 2021 ("Waivers").

8-12. The Brookline Zoning Board of Appeals (the "Board" or the "ZBA") with the consent of the Applicant opened a duly noticed and advertised public hearing on December 19, 2019. The Board continued the hearing and/or deliberated on testimony on the following dates: January 16, 2020, March 18, 2020 (continued), April 13, 2020 (continued), September 23, 2020, September 30, 2020, November 4, 2020, December 9, 2020 (continued), February 17, 2021, March 31, 2021 (continued), April 14, 2021, and May 5, 2021 (continued), May 26, 2021, June 9, 2021 (continued), and June 23, 2021. All continuances beyond 180 days from December 19, 2019, were with the Applicant's written consent and filed with the Town Clerk.

9-13. At the January 16, 2020, hearing, Maria Morelli, the Town's Senior Planner, presented the Town's site plan and design review framework for major impact projects including but not limited to Chapter 40B projects and a design analysis of the Original Project.

10-14. The Board conducted a duly noticed site visit on February 26, 2020.

~~11.15.~~ Pursuant to G.L. Chapter 53 of the Acts of 2020: An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19” [“Acts of 2020”], the Board tolled public hearings during the months between February 2020 and August 2020 inclusive.

~~12.16.~~ Consistent with the Commonwealth of Massachusetts Executive Order dated March 12, 2020, the Board held public hearings [*and public meetings*] remotely with adequate access provided to the public.

~~13.17.~~ 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 part of the public record of these proceedings and have been taken into consideration by the Board in rendering its Decision.

~~14.18.~~ During the course of the public hearing, Town staff and boards, independent peer reviewers, local residents, and technical experts submitted extensive oral and written testimony with respect to the Original Project, the November 2020 Revised Project, the February 2021 Revised Project, and the March 2021 Revised Project on issues of height, yard setbacks, massing, scale in relation to the two-family Kenwood Street neighborhood, scale in relation to the Harvard Street multifamily neighborhood, architectural style, development pattern and streetscape/public realm of Harvard Street from Boylston Street to Commonwealth Avenue, feasibility of the parking plan, maneuverability of vehicles within the garage, equivalent facilitation pertaining to handicapped parking spaces, traffic and pedestrian safety, stopping sight distance and visibility of pedestrians at the driveway, intensity of use related to mixed use programming and coordination of functions occurring at the ground plane including but not limited to trash management and truck deliveries and ride share drop off and pick up, parking demand, parking utilization rate, stormwater management and impact on municipal systems, environmental, fire, and public health and safety, foundation method, abutters’ viewsheds, shadow impacts, energy efficiency and non-fossil-fuel systems, technical feasibility of residential units on the ground floor, feasibility of retaining the Project’s living area and number of affordable units without a sixth floor, outreach to neighbors, and including matters of local concern identified in the PEL under MassHousing Determination.

~~15.19.~~ The following consultants and independent technical peer reviewers assisted the Board in its review of the Application:

MassHousing Partnership Technical Assistance Fund – Chapter 40B Advisor

Judith A. Barrett, Principal
Barrett Planning Group LLC
Plymouth, Massachusetts

Engineering and Traffic

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

Parking Design/Feasibility and Parking Demand Management

Arthur G Stadig, P.E.
Vice President and Managing Principal
Brandon Schrenker, P.E.
Walker Consultants
Boston, Massachusetts

Site and Building Design

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

~~16. At the March 10, 2021, public hearing the Board expressed “great reservation that the overarching charge that this building is too big for this site ... this lot does not sustain a six-story building.” [moved]~~

~~20. On September 3, 2020, Marc D. Draisen, Executive Director of MAPC, submitted a letter pertaining to the Original Project to the Board and to the Brookline Transportation Board supporting the low parking ratio of the Original Project by stating:~~

~~*“MAPC strongly supports the development of housing with limited parking in areas well served by transit like Packard’s Corner and Coolidge Corner where the Green Line and #66 bus line run, both within (5- or 10-minute) walks to 500 Harvard Street. Homes in these kinds of places typically rent easily without off-street parking. Using valuable land and resources to build parking that is neither needed nor in demand makes it more difficult to achieve other Town goals: increasing the supply of homes, making a significant portion of those homes affordable, creating an appealing streetscape, and/or enabling developers to devote resources to energy-saving and emission-reducing infrastructure. It can be difficult for any single development to provide all of these community benefits, but none should be sacrificed in favor of parking in transit-accessible areas.*~~

~~*“As determined by MAPC’s Perfect Fit Parking research (<https://perfectfitparking.mapc.org/>), expanding the supply of parking in residential buildings does not reduce traffic; it actually induces it by encouraging the tenancy of households with a higher rate of car ownership. Given the high demand for housing in Brookline and this particular site’s proximity to transit, MAPC feels that 7 [sic] parking spaces for 30 units would be adequate. Furthermore, requiring the developer to build more parking spaces would only increase financial pressure for a taller building, which we know is also an issue of concern in Brookline.”*~~

~~21. At the September 23, 2020, hearing, in response to how the Original Project with six parking spaces for 30 residential units would be marketed to prospective tenants, Danny Danesh on behalf of the Applicant stated:~~

~~*“there’s very limited parking at this property, this development [the Original Project]. And if you have a car, and you want to live in Brookline, and you’re going to be...using your car for work or whatever reason you need a car, this is not the building for you. If you will take the bus or a Zip car or the T or a bike to work on your daily commute, then*~~

this building makes sense for you. So you're not going to -- there's no reason for...someone to come to this building and say, hey, I need a parking space, or even two parking spaces, when we have limited parking. So there's plenty of other options in Boston that they can live at if they need parking."

22. In his report to the Board dated June 17, 2020, and updated September 17, 2020, and presented September 23, 2020, Brandon Schrenker, P.E., independent parking peer reviewer stated:

"given the proximity of this development to the Green Line transit service and that this project is rental units opposed to condominiums, this development will likely be more similar to the adjacent Census Tracts 7.03 and 7.04 just to the north in Brighton [rather than the Census Tract 4003 in which the Site is located]. These tracts are predominantly along the transit service and are 90% rental units, whereas Tract 4003 is only 47% rental units. If using the Tract 7.03 and 7.04 data, an estimated parking supply would be between 0.4 to 0.6 spaces per residential unit...for this project, not including visitor or service vehicle parking. Note that price-point of the units will also impact the parking demand.

23. At the September 30, 2020, hearing, Board member Johanna Schneider asked the Applicant to consider no parking on the Site:

I'm not sure that I couldn't get behind a zero-parking development in this site, given that it is walkable and well-served by public transportation, but the tradeoff would have to be that that space that's currently dedicated to parking is utilized for some benefit to the project...Maybe residential units do get added there and then get -- it results in a reduction of height or a reduction of the massing of the building. And so, I would like there to be some study of that by the applicant and their team."

24. At the March 10, 2021, public hearing the Board expressed "great reservation that the overarching charge that this building is too big for this site ...this lot does not sustain a six-story building."

17-25. At the March 10, 2021, public hearing the Board addressed the Applicant's principals, David Danesh and Danny Danesh, and what it deemed an appearance of a double standard related to their pending appeal of the Comprehensive Permit the Board issued to the 445 Harvard LLC. The Board acknowledged that such an issue might be irrelevant in the context of the hearing for the Application.

18-26. David Danesh on behalf of the Applicant stated during the March 10, 2021, public hearing, "Well, I'm taking these [REDACTED] to court."

19-27. David Danesh in an e-mail dated March 11, 2021 and addressed to the Board stated: "I want to apologize to all of you for letting my frustration get the best of me last night. I

Commented [JG3]: I do not recall the Board acknowledging the irrelevance of the matter they raised, but they did move on when I raised it.

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thought I was muted and said something inappropriate. My frustration got the best of me when the Board brought up our pending lawsuit with 445 Harvard Street. Please accept my sincere apology.”

28. The Board considered the Applicant’s requests for Waivers from Zoning and Town By-Laws and voted to grant all waivers to the scope and limits requested except as set forth in Condition 8 pertaining the maximum gross floor area and in Condition 1 pertaining to maximum heights.

29. The Applicant has maintained throughout the hearings that removal of the sixth 6th floor or the imposition of a condition restricting the height to 5-stories would make the project uneconomic. On June XX, 2021 the Applicant submitted a memorandum to the Board outlining the hardship resulting from the restriction on the Project as proposed with six stories. The memo is part of the Board’s record in this matter.

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30. Although the Original Project was six stories, and despite the Board’s charge that the scale and height were excessive, the Applicant was not willing to reduce the height of the Project throughout the public hearing and stated in the November 4, 2020, February 17, 2021, and March 10, 2021 hearings, that it would be uneconomic.

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31. At the March 10, 2021, hearing the Applicant stated that reducing the Project’s 25 units by an additional six units would be uneconomic.

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32. Clifford Boehmer stated in his April 1, 2021, letter to the Board that 25 units and the residential living area provide in the Project could be maintained in a five story building with four story bays and that eliminating the expensive parking system would reduce construction costs.

33. On behalf of the Applicant, Lynne D. Sweet, of LDS Consulting Group LLC stated in her May 20, 2021, letter to the Board that a five story multifamily building with no parking on site would be uneconomic.

34. On June 18, 2021, the Applicant’s architect John Harding submitted a height analysis indicating that a five story building with residential units on the ground floor would be 65 feet tall, nearly as tall as a six story mixed-use Project of 69 feet in height.

20-35. On DATE, Clifford Boehmer responded to the Applicant’s June 18, 2021, height analysis that

21-36. The Board deliberated on the Application at a public hearing held on May-5 June 23, 2021, and voted to grant a Comprehensive Permit subject to the conditions below.

22-37. On DATE, the Board closed the public hearing.

23-38. On DATE, the Town submitted a letter to the subsidizing agency, Mass Housing, requesting a review of draft Housing Conditions and the terms to be included in a second

Regulatory Agreement and a Monitoring Service Agreement (“Exhibit 2”). On DATE, Jessica Malcolm, Legal Specialist at Mass Housing, approved the Housing Conditions of this Decision and Exhibit 2.

24.39. Staff asked the Applicant if he would consider designing the Project with energy efficiency standards beyond the current State Stretch Code and provide onsite renewable energy combined with fossil-fuel-free systems for heating and cooling to reduce greenhouse gas emissions, all of which in combination would have the added benefits of both reducing utility costs especially for low-income residents of the Project and avoiding a costly retrofit post construction should a future State mandate involve a fossil-fuel ban (“Core Green Building Standards”). Staff emphasized that this query is in no way a request or demand of the Board or Town staff but only a pragmatic discussion of sustainable-building best practices intended to help the Applicant plan for carbon-free building operations in a cost-effective manner at the conceptual stage of the Project’s design.

25.40. The Applicant stated it was premature for him to commit during the public hearing to Core Green Building Standards for the Project.

26.41. Because nearly the entire surface Site is impervious with no open space, the Public Works Department recommended in its November 19, 2020, letter that the Applicant install a green roof, a permanent rooftop planting system containing live plants [which would have energy efficiency, stormwater management, and other environmental benefits]. The Applicant stated that installation of a green roof is not feasible at this time.

27.42. The Public Works Department recommended in its November 19, 2020, letter that the Applicant install pervious pavers on areas outside the building footprint. The Applicant stated that because of the small area available for such pervious pavers it would not provide a significant benefit and therefore would not be warranted.

FINDINGS

1. According to the Commonwealth’s Department of Housing and Community Development Subsidized Housing Inventory (“SHI”), as defined in 760 CMR 56.02, as October 29, 2019, approximately 9.9% 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 those seeking to purchase, rent, and rehabilitate affordable homes; and other Chapter 40B housing developments.
3. Alison Steinfeld, the Town’s Director of Planning and Community Development, submitted a letter to the Board dated March 29, 2021, that describes the Town’s progress in creating and supporting affordable housing, including but not limited to the Board’s record permitting projects under Chapter 40B; namely:

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- a. Since 2014 the Board has permitted 12 Chapter 40B projects, providing 796 SHI-eligible units in over 800,000 square feet of development. As of March 2021, six Chapter 40B projects totaling an additional 485 units are pending before the Board.
 - b. ~~Of the 12 Chapter 40B projects the ZBA has approved since 2004, only one applicant has appealed a ZBA decision to the Housing Appeals Committee. None of the Board's Chapter 40B decisions has involved pro forma review, and only one has been appealed to the Housing Appeals Committee.~~
 - c. A Comprehensive Permit application submitted during the time that the Town's SHI briefly exceeded 10% was not denied even though the option to deny the project was available to the Board.
 - d. The State has recognized the Town's site plan and design review framework as a successful model for fostering good design on Chapter 40B projects: MassHousing invited the Town to present its design review toolkit, specially prepared for Massachusetts communities, at the annual Chapter 40B conference hosted by the Citizens' Housing and Planning Association ("CHAPA") in January 2021, attended by over 350 municipal officials, planners, and housing and real estate professionals.
4. MassHousing determined that the Original Project was eligible under the New England Fund housing subsidy program, and at least 20% of the units would be available to households earning at or below 50% of the Area Median Income ("AMI"), adjusted for household size, as published by the Department of Housing and Urban Development ("HUD").
 5. The Site falls within a corridor that the Brookline Housing Production Plan ("HPP") identifies as an opportunity for additional higher density housing development. The HPP was approved by the Brookline Planning Board and the Brookline Select Board in September 2016 and approved by the Massachusetts Department of Housing and Community Development ("DHCD") on November 9, 2016.
 6. The Site, which is located in the L-1.0 local business zoning ("L-1.0") district ~~and within the Transit Parking Overlay District~~, abuts the M-2.0 multifamily zoning ("M-2.0") district to the north and the T-5 two-family zoning ("T-5") district to the west. The G-2.0 general business ("G-2.0") zoning district to the east is opposite the Site on Harvard Street, ~~and is within a Transit Overlay District.~~
 7. The L-1.0 district has no requirement for minimum lot size.
 8. The Brookline Zoning By-law prohibits commercial use in the abutting M-2.0 district.
 9. The Site has two Front Yards as defined in the Zoning By-Law: the Harvard Street Front Yard on the east and the Kenwood Street Front Yard on the south.

10. The dimensions of the Site according to the Boundary and Utility Survey listed under Item 8 under Procedural History are approximately x feet at its deepest and approximately x feet at its widest.
11. On the south the Site abuts Kenwood Street, a one-way street running westbound toward the T-5 district.
12. Existing conditions of the Site consist of a one-story brick building the façade of which aligns with the 10-foot front yard setback of the multifamily building to the north and which has approximately 2,325 square feet of floor area and is occupied by a take-out restaurant. The existing Site has an asphalt-paved surface lot with four parking spaces with a curb-cut on Harvard Street and a curb-cut on Kenwood Street. The existing Site has three steps that lead up from Harvard Street to a partially fenced-in outdoor deck with temporary seating in its front yard.
13. The Project would eliminate the Harvard Street curb cut and increase the width of the existing Kenwood Street curb cut.
14. The Town's Transportation Administrator, Todd Kirrane, in an e-mail dated June 9, 2020, to the Planning Department stated that a curb cut on Harvard Street is not desirable; and in an e-mail dated September 14, 2020 to the Planning Department Mr. Kirrane objected to the possibility of changing the portion of Kenwood Street between the Original Project's driveway on Kenwood Street from a one-way to a two-way segment of roadway.
15. Parcels on Harvard Street, from Fuller Street and Stedman Street to the south and extending to Kenwood Street and Lawton Street to the north, abut two-family zoning districts.
16. According to the Applicant's study dated February 17, 2021, of front yard setbacks on the northbound and southbound sides of Harvard Street encompassing 5,547 linear feet between Beacon Street and Verndale Street cross streets, the modal front yard setback pattern is zero to five feet with some exceptions related to a driveway and surface parking for a funeral home and a religious nonprofit in the L-1.0 district abutting the Site to the south and the surface parking for a retail use in the G-2.0 district across the Site to the east.
17. In his report dated August 25, 2020, and presented to the Board on September 30, 2020, Clifford Boehmer, AIA, the Board's independent architecture peer reviewer, stated:

"Very near 500 Harvard, four 40B developments have been approved, two of which are complete or very near completion (420 [Harvard] and 455 Harvard). 384 Harvard is under construction. 445 [Harvard] has yet to commence construction. These buildings range in height from 4 to 6 stories, and all have incorporated mitigation strategies into their design that helps integrate the buildings into the existing context."

18. In his report dated August 25, 2020, and presented to the Board on September 30, 2020, Clifford Boehmer, AIA, the Board's independent architecture peer reviewer, stated about the Original Project:

"If [the Original Project] is constructed as currently conceived, it will be the tallest structure on the entire length of Harvard Street (including the stretch in Boston that runs to Cambridge Street). Currently, the tallest structure (with the possible exception of the bell-tower at St. Mary's [67 Harvard Street]) appears to be [209 Harvard Street], a five story (parking at first level) commercial structure set back about 10 feet from the sidewalk."

and

This aspect [the Original Project being the tallest structure] alone does not preclude the feasibility of a building on the site that's taller than existing context. Rather, it is the sum of a multitude of design attributes that make its height untenable. The fully unarticulated, uniformly fenestrated façade is a sheer plane that rises up abruptly from the sidewalk a full 72 feet to the parapet level. There is no comparable treatment at any point along Harvard Street/Avenue. This is immediately adjacent to a well-articulated, meaningfully set back 30-foot tall building to the north, and close to a 2.5 story small residence to the west. Essentially, given the proposed massing, it isn't possible to determine what kind of height the site can responsibly support if the building were more thoughtfully designed."

19. In his report dated August 25, 2020, and presented to the Board on September 30, 2020, Clifford Boehmer, AIA, the Board's independent architecture peer reviewer, stated about ground parking plan of the Original Project:

"Ramping underground does not help in the existing plan, as the ramp itself, in order to be drive-able, would leave very little space available in the basement spaces....From a neighborhood impact perspective, the inclusion of the indicated at-grade parking within the building footprint has exacerbated the issue of building height, in particular because of the dimensional requirements of the proposed stacking equipment."

20. Several multifamily buildings on Harvard Street have residential units on the ground floor, including the building at 514 Harvard Street directly abutting the Site to the north.

21. The Site is located in a highly walkable urban area on the second busiest bus route in the Massachusetts Bay Transportation Authority's system that travels Harvard Street commencing from Nubian Square in the Roxbury neighborhood of the City of Boston and terminating in Harvard Square in the City of Cambridge and is near the public-transit train service known as the Green Line B-Branch on Commonwealth Avenue.

22. Based on Marc D. Draisen's September 3, 2020, letter, the Board found that a project with a low parking ratio or no off-street parking on the Site, which is located within walking distance of bus and train routes, would likely be attractive to potential tenants and conducive to reducing construction costs, and would maximize the Site's land area for housing.

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~~21. Based on Danny Danesh's testimony on behalf of the Applicant at the September 23, 2020, hearing justifying Original Project's low parking ratio, the Board found that a project with no off-street parking on the Site would likely be marketable.~~

~~23. Based on independent peer reviewer Brandon Schrenker's testimony at the September 23, 2020, hearing, the Board found that the parking demand in a rental project located at the Site within walking distance of public transportation would be low and therefore a project with little to no parking would be feasible.~~

~~24. Because of the Site's proximity to public transportation, the Board determined that eliminating off-street parking would be one way to reduce the Project's scale without sacrificing its housing program.~~

22. On September 3, 2020, Mare D. Draisen, Executive Director of MAPC, submitted a letter pertaining to the Original Project to the Board and to the Brookline Transportation Board supporting the low parking ratio of the Original Project by stating:

"MAPC strongly supports the development of housing with limited parking in areas well served by transit like Packard's Corner and Coolidge Corner where the Green Line and #66 bus line run, both within (5- or 10-minute) walks to 500 Harvard Street. Homes in these kinds of places typically rent easily without off-street parking. Using valuable land and resources to build parking that is neither needed nor in demand makes it more difficult to achieve other Town goals: increasing the supply of homes, making a significant portion of those homes affordable, creating an appealing streetscape, and/or enabling developers to devote resources to energy-saving and emission-reducing infrastructure. It can be difficult for any single development to provide all of these community benefits, but none should be sacrificed in favor of parking in transit-accessible areas."

"As determined by MAPC's Perfect Fit Parking research (<https://perfectfitparking.mape.org/>), expanding the supply of parking in residential buildings does not reduce traffic; it actually induces it by encouraging the tenancy of households with a higher rate of car ownership. Given the high demand for housing in Brookline and this particular site's proximity to transit, MAPC feels that 7 [sic] parking spaces for 30 units would be adequate. Furthermore, requiring the developer to build more parking spaces would only increase financial pressure for a taller building, which we know is also an issue of concern in Brookline."

23. At the September 23, 2020, hearing, in response to how the Original Project with six parking spaces for 30 residential units would be marketed to prospective tenants, Danny Danesh on behalf of the Applicant stated:

"there's very limited parking at this property, this development [the Original Project]. And if you have a car, and you want to live in Brookline, and you're going to be...using your car for work or whatever reason you need a car, this is not the building for you. If you will take the bus or a Zip car or the T or a bike to work on your daily commute, then this building makes sense for you. So you're not going to — there's no reason for...someone to come to this building and say, hey, I need a parking space, or even two parking spaces, when we have limited parking. So there's plenty of other options in Boston that they can live at if they need parking." [September 23, 2020, transcript page 117 lines 8 —13]

24. In his report to the Board dated June 17, 2020, and updated September 17, 2020, and presented September 23, 2020, Brandon Schrenker, P.E., independent parking peer reviewer stated:

“given the proximity of this development to the Green Line transit service and that this project is rental units opposed to condominiums, this development will likely be more similar to the adjacent Census Tracts 7.03 and 7.04 just to the north in Brighton [rather than the Census Tract 4003 in which the Site is located. These tracts are predominantly along the transit service and are 90% rental units, whereas Tract 4003 is only 47% rental units. If using the Tract 7.03 and 7.04 data, an estimated parking supply would be between 0.4 to 0.6 spaces per residential unit...for this project, not including visitor or service vehicle parking. Note that price point of the units will also impact the parking demand.

25. At the September 30, 2020, hearing, Board member Johanna Schneider asked the Applicant to consider no parking on the Site:

I'm not sure that I couldn't get behind a zero parking development in this site, given that it is walkable and well-served by public transportation, but the tradeoff would have to be that that space that's currently dedicated to parking is utilized for some benefit to the project...Maybe residential units do get added there and then get —it results in a reduction of height or a reduction of the massing of the building. And so, I would like there to be some study of that by the applicant and their team.” [Page 92, lines 3-14]

26-25. The Applicant submitted the November 2020 Revised Project that reduced the housing units from 30 to 25, reduced the affordable units from six to five, which reduced living area to from x to x square feet, and increased the parking from six to ten spaces, and expanded the amenity space from 600 to 1770 square feet supplanting the retail space in the Original Project.

27-26. In her staff report to the Board at the November 4, 2020, hearing, summarizing the working groups meeting held with the Applicant and Clifford Boehmer, Maria Morelli, Senior Planner, Brookline Planning Department addressed the Applicant's position on a possible project with no parking spaces on the Site:

“how comfortable do you [Applicant] feel with no parking on the site, because there was a range of opinions on the ZBA. And the Applicant felt very strongly that parking—that they wanted parking on the site....that was something that they were not willing to back down on.”

28-27. At the November 4, 2020, hearing, the Board opined that the building lacked articulation of the 72-foot-tall west façade facing the two-family neighborhood and felt that the Board's concerns with the building scale in relation to the two-family neighborhood was not yet addressed. The Board noted that the arcade treatment on the ground floor of the Harvard Street façade was only a token gesture toward reducing the project's scale.

~~29-28.~~ The Applicant submitted the February 2021 Revised Project that maintained 25 units of rental housing and reduced the housing component by ~~x square~~ feet of living area on floors two through six and maintained 1770 square feet of amenity space and no commercial space on the ground floor and retained 10 parking spaces and arcade on the ground floor.

~~30-29.~~ In her staff report to the Board, Brookline Senior Planner Maria Morelli summarized working group meetings with the Applicant and Clifford Boehmer in which different uses for the ground floor were explored in an effort to mitigate the building's scale. She stated that the Applicant did not want to eliminate parking on the ground floor and did not want to locate residential units on the ground floor and that 1770 square feet on the ground remained unrentable amenity space and that the massing on the northeast vertex abutting the three-story condominium to the north had been increased.

~~31-30.~~ The Board expressed frustration that despite the Applicant's elimination of commercial use from the ground floor, the scale and massing of the building was not sufficiently mitigated.

~~32-31.~~ The width of a parking space with the stacker mechanism in the Project's parking plan does not meet the requirement for the minimum width for a standard stall pursuant to Section 6.04.2.a of the Brookline Zoning By-Law.

~~33-32.~~ The Brookline Zoning By-Law does not specify dimensional requirements for mechanical parking systems.

~~34-33.~~ In a report to the Board dated March 31, 2021, peer reviewer Clifford Boehmer stated:

"For a number of reasons [construction costs, proximity to public transit], particularly at 500 Harvard Street, it is reasonable, and perhaps even desirable, to create multi-family housing that does have any on-site parking."

~~35-34.~~ Section 6.04.2.f of the Brookline Zoning By-Law states:

"In no case shall parking lots be designed to require or encourage cars to back into a public or private way in order to leave the lot; except for a parking stall where the sole access is an alley adjacent to the rear lot lines and so arranged that there is at least 20 feet of clear backing between the rear line of the parking stall and the opposite and more distant line of the alley."

~~36-35.~~ Brandon Schrenker, P.E., in a report to the Board dated March 25, 2021, that the Project's parking plan layout with two handicapped parking spaces along the north wall and a 24-foot wide drive aisle and no hammerhead would require drivers backing out of the handicapped parking spaces to perform an 8-point turn to turn the vehicles 180 degrees to exit the garage.

~~37-36.~~ Brandon Schrenker, P.E., in an e-mail dated March 29, 2021, ~~opined~~ that the Project's parking plan layout with one handicapped parking space centered along the north wall and a

24-foot wide drive aisle and no hammerhead would require drivers backing out of the handicapped parking spaces to perform an 6-point turn to turn the vehicles 180 degrees to exit the garage.

~~38-37.~~ In his experience, Brandon Schrenker stated that Walker Consultants does not use 6-point turns in its parking design practice and does not observe 6-point turns used in the plans it reviews and therefore would call the practice uncommon.

~~39.~~ ~~The Project's parking plan was not developed in consultation with nor independently reviewed by an Americans with Disabilities Act ("ADA") compliance expert although it was reviewed by the Town's Commission on Disabilities and by the Project Architect who is familiar with code requirements.~~

~~40-38.~~ In regard to the question of any safety or design standards related to handicapped parking spaces, Brandon Schrenker, P.E., who is not an ADA compliance expert, stated in an e-mail dated March 29, 2021 that the ADA Architectural Guidelines ("ADAAG") specify a standard of "Equivalent Facilitation," which is described as resulting in "substantially equivalent or greater accessibility and usability" than other parking spaces provided in the facility and that according to the ADAAG "the responsibility for demonstrating equivalent facilitation in the event of a challenge rests with the covered entity."

~~41-39.~~ The Applicant agreed to assume costs for all the mitigation measures recommended by the Brookline Transportation Board in its September 21, 2020, letter to Board, including but not limited to the construction of a non-exclusive loading zone on Harvard Street, construction of ADA-compliant sidewalk ramps at the intersection of Harvard Street and Kenwood Street, purchase and installation of four bike racks for the public way, purchase and installation of Accessible Pedestrian Signal ("APS") push buttons and countdown timers to make ADA-compliant the traffic signal at Harvard Street and Verndale Street, and construct and restore adjacent sidewalks on Harvard Street and Kenwood Street.

~~42-40.~~ The Board considered the use of four-story bays at the northeast portion of the Project abutting the three-story condominium to the north, and at the southwest portion of the Project abutting the two-family neighborhood to the west, a successful transition to an overall five story building but not sufficient to mitigate the overall six story volume.

~~43-41.~~ The Board at the March 10, 2021, hearing expressed frustration that, despite the improved architectural style, the Project is still too tall and out of scale with both the Harvard Street streetscape and the two-family neighborhood to the west.

~~44-42.~~ Jesse Geller, Chairperson of the Board, was not satisfied that Applicant sufficiently addressed that the Board's repeated recommendations at hearings held on September 30, 2020, February 17, 2021, and March 10, 2021, to consider alternative use of the ground floor to mitigate the building's scale and height while meeting the goal of the Chapter 40B mechanism. Because of the lack of resolution, Mr. Geller asked that the Board's design peer reviewer to address (a) the feasibility of constructing residential units on the ground floor and

(b) how much of the living area on the Project's sixth-story living area could be maintained on the ground floor.

45-43. Design peer reviewer, Clifford Boehmer, in his March 31, 2021, letter to the Board stated in part:

- a. The available space and site conditions do not preclude the option of residential units on the ground floor;
- b. Ground floor residential units are common on Harvard Street;
- c. It appears feasible to keep the first-floor residential units sufficiently above grade elevated above grade to ensure a reasonable degree of privacy while maintaining fully accessible entrances and exits;
- d. About 3,500 square feet of space is available on the ground floor for residential units, which could be configured to approximately the number, size, scale, and unit mix of the units on the Project's sixth floor;
- e. The Project's amenity space, commercial space, parking area, and garage driveway would need to be converted to residential units to shift the living area of the sixth-story units to the ground floor;
- f. The Site's location is especially conducive to a project with no parking on site; and
- g. Eliminating parking on the Site would improve construction costs.

46-44. At the April 14, 2021, hearing the Board stated that for a project at this location, it prioritized affordable units over the Project's other components like parking, amenity space, and commercial space.

47-45. The Board did not prohibit parking and commercial uses in the Project.

48-46. The Transportation Board in its September 21, 2020, letter to the Board ("Transportation Board Letter") stated that it makes no recommendation on an appropriate number of onsite parking space except to stipulate that the number of accessible parking spaces onsite be equal to the number of accessible units and that accessible parking spaces be prioritized for the occupants leasing the accessible units.

49-47. The Board did not require through a unanimous directive that the Applicant meet the parking ratio minimum recommended by the Board's parking peer reviewer. The Board in its approval of Waivers considers zero parking on the Site at its location acceptable.

50-48. Captain Todd Cantor of the Brookline Fire Department's Fire Prevention Division stated in an e-mail to the Planning Department dated March 30, 2021:

"The current sprinkler code NFPA 13 (2013) does not properly address car stacking systems.... The NFPA 13 (2019 edition) more appropriately addresses providing sprinkler coverages in these areas [where parking stackers are used]. The level of hazard is multiplied and if a fire event were to ensue, a very large amount of water would be required to control the fire. In some cases, these systems can only prevent the fire from spreading further into the

building and not actually extinguish the fire. The level heat can be enormous and very large amounts of water would be needed.

“Under NFPA 13 (2019), the garage [with stackers] would be considered an Extra Hazard (Group 2). From 780 CMR 104.11 Alternative Materials, Design and Methods of Construction and Equipment: ‘The provisions of 780 CMR are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by 780 CMR, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of 780 CMR, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in 780 CMR in quality, strength, effectiveness, fire resistance, durability and safety.’”

~~51-49.~~ Brookline Health Commissioner Dr. Swannie Jett reviewed the preliminary trash and recycling plan and architectural plans for the Project listed under Item 8 under Procedural History and in his April 12, 2021, letter to the Board based his recommendations to meet the demands of a residential use with retail or restaurant use on the Site as specified in the Project’s program. The Health Commissioner reserves the right to adjust its recommendations after the Project is occupied.

~~52-50.~~ The Transportation Board in its September 21, 2021, letter to the Board supported the installation of a 40-foot long loading zone on the Harvard Street in front of the Site only if the conditions specified in its letter and the specifications of the Public Works Department are met. The Transportation also stated that it prefers that the Loading Zone specified in Transportation Board Letter not be a dual-function Loading Zone for certain hours per day and metered parking spaces during other hours per day.

~~53-51.~~ Todd Kirrane, the Town’s Transportation Administrator, confirmed in an e-mail to the Planning Department dated September 29, 2020, that a 40-foot long loading zone, as recommended in the Transportation Board Letter, would not require the removal of street trees and on-street parking spaces and would not obstruct the minimum depth required by the Town for pedestrian access on the sidewalk.

~~54-52.~~ Thomas Brady, Town Arborist, stated in an e-mail dated February 12, 2021, to the Planning Department that he authorized the Town’s removal of a structurally compromised weed tree on the sidewalk at the proposed entrance of the Project’s driveway on Kenwood Street.

~~55-53.~~ At the April 14, 2021, hearing, the Board granted all waivers requested from zoning to the limits and scope requested by the Applicant, except to limit the height to the four-story and five-story segments configured and shown on the Architectural Renderings and Architectural Plans for the Project shown under Item 8 under Procedural History and as set forth in Condition A and Condition B pertaining to height and gross floor area.

~~56-54.~~ The Board heard the concerns of Town staff, boards, commissions, and residents and weighed them against local needs. The Board finds that the Project, subject to compliance with the Conditions below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.

~~57-55.~~ 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 render the Project uneconomic, the Board finds that the Local Concerns outweigh the potential benefits of the proposed affordable units.

~~58-56.~~ The Board finds that granting certain waivers local by-laws and regulations is acceptable even though granting such waivers may have an adverse impact on Local Concerns.

~~59-57.~~ The Board acknowledges concerns raised by abutters and other interested parties.

~~60-58.~~ The Applicant has had the opportunity to review the following Conditions and has ~~no~~ objections ~~to all conditions that limit the Original Project.~~

~~61-59.~~ The Project is oversized for its context with excessive scale in relation to the Harvard Street streetscape and the abutting two-family neighborhood. Although the Board—in an effort to modulate the scale and prioritize affordable housing units over parking spaces and amenity and commercial space—urged the Applicant to consider alternative programming to the mixed-use project with limited parking in the Original Project, the Applicant increased the parking spaces by 67% and expanded the stacker mechanism and introduced a deeper excavated pit construction and converted all the commercial space to unrentable amenity space in at least two revisions of the Original Project. Although the overall volume was not sufficiently reduced to mitigate the Project's scale, any reduction in volume disproportionately impacted the housing component of the Project in contrast with the increased allocation of space given to parking and no reduction in combined commercial and amenity spaces configured over the course of the hearing.

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 zero to 10 parking spaces maximum and zero to 1,220 square feet commercial space and zero to 520 square feet of amenity space, as shown on the Site Plans, Stormwater Management Plan, Architectural Plans, Parking Narrative, Trash and Recycling Plan, shown under Item 8 under Procedural History, subject to all of the Conditions listed below.

Commented [MM6]: BOARD: See disclaimer at Item 8 under Procedural.

CONDITIONS

1. The Project shall include no more than 25 units of rental housing in one building with four-story and five-story segments the arrangement, heights, setbacks, and step-backs of which shall be configured as shown on the Site Plans and Architectural Renderings and

Architectural Plans shown under Item 8 under Procedural History. The height of the Project's five-story segment shall not exceed 58 feet as calculated pursuant to Section 5.30.1.a and the height of the mechanicals and mechanical screening shall not exceed 4 feet, subject to the reviewing and approval of the Building Commissioner. **Dan B: Clear for final plans, OK?**

Commented [MM7]: Cliff is ok with 58 feet max—see his memo. Add this testimony to PH and Findings.

2. Twenty-five percent of the units shall be available to households earning at or below 50% AMI, adjusted for household size, as published by the U.S. Department of Housing and Urban Development from time to time.
3. The total maximum number of bedrooms shall be 00 and the maximum number of units shall be 25 as listed in the following table [fill in]:

Commented [MM8]: JUDI: Ok to delete?

Unit Type	Number of Units	Total Bedrooms per Unit Type
One Bedroom		
Two Bedroom		
Three Bedroom		
TOTAL 00 Bedrooms		

4. The Project shall have zero to 10 parking spaces maximum.
5. Prior to the issuance of Building Permit, the Applicant shall provide to the Building Commissioner evidence certified by a qualified architectural accessibility professional, the costs thereunder borne by the Applicant, that the parking plan is compliant with Architectural Access Board Rules and Regulations and that the parking plan demonstrates equivalent facilitation in accordance with the ADA Architectural Guidelines.
6. With respect to the Applicant's Request for Waivers from local by-laws and regulations dated March 30, 2021, the Board approves those Waivers in Exhibit 1 to the scope and limits specified by the Board as indicated in Exhibit 1. The Project must comply with by-laws and regulations not waived.
7. The Project shall have zero to 520 sf maximum of amenity space and zero to 1220 sf maximum of commercial space.
8. The Project shall not exceed the maximum gross floor area as specified:
 - a. If the Project is comprised of only residential units, the gross floor area shall not exceed x sf and the floor area ratio shall not exceed x / 6969 sf, or 0.00.
 - b. Alternatively, if the Project is comprised residential units on floors two through five and commercial space and amenity space and parking spaces on the ground floor, the gross floor area shall not exceed x sf and the floor area ratio shall not exceed x / 6969 sf, or 0.00.

Housing

9. 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 HUD (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 SHI.
10. Twenty percent of the units in the Project shall in perpetuity be Affordable Units.
11. Lease and occupancy agreements shall be for terms not less than six months with the exception of extension. No more than two such extensions of an existing lease for a period of less than six months shall be permitted. Nightly rentals shall not be permitted. Short-term rentals such as Airbnb and similar lodging services shall not be permitted.
12. Local Preference: The Applicant shall work with the Assistant Director for Community Planning to request that no less than 25% of the Affordable Units be awarded to households with local preference during the initial lottery, subject to the approval of the Subsidizing Agency.
13. A second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in **Exhibit 2**) shall be 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 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 the Town's Regulatory Agreements.
14. The Owner shall retain the Town or a consultant designated by the Town as the Monitoring Agent for the Project for a 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.
15. The Town will not issue a Building Permit for the Project without final approval from the Subsidizing Agency.
16. No more than four Certificates of Occupancy will be issued by the Building Commissioner for Market Rate Units until at least one Certificate of Occupancy is issued for an Affordable Unit. No more than one Certificate of Occupancy for an Affordable Unit shall be issued for every four Market Rate Unit Certificates of Occupancy issued by the Building Commissioner.

Fire Safety

~~17. Prior to the issuance of a Building Permit, the Applicant shall submit plans for access to the roof for the review and approval of the Fire Chief. The Project shall provide access to the roof by means approved by the Fire Department, of an interior stairway. Access to the roof by means of a ladder is prohibited.~~

18.17. Prior to the issuance of a Demolition Permit, the Applicant shall submit a construction site safety plan in compliance with NFPA 241 prepared by a third-party fire safety professional who has been approved by the Fire Chief (“Construction Site Safety Plan”) for the review and approval of the Building Commissioner and the Fire Chief, with all costs thereunder borne by the Applicant. The Construction Site Safety Plan shall include measures to decrease and/or eliminate fire safety hazards during demolition of the existing building on the Site and during all phases of construction of the Project. The Fire Chief or their designee may review onsite operations during construction. The third-party fire safety professional shall report any conflicts with the Construction Site Safety Plan to the Fire Department in a timely manner.

19.18. Prior to the application for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that:

- a. The Project’s building has enhanced NFPA-13 (or latest version of the NFPA code) designed sprinkler system;
- b. The Project’s parking garage complies NFPA-13 (2019) Section 4.3.6 Extra Hazard (Group 2);
- ~~e. The Project’s building has direct alarm notification to the Fire Department designed in accordance with the latest version of Building and Fire Codes.~~

Commented [MM9]: Ask Todd Cantor if deletion is ok. Or word: proof that such notification is not required.

20.19. Prior to the issuance of a Building Permit, the Applicant shall provide for the review and approval of the Fire Chief or their designee and the Building Commissioner:

- a. a site plan stamped and signed by a registered land surveyor or civil engineer certifying the height of the Project calculated in accordance with the methodology specified in the Waivers; and
- b. an analysis prepared by a registered engineer certifying the Project complies with the latest Building and Fire Codes.

Commented [JG10]: The Building will meet code. A BDA system is only required if a BDA test shows it is necessary. We don’t believe it is required here so can not agree to install one voluntarily where unnecessary.

21.20. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall provide for the review and approval of the Fire Chief or their designee and the Building Commissioner a site plan stamped and signed by a registered land surveyor or civil engineer certifying the height of the Project calculated in accordance with the methodology specified in the Waivers.

22-21. Prior to the issuance of the first Certificate of Occupancy, the private property management for the Project shall submit a fire safety and emergency procedures plan for the review and approval of the Fire Chief or their designee.

Pre-Construction, Stormwater Management, and Infrastructure

23-22. Prior to the Commencement of Construction, the Applicant shall provide to the Director of Engineering and Transportation or their designee plans showing that no erosion from the Site will cause deposition of soil or sediment upon adjacent properties or public ways or into public stormwater systems. For purposes of this Decision, “Commencement of Construction” shall mean: the initial disturbance of 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 removing and disconnecting of utilities or water or sewer lines; and/or any alteration, demolition, repair, or improvements to a building or structure (“Commencement of Construction”).

24-23. Prior to Commencement of Construction and subject to the approval by the Building Commissioner in conjunction with the Director of Engineering and Transportation, the Health Commissioner, and the Fire Chief, the Applicant shall provide a Final Construction Management Plan that shall include but not be limited to: designation of truck routes, sequencing of truck traffic; limit of work areas; staging areas; the locations 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; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips.

25-24. The Applicant shall include the Final Construction Management Plan in the contract with the Project’s general contractor and be binding on all subcontractors for the duration of construction.

26-25. Prior to Commencement of Construction, the Applicant shall submit a plan to be included in the Final Construction Management Plan subject to the review and approval of the Building Commissioner and the Director of Engineering and Transportation for trucking and hauling soil from the Site during excavation, including but not limited to:

- a. Duration of the excavation period;
- b. Capacity of the dump trucks;
- c. Number of dump trucks; and
- d. Plan to avoid queueing of dump trucks.

27-26. Any damage to structures and parking areas including but not limited to infrastructure owned by the Commonwealth of Massachusetts, the Town of Brookline, and/or private utility companies causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair, and the Applicant shall indemnify

and hold harmless the Town from and against any and all loss, liability, claim, cost, or expense related to said damage.

~~28-27.~~ Prior to the Commencement of Construction, the Applicant shall confirm for the review and approval of the Director of Engineering and Transportation that utilities including but not limited to storm drainage infrastructure, sewer connections, electrical power lines do not cross the Site's property lines prior to disconnection. Should electrical power lines be relocated for construction of the Project, the Applicant shall coordinate activities with the Town and the utility.

~~29-28.~~ The Applicant shall provide back-up generators if **deemed** necessary or ordered by the Building Commissioner in the event power is shut off or disconnected for an extended period of the construction of the Project with all costs paid by the Applicant.

~~30-29.~~ Construction vehicles shall load and unload within the limit of the work area designated in the Final Construction Management Plan approved by the Building Commissioner and the Director of Engineering and Transportation. Construction equipment and vehicles shall not impede the access, staging, and passage of emergency vehicles on Harvard Street and Kenwood Street.

~~31-30.~~ Prior to the Commencement of Construction, the Applicant shall provide the Director of Engineering and Transportation with a report **and** still photographs and/or video recording of the condition of finished surfaces of streets and sidewalks along truck routes designated in the Final Construction Management Plan before Commencement of Construction and then again prior to issuance of a Certificate of Occupancy to document any adverse effects on the hard surface materials caused by construction traffic. Any damage to streets and sidewalks causally connected to construction of the Project shall be the financial responsibility of the Applicant to repair.

~~32-31.~~ There shall be no blasting during the construction of the Project.

~~33-32.~~ Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of any street trees and shall submit a plan for protecting the roots, limbs, and canopies of any street trees adjacent to the Site on Harvard Street and Kenwood Street during construction for the review and approval by the Town Arborist and with all costs for performance thereunder borne by the Applicant. Any proposed cutting or removal of street trees shall be subject to M.G.L. c.87, the "Shade Tree Act."

~~34-33.~~ Prior to the issuance of a Building Permit, the Applicant shall submit final floor plans and elevations for the building, indicating façade design and rooftop details subject to the review and approval of the Assistant Director for Regulatory Planning for consistency with the plans listed under Item 8 under Procedural History. Color, windows, and materials shall be reviewed and approved on site by the Assistant Director for Regulatory Planning within a reasonable time frame.

Commented [JG11]: Indemnity? This is a new condition which the Applicant does not agree too.

Commented [MM12]: From Jonathan Simpson: "I am not sure why they object to the second clause when the first clause already imposes a requirement that they pay. I do not believe it is appropriate to remove the indemnification language. The Town shouldn't be subject to claims for any damage. If Jennifer wants to propose an alternative phrasing, I'm happy to review it."

~~35.~~ Gas meters shall not be installed outside the building footprint property line, unless otherwise directed by the utility company.

~~36.~~~~34.~~ Prior to the issuance of a Building Permit, the Applicant shall indicate how the garage, if constructed, will be ventilated, subject to the review and approval of the Building Commissioner.

~~37.~~~~35.~~ The Project's garage shall be equipped with a garage door to mitigate noise and glare from garage lighting and parking activity.

~~38.~~~~36.~~ Prior to the issuance of a Building Permit, the Applicant shall submit for the review and approval of the Assistant Director for Regulatory Planning and the Director of Engineering and Transportation or their designees a final site plan and final landscaping plans indicating:

- a. plant types and sizes at planting and location of plants;
- b. compliance with Section 6.04.4.f.1 of the Zoning By-Law
- c. proposed design of garage and garage door;
- d. location of and materials for fences, walls, walkways, and driveway;
- e. height of fences and elevation at top of walls in relation to grade;
- f. exterior lighting;
- g. location of utilities, mechanicals, parking spaces, bicycle racks; and
- h. location of trash, recycling, and snow storage.

~~39.~~~~37.~~ The Applicant shall install plantings in the setback running along the Site's western property line to provide screening and privacy, and shall maintain and replace such plantings to maintain this screening. Fences and plantings shall not obstruct the view of motorists exiting the garage pursuant to Section 6.04.

~~40.~~~~38.~~ Mechanical systems, including but not limited to parking stackers and ventilation equipment shall comply with the Town's Noise By-Law. The garage, if provided, shall be ventilated to the roof.

~~41.~~~~39.~~ Prior to the issuance of Building Permit, the Applicant shall submit a lighting and photometric plan for the review and approval of the Director of Engineering and Transportation and the Building Commissioner. 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. Headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded to the maximum extent possible.

~~42.~~~~40.~~ There shall be no parking and no idling in the Project's driveway.

~~43.~~~~41.~~ Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan the review and approval of the Director of Engineering and Transportation.

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~~44.42.~~ Prior to the issuance of a Building Permit for the building on the Site or a portion thereof the Applicant shall comply with the Public Works Department's Site Plan Review Checklist as verified by the review and approval of the Director of Engineering and Transportation and the Building Commissioner.

~~45.43.~~ Prior to the issuance of a Building Permit, all water, stormwater, and sewage facility designs shall be subject to the review of the Director of Engineering and Transportation and the Director of Water and Sewer.

~~46.44.~~ Prior to the issuance of a Building Permit, the Applicant shall submit the following subject to the review and approval of the Director of Engineering and Transportation and the Director of Water and Sewer, as applicable. The Applicant shall:

- a. Conduct test pits to determine estimated seasonal highground water table ("ESHGWT") and percolation rates;
- b. Indicate on the site plan the dedicated fire service line for the Project's fire protection;
- c. Provide calculations for fire and for domestic water service so that adequate sizing of these lines can be determined; and
- d. Provide sewer profile with depths and crossings with other utilities.

~~47.45.~~ 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 onsite stormwater management system;
- b. All sewer, stormwater, and water connections, lines and equipment requirement, from the public way to the building; and
- c. All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable systems.
- d. The Applicant shall operate and maintain all of the foregoing specified in (a), (b), and (c) in good, safe, and working condition and repair at all times at its sole cost.

~~48.46.~~ All utilities shall be underground.

~~49.47.~~ Contemporaneously with sending or within ten days of receiving any and all correspondence to and/or from the Massachusetts Historical Commission and/or the Massachusetts Secretary of Energy and Environmental Affairs concerning the Project, the Applicant shall provide the Board and Brookline Preservation Commission with copies.

Construction

~~50-48.~~ 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 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, except as otherwise provided by this Decision, are limited to: Monday through Friday (excluding Federal and State holidays) from 7:00 am to 5:00 pm; Saturday from 8:30 am to 5:00 pm; and Sunday from 8:30 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.

~~51-49.~~ During construction and initial leasing, the Applicant may post on the Site no more than one temporary sign for the Project, no greater than twenty square feet, with the design and location subject to the review and approval of the Assistant Director for Regulatory Planning.

~~52-50.~~ 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 months except subject to causes beyond the Applicant's reasonable control. The Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11). The Applicant shall work with the Town to coordinate construction activity with improvements the Town schedules to the public way.

~~53-51.~~ The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.

~~54-52.~~ Upon request of the Director of Engineering and Transportation and/or the Building Commissioner, the Applicant shall provide written reports during construction outlining the status of the Project.

Certificate of Occupancy

~~55-53.~~ Prior to the issuance of the first Certification of Occupancy, the Applicant shall submit as-built floor plans certified by a registered architect to the Building Commissioner for their review and determination of conformance with the approved plans and the Conditions of the Decision. Prior to the issuance of the first Certificate of Occupancy for the building on the Site or a portion thereof, the Applicant shall comply with the Building Commissioner's Certificate of Occupancy Process as verified by the review and approval of the Building Commissioner.

~~56-54.~~ When **ninetyfifty percent** of the Certificates of Occupancy are issued, the Applicant shall demonstrate to the Building Commissioner that the Project complies with

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the Town Noise By-Law. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall demonstrate to the Building Commissioner that the Project complies with the Town Noise By-Law.

~~57-55.~~ After the issuance of the final Certificate of Occupancy and before the Applicant replaces or changes 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 plans listed in Item 8 under Procedural History.)

~~58-56.~~ The Building Commissioner will not issue the final Certificate of Occupancy unless a Loading Zone on Harvard Street is completed and signage installed ~~constructed~~ to the satisfaction of the Director of Engineering and Transportation.

Transportation and Mobility Management

~~59-57.~~ If the Project retains parking onsite, to mitigate traffic the Applicant shall:

- a. Ensure that the Kenwood Street driveway aprons are at the same level as the sidewalk elevation and that the material for driveway aprons is the same as that of the sidewalk;
- b. In consultation with the Director of Engineering and Transportation, purchase and install a STOP sign and a stop line consisting of concrete pavers or painted white line at the driveway exit before the sidewalk with all costs thereunder borne by the Applicant;
- c. Use best efforts to prevent vehicles entering the Site from queueing onto Kenwood Street;
- d. Post a No Idling sign in the Project's garage;
- e. Make the parking spaces available to only the occupants of the residential units;
- f. Unbundle the parking spaces from the leases for the residential units;
- g. Install both a visual- and audible-warning system to warn pedestrians, including sight impaired pedestrians, that a vehicle is exiting the Site.
- h. Keep sidewalks adjacent to the Site on Harvard Street and Kenwood Street clear of snow and ice and shall remove snow mounds that collect on Kenwood Street to the left and the right of the Project's driveway to ensure that drivers entering and exiting the Site have a clear view of pedestrians and approaching vehicles. The Applicant shall not store snow in the public way; and

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- i. In consultation with the Director of Engineering and Transportation, install a NO PARKING ANYTIME/TOW AWAY ZONE sign on Kenwood Street adjacent to the Site on Kenwood Street and between the corner of Harvard Street and Kenwood and the Project's driveway curb cut with all costs related to fabrication and installation borne by the Applicant.

~~60-58.~~ The Applicant shall keep sidewalks adjacent to the Site on Harvard Street and Kenwood Street clear of snow and ice and shall remove snow mounds that collect in the public way adjacent to the Site.

~~61-59.~~ Prior to the issuance of Building Permit, the Applicant shall submit a Transportation Access Plan agreement ("TAP") for reducing the number of vehicular trips to and from the Project and for facilitating alternative modes of transportation, to be prepared in accordance with the Transportation Access Plan Guidelines of the Town (Section 5.09.3.c.6 of the Town Zoning By-Law [Waivers cross reference] and which shall be subject to the review and approval of the Director of Engineering and Transportation. The Applicant shall include in the TAP all of the following mitigation measures; the Applicant shall:

- a. Provide a comprehensive Parking and Transportation Demand Management ("P&TDM") program that complies with the Town's Transportation Access Guidelines for employees of the Project and the tenant that occupies any commercial space;
- b. Provide no fewer than one bicycle racks per unit and provide for secure and covered bicycle storage on the Site;
- c. Provide traffic monitoring and annual reports as specified in the TAP to the Director of Engineering and Transportation; and
- d. Provide at no cost to the user a smartphone application that install transit screens (similar to <https://transitscreen.com/>) displaying/displays real time information for MBTA buses and trains, and other alternative modes of transportation in Project's lobby for use by residents, visitorstenants, retail employees, staff, and service people.

~~62-60.~~ Prior to the issuance of a Building Permit, the Applicant shall provide a contribution in the amount of \$X for the following~~execute the following~~ mobility management measures in accordance with all Town of Brookline standards as determined by the Director of Engineering and Transportation and related to the costs. Prior to any Town inspections, the Applicant shall provide evidence to the Director of Engineering and Transportation that a registered civil engineer inspected the work for execution in accordance with all Town standards and Town-approved design specifications to:

- a. Design and The Applicant shall submit plans stamped by a registered civil engineer for the review and approval of the Director of Engineering and

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Transportation and construct ADA-compliant sidewalk ramps with ~~a~~-reduced curb radii and crosswalk pavement markings at the intersection of Harvard Street and Kenwood Street and related adjustments to the adjacent drainage system; and

~~b. Purchase and install Accessible Pedestrian Signal (APS) push buttons and count down timers to make the nearby traffic signal at Harvard Street and Verndale Street ADA-compliant; and~~

~~e.b. The Applicant shall p~~Purchase and install up to four bicycle racks in the public way for short-term use by customers of the commercial space and ~~/or~~ by the general public, the location of which shall be determined by the Director of Engineering and Transportation.

~~61.~~ The Applicant shall construct and restore sidewalks adjacent to the Site on Harvard Street and Kenwood Street according to Town of Brookline standards as determined by the Director of Engineering and Transportation with all costs thereunder borne by the Applicant.

~~63-62.~~ Prior to the issuance of a Building Permit, the Applicant shall provide \$10,620 to the Town for deposit into a segregated Town account to be used by the Town for the purchase and installation of Accessible Pedestrian Signal (APS) push buttons and count down timers to make the nearby traffic signal at Harvard Street and Verndale Street ADA-compliant. If the funds are not used within three (3) years from the date of deposit for the installation of the APS push buttons and timers at the aforementioned location, the funds shall be returned to the Applicant.

~~64.63.~~ The Applicant shall install a 40-foot long Loading Zone ~~shall be installed on~~ Harvard Street ~~and to be~~ used in accordance with conditions specified by the Brookline Transportation Board and the Transportation Administrator in their testimony to the Board as well as relevant Rules and Regulations for the Town of Brookline including but not limited to all of the following conditions:

- a. Use of the Loading Zone shall be available to any vehicle authorized by the Traffic Rules and Regulations and regulations for the Town of Brookline and shall not be limited to the exclusive use of the tenants of the Project.
- b. The cost for removal of existing materials and the installation of new materials ~~and the Town's labor~~ related to construction of the Loading Zone shall be borne by the Applicant.
- c. In consultation with the Director of Engineering and Transportation, the Applicant shall install a sign stating LOADING ZONE/TOW AWAY ZONE with all costs for fabrication and installation thereunder borne by the Applicant.
- d. Any changes in design of the Loading shall be approved by the Director of the Engineering and Transportation.

- e. The Applicant shall be responsible for the removal of snow, ice, leaves, and debris in the Loading Zone to ensure that vehicles occupying the Loading Zone do not impede traffic in the bike and travel lanes.

Public Health

~~65-64.~~ Prior to the issuance of a Building Permit, the Applicant shall submit a trash and recycling plan and schedule to the Assistant Director of Health and Human Services for review and a determination of compliance with the Town regulations. Public Health Department approval of the trash and recycling plan is contingent on the installation of a Loading Zone on Harvard Street prior to the issuance of the final Certificate of Occupancy. Said plan shall include provisions guaranteeing that:

- a. The Applicant shall have trash and recyclables generated by the Project's residential and, if constructed, commercial spaces picked up a minimum of once per week and a maximum of twice per week or as approved in advance by the Assistant Director for Health and Human Services contemporaneously by the Applicant's private waste management service(s) and in any event in compliance with applicable regulations;
- b. The Project shall provide for the residential and, if constructed, commercial uses the number and specifications for the trash and recycling room, chute system, trash compactors, two-cubic-yard containers as described in the Trash and Recycling Plan under Item 8 under Procedural History;
- c. The Applicant shall provide one trash compactor for the trash container for the residential use and one compactor for the trash container for the restaurant use or commercial use;
- d. Food waste associated with food-related retail uses shall be stored separately from other solid waste;
- e. The Applicant shall clean and maintain in sanitary conditions the trash room, compactors, containers, and chutes;
- f. In consultation with Assistant Director of Health and Human Services, the Applicant shall provide a contingency plan in the event the trash compactor(s) fail including but not limited to repair and replacement of the compactor(s);
- g. The trash room shall be equipped with:
 - i. 2 two-cubic-yard containers for the residential use (one for trash and one for recyclables);
 - ii. 2 two-cubic-yard containers commercial use (one for trash and one for recyclables); and

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- iii. an additional 4 two-cubic-yard containers in the event of compactor failure;
- h. The motor of compactors shall have a decibel rating in compliance with the Town Noise By-Law;
- i. The Applicant shall install noise reduction material for the compactor room to mitigate noise impact from the trash compactor(s);
- j. The Applicant shall inform the Public Health Department when the residential units are at 90% occupancy and, if the commercial use is constructed, when commercial space is operational, so that the Assistant Director of Health and Human Services may review and modify the trash and recycling plan for compliance with this Decision and applicable State and Town regulations and by-laws;
- k. The Applicant shall not store trash containers in the public way or outside the building footprint. The designated trash and recyclables pick-up location shall be the Loading Zone as described by this Decision on Harvard Street. Trash and recyclables containers shall be returned promptly to the trash room during scheduled pick-up times from the designated Loading Zone;
- l. The Applicant shall install an odor control system for any full-restaurant tenant of the commercial space; and
- m. The Public Health Department reserves the right to require modifications to the trash and recycling plan to ensure compliance with applicable State and Town regulations and by-laws.

General

~~66-65.~~ 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.

~~67-66.~~ Any reference to Town staff should 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.

~~68-67.~~ 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.

~~69-68.~~ Upon execution by the Board, the Director of Planning and Community Development or her designee is directed to file this Decision with the Town Clerk and send a copy to the Applicant with acknowledgment of receipt requested.

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~~70-69.~~ Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.

~~71-70.~~ Prior to thirty days subsequent to the end of all applicable appeal periods, the Applicant shall record this Decision with 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.

~~72-71.~~ The Comprehensive Permit shall expire if construction is not commenced within three years from the date this Decision becomes final as provided in 760 CMR 56.05(12)(c), subject to 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 extension of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).

~~73-72.~~ 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).

~~74-73.~~ This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).

~~75-74.~~ The Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.

~~76-75.~~ All Conditions of this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations thereunder.

Summary of Pre-Building Permit Review, Approvals, and Conditions

~~77-76.~~ CROSS-REFERENCES TO PREVIOUS CONDITIONS GO HERE

ATTACHED:

- Exhibit 1 – Waivers Granted by the Board on April 14, 2021
- Exhibit 2 – Terms To Be Included in Replacement Town Regulatory Agreement
- Exhibit 3 – Public Hearing Published DATE and DATE

RECORD OF VOTE

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

Jesse Geller, Chairperson, Brookline Board of Appeals. *(signed and dated)*

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

Filed with the Town Clerk on _____ (date)

ATTEST:

Patrick J. Ward, Town Clerk

TWENTY-DAY APPEAL PERIOD ENDED (Town Clerk Stamp)

APPLICANT
When the Town Clerk confirms the end of the 20-day appeal period, file one copy of the Decision with the Registry of Deeds Norfolk County and return to the Planning Department a copy of the cover page stamped by the Registry.