

**TOWN OF BROOKLINE  
MASSACHUSETTS**

**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT  
217 KENT STREET  
BOARD OF APPEALS CASE NO. 00000**

Date: \_\_\_\_\_

Re: Application of New Kent Street LLC for a Comprehensive Permit (“Application”)

Location: Town Assessor’s Atlas Map Sheet 29 Block 127 Lot 10, known and numbered as 217 Kent Street, Brookline, Massachusetts

PROCEDURAL HISTORY

1. On December 23, 2019, the Massachusetts Housing Finance Agency (“MassHousing”) issued a Project Eligibility Letter (“PEL”) to New Kent Street LLC (the “Applicant”) for a proposal to build 90 units of rental housing.
2. On December 24, 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 73 units of rental housing and 44 parking spaces and to renovate 17 rental housing units in an existing three story building for a total 79,316 square feet of floor area in two connected buildings (the “Original Project”) on approximately 28,645 square feet of land located on the northbound side of Kent Street known and numbered as 217 Kent Street, Brookline, Massachusetts (the “Site”).
3. The Applicant provided the Brookline Board of Appeals (the “Board” or the “ZBA”) with written permission to open the hearing on February 27, 2020, beyond the 30-day statutory deadline, to accommodate the Board’s scheduling conflicts.
4. On the February 3, 2020, the Applicant informed the Town that ~~it~~<sup>he</sup> was changing the plans for the Original Project in response to ~~his voluntary~~ community ~~feedback~~<sup>outreach</sup> and did not want to open the hearing on February 27, 2020.
5. On April 3, 2020, Governor Baker signed Chapter 53 of the Acts of 2020, An Act to Address the Challenges Faced by Municipalities and State Authorities Resulting from Covid-19, which tolled the deadlines to open or complete a hearing until 45 days after the end of the state of emergency and which authorized permit-granting authorities to conduct meetings and hearings remotely during the state of emergency at their discretion.
6. In November 2020, Governor Baker signed an amendment to Chapter 53 of the Acts of 2020 to recommence hearing timelines as of December 1, 2020.

7. Despite the tolling provision allowed by Chapter 53 of the Acts of 2020, the Board asked the Applicant to provide permission in writing to extend the deadline to open the hearing. The Applicant granted the Town a written extension to open the public hearing by April 28, 2021.
8. Consistent with the Commonwealth of Massachusetts Executive Order dated March 12, 2020, the Board held public hearings remotely with adequate access provided to the public.
9. The Board opened the duly noticed and advertised public hearing on April 28, 2021.
10. At the April 28, 2021, hearing Robert Allen, attorney for the Applicant, described community meetings the Applicant ~~had voluntarily scheduled~~ in January 2021 and March 2021 with members of the community to ~~discuss~~ develop a conceptual concerns with the project and alternative conceptual designs to the Original Project.
11. At the April 28, 2021, hearing the Applicant presented (a) plans for the Original Project submitted in the Application and (b) the revised plans designed in response to community input that would demolish the existing building to construct 112 units and 44 parking spaces in a single six story building (the “Revised Conceptual Drawings”).
12. At the April 28, 2021, hearing the Board asked the Applicant which plan—the Original Project or the Revised Conceptual Drawings—would be the plan of record for review during the public hearing, as the Board is not authorized to choose between the Original Project and Revised Conceptual Drawings or to review both plans or a combination thereof.
13. At the April 28, 2021, hearing Attorney Allen stated that he hoped the peer reviewers would review both the Original Project and Revised Conceptual Drawings. He was concerned that establishing the Revised Conceptual Drawings as the plan of record would require the submission of new PEL application to MassHousing.
14. At the April 28, 2021, hearing the Board advised the Applicant to obtain a statement from MassHousing to confirm whether or not a new PEL would be required.
15. At the April 28, 2021, hearing the Board asked the Applicant how many units were currently in the existing building, how many parking spaces were provided and utilized, and if current tenants would be displaced as a result of the new project. Sassan Zelkha, the Applicant’s project manager, stated that the existing building has 23 units and 36 parking spaces of which 20 parking spaces are utilized. ~~Mr. Zelkha stated that the existing units are not occupied at this time and furthermore the Applicant has other apartments in the area that could provide housing to tenants.~~
16. The Board conducted a duly noticed visit to the Site with the Applicant on May 14, 2021.
17. At the June 2, 2021, hearing Senior Planner Maria Morelli confirmed discussions Jennifer Dopazo Gilbert, attorney for the Applicant, conducted with Jessica Malcolm, Manager of Planning and Programs at MassHousing; namely, that MassHousing does not require applicants to submit a new PEL application as a result of changes they make to a project after

Commented [JDG1]: Not relevant

a PEL is issued. As long as the Applicant submits a revised plan to the Board and not to MassHousing, the Project Eligibility application process does not start over. Should the Board issue a Comprehensive Permit, the project would be subject to the Subsidizing Agency's final approval, ~~and any impact such revisions would have on the economic feasibility of the project is the risk of the Applicant.~~

**Commented [JDG2]:** The risk is not on the Applicant if the case were appealed due to a condition imposed, so either reword this sentence or delete.

18. At the June 2, 2021, hearing Ms. Morelli provided a preliminary design analysis of the Original Project in which she scoped several significant deficiencies with the input of Town Departments that would need to be addressed in a substantial manner to improve vehicular and pedestrian safety, feasibility and adequacy of site operations, and environmental safety, including the narrow width and excessive slope of the existing driveway and the proposed build-out within both the Floodplain Overlay District and the MBTA's Zone of Influence on the Site near the Green Line D-Branch train tracks.
19. At the June 2, 2021, hearing the Board asked the Applicant to confirm the plan of record. ~~Attorney Ms.~~ Dopazo-Gilbert confirmed that the Applicant would be submitting plans revising a revised the Original Project to address major areas of concern and that peer reviews would be conducted on only the revised plans for the Original Project.
20. At the June 2, 2021, hearing Ms. Morelli on behalf of the Town requested that the Applicant submit an updated traffic impact study and a stormwater management plan and civil drawings consistent with the revised plans for the Original Project, to which the Applicant agreed to provide.
21. On June 15, 2021, the Applicant voluntarily submitted to the Town ~~as a revised plans which revisions included of the Original Project plans~~ to demolish the existing three-story building and to construct one building ranging from four- to eight-stories with 112 rental housing units, 39 parking spaces within the building, 100,340 square feet of floor area, and 25% affordable housing (the "Revised Original Project").
22. At the July 7, 2021, hearing the Applicant presented the plans for the Revised Original Project, and members of the public provided oral testimony on the revised plans.
23. At the August 25, 2021, hearing the Board issued a charge to the Applicant to address safe emergency access, feasible site circulation, and the overall siting of the building before the Board would begin addressing what it deemed to be the building's over-scaled massing; namely, to address the lack of usable open space on the Site, the concern about safe emergency access at the rear of the building, the steep slope and narrow width of the driveway, the feasibility of site operations (deliveries, short-term parking, trash pick-up), pedestrian circulation and pedestrian safety at the driveways, turning radius of emergency apparatus and other large vehicles, and an overlooked opportunity to relate the project to Olmsted Park at the rear of the Site. The Board authorized Maria Morelli, Senior Planner, Brookline Planning Department, to convene working group meetings with the Applicant and independent peer reviewers to address the Board's charge.

24. Ms. Morelli convened working group meetings on the following dates that were attended by the Board's independent architecture peer reviewer, Clifford Boehmer; at times Town Departments including Transportation, Engineering, Public Health, Fire, and Conservation; the Applicant's attorney, Jennifer Dopazo Gilbert; and the Applicant's project team: September 29, 2021, November 17, 2021, February 2, 2022, February 22, 2022, April 11, 2022, and June 2, 2022.

25. On June 30, 2022, the Applicant submitted revised plans listed in Item 26 under Procedural History (the "Project") that reduces the number of units to 100, reduces the floor area to 92,860 square feet, increases the number of parking spaces to 42, increases the number of long-term bicycle parking spaces to 116, eliminates build out in the MBTA's Zone of Influence by increasing the rear set back, reduces the height of the building so that is no longer meets the threshold of a high rise as defined by the State Building Code, decreases the slope of the driveway so that it complies with the Zoning By-Law, provides a double-lane circular driveway as a loading area on Site, increases the front-, side-, and rear-yard setbacks, and sets back the top floor to improve of the overall scale of the building, provides 2500 square feet of usable open space at the ground level, and provides a comprehensive sustainability narrative toward goals for achieving zero emissions.

26. The materials submitted by the Applicant in the Application and during the public hearing include:

**Comprehensive Permit Application:**

Comprehensive Permit Plans submitted to the Board for the July 6, 2022, hearing are as follows:

Link to Project Page: <https://www.brooklinema.gov/1722/217-Kent-St>

**Sheet Numbers and Titles**

**Existing Conditions Plan of Land Brookline Massachusetts, dated November 1, 2018, amended with additional topography April 4, 2022, signed and stamped by Jason A. Ellis, Professional Land Surveyor, Hancock Associates, Danvers, Mass.**

["Existing Conditions Plan"]

**Civil drawings dated April 18, 2022, and revised July 6, 2022, and signed and stamped by Anthony Donato, Professional Engineer, Hancock Associates, Boston, Mass.:**

- C-0 Cover Sheet
- C-1 Site Preparation and Erosion Control Plan
- C-2 Site Layout Plan
- C-3 Grading and Drainage Plan
- C-4 Average Grade Plan
- C-5 Utilities and Open Space Plan

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C-6 Details  
C-7 Details

["Site Plans" and "Civil Drawings"]

**Landscape plan dated April 18, 2022, and prepared by Verdant ~~Landscap~~Landscape Architecture, Brookline, Mass.:**

L1 Landscape Plan  
L2 Drop Off Court and Entry  
L3 Shared Amenity Space

["Landscape Plans"]

**Architectural Drawings and Plans dated April 21, 2022 and revised June 30, 2022, by Dennis Greenwood, Registered Architect, Sousa Design Architects, Brookline, Mass:**

Narrative  
Design Comparisons  
Site Plan  
Proposed Parking Level  
Proposed Garage Floor Level  
Proposed First Floor Level  
Proposed Second Floor Level  
Proposed Third Floor Level  
Proposed Fourth Floor Level  
Proposed Fifth Floor Level  
Proposed Roof Plan  
A-1 Site Sections  
Site Section Key (Fifth Floor)  
Exterior Rendering Street Views (three sheets)  
Exterior Rendering Axon (five sheet)  
Proposed East Elevation  
Proposed West Elevation  
Proposed North Elevation  
Proposed South Elevation

["Architectural Drawings and Plans"]

**Peer Review Response dated June 30, 2022, amended July 6, 2022 Sousa Design Architects, Brookline, Mass.**

["Response to Design Peer Review"]

**Sustainability Narrative dated June 30, 2022 Sousa Design Architects, Brookline, Mass.**

["Sustainability Narrative"]

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**Stormwater Management Report dated April 18, 2022, signed and stamped by Anthony Donato, Professional Engineer, Hancock Associates, Boston, Mass.**

["Stormwater Management Plan"]

**Geotechnical Data Summary Report dated October 7, 2021 and prepared by Lisa R. Casselli, Professional Engineer, Geotechnical Partnerships, Inc, Swampscott and Fitchburg, Mass.**

**FEMA Flood Map**

["Geotechnical Report"]

**Transportation Impact Assessment dated February 2021 and prepared by Vanesse and Associates, Inc.**

[Traffic Impact Study"]

**Maneuverability Studies prepared April 20, 2022 by Vanasse and Associates, Boston, Mass.:**

Vehicle Turning Movement and Emergency Access Entering/Exiting

["Maneuverability Analyses"]

**Trash Management Plan dated January 25, 2022**

["Trash and Recycling Plan"]

Preliminary Public Shade Tree Protection Plan dated DATE

["Shade Tree Protection Plan"]

27. The Applicant submitted a request for waivers from the local by-laws and regulations dated December 23, 2019, and amended June 27, 2022 ("Waivers").
28. After the duly noticed and advertised hearing was opened on April 28, 2021, the Board continued the hearing and/or deliberated on testimony on the following dates: June 2, 2021, July 7, 2021, August 25, 2021, September 29, 2021, October 27, 2021 (continued), December 1, 2021 (continued), January 12, 2022 (continued), February 23, 2022 (continued), March 28, 2022 (continued), April 28, 2022 (continued), May 19, 2022, July 6, 2022, and August 17, 2022. All continuances beyond 180 days were granted with the written permission of the Applicant.

29. 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 issuing its Decision.
30. 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 Revised Original Project ~~and the Project~~ on issues of height, yard setbacks, massing, scale, architectural style, development pattern and streetscape/public realm, usable open space, circulation, parking demand, feasibility of the parking plan, maneuverability of vehicles and emergency apparatus, accessible parking spaces, traffic and pedestrian safety, stopping sight distance and visibility of pedestrians at the driveway, intensity of use related to 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, stormwater management and impact on municipal systems, environmental, fire, and public health and safety, abutters' viewsheds, shadow impacts, energy efficiency and non-fossil-fuel systems, outreach to the community and matters of local concerns identified in the PEL under MassHousing Determination.
31. 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  
Jane R. Davis, P.E.  
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  
Greg Strangeways, AICP  
Walker Consultants  
Boston, Massachusetts

**Site and Building Design**

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

32. The Board deliberated on the Application at a public hearing held on August 17, 2022, and voted to grant a Comprehensive Permit subject to the conditions below.

33. On August 17, 2022~~4~~, the Board closed the public hearing.

#### 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 December 24, 2019, approximately 9.54% of the Town's total housing stock constituted SHI-eligible housing.
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. MassHousing determined that the Original Project was eligible under the New England Fund housing subsidy and at least 25% of the 90 units would be available to households earning at or below 80% Area Median Income ("AMI"), adjusted for household size, as published by the Department of Housing and Urban Development ("HUD").
4. 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 DHCD on November 9, 2016.
5. The Site is located at the edge of a M-1.0 Multifamily Zoning District that abuts the SC-Single-Family and Converted for Two-Family Zoning District to the north and the T-5 Two-Family District to the west.
6. The Site falls in the Transportation Parking Overlay District.
7. The Site is just outside the Lawrence Local Historic District.
8. The structure abutting the Site to the south is a four-story brick condominium.
9. The existing structure at the Site is three-story brick apartment building with 23 units and 36 surface parking spaces.
10. A strip of land that is part of the abutting parcel to the south separates the Site from the MBTA-owned land and Green Line D-Branch train tracks.
11. A portion of the Site falls in the MBTA's Zone of Influence. The Applicant has conducted meetings with the MBTA to ensure that the siting of the Project's building footprint falls



outside the MBTA's Zone of Influence and to discuss MBTA construction related requirements.

12. A portion of the Site falls in the Floodplain Overlay District as indicated on the Federal Emergency Management Administration (FEMA) Flood Map referenced in Item 26 under Procedural History and therefore is subject to the jurisdiction of the Brookline Conservation Commission for compliance with FEMA requirements, a process conducted after local permitting concludes.
13. The Site overlooks Olmsted Park, part of the Emerald Necklace string of parks in Boston designed by Frederick Law Olmsted. Because Olmsted Park is in the National Register of Historic Places and because the Project would receive State funding, pursuant to 950 CMR 71 the Applicant is required to submit a Project Notification Form to the Massachusetts Historical Commission for an assessment of any impacts of the construction on National Register and State Register assets, a process conducted after local permitting concludes.
14. Existing conditions at the Site consist of a combined stormwater and sewer system east of the Site, which does not meet the standards of the Town's Engineering Division and which the Project would remedy as stipulated in the Engineering Division's June 27, 2022, memorandum to the Board.
15. The grade of the Site declines from the front lot to the rear lot yard by approximately one story, which mitigates the full extent of the Project's height as viewed from Kent Street and enables access to a garage level below the Kent Street elevation.
16. Kent Street is the only street providing access to the Site.
17. The Longwood train stop on the MBTA Green Line D-Branch is 0.3 mile away.
18. Kent Street is a two-way street, providing a single lane in both directions, with no loading zones in the public way.
19. The Town's on-street and public parking policy for the areas within walking distance of the Site limits parking to a maximum of two hours and prohibits overnight parking unless the Town has issued a residential or guest overnight parking permit as part of its very limited overnight parking program.
20. On-street parking is prohibited on the majority of the northbound and southbound sides of Kent Street though it is not expressly prohibited adjacent to the Site and to the north and south of all entrance and egress locations at the Site.
21. The Board's independent traffic peer reviewer, Jane R. Davis, stated in her report dated September 22, 2021, that ~~one~~ on-street parking to the south of the Project's driveway in the right-side yard of the Site would adversely impact Stopping Sight Distance and that on-street parking immediately to the south of the side yard driveway should be eliminated.

**Commented [JDG3]:** This is a town wide policy not unique to this site.

22. The Transportation Board stipulated in its August 1, 2022, letter to the Board that the parking along the public way 20 feet west [to the right] of the garage driveway to 10 feet east [to the left] of the entrance curb cut for the U-Shape driveway be restricted as NO PARKING ANYTIME/TOW AWAY ZONE. The Board recommended the Applicant ~~shall~~ install the aforementioned signage and poles in the public way to the specifications and standards of the Public Works Departments with all costs thereunder borne by the Applicant.
23. The existing driveway at the Site has a slope of 14%, in excess of the 10% maximum allowed within the first 20 feet of the front lot line under Brookline Zoning By-Law Section 6.04. The slope of the driveway in the Project would be regraded to comply with Section 6.04, and it was recommended that all driveways in the Project would be heated to mitigate snow and ice conditions and to maintain the full width of the driveways for travel.
24. Existing conditions in the public way adjacent to the Site consists of three public shade trees which the Town Tree Warden stated in his DATE email that the Applicant's preliminary tree protection plan in relation to the proposed plans referenced in Item 26 under Procedural was feasible and acceptable.
25. Assessing parking demand at this location, the Board's independent parking peer reviewer, Arthur Stadig stated in his report dated September 22, 2021, and updated May 16, 2022, that he referenced Census Tract 4008 and the American Community Five-Year Survey (ACS) 2019 Table B25044 "Tenure by Vehicles Available" conducted by the U.S. Census for data on vehicle ownership. Census Tract 4008 is bounded by a portion of Kent Street behind the Site, and portions of Park Street, Beacon Street, Harvard Street, Brookline Avenue, Longwood Avenue, and Aspinwall Avenue.
26. Assessing the Project's total number of units and the unit mix, Mr. Stadig determined a parking demand ratio of 0.6 to 0.7 parking space per residential unit, or 60 to 70 spaces for the Project. The Project would provide 42 parking spaces, including two accessible parking spaces.
27. Mr. Stadig testified to the Board that the Urban Land Institute recommends 0.15 spaces per unit for visitor demand, consistent with Brookline Zoning By-Law requirement that 10% of total parking spaces in a Multifamily (M) Zoning District be reserved for visitors and tradespeople. In his opinion, 0.1 visitor parking space per dwelling unit is appropriate and would increase the parking demand to 70 to 80 for the Project. Fifteen of the Project's 42 parking spaces would be mechanized and therefore not available to visitors.
28. Ms. Davis recommended that the Applicant inform delivery truck drivers accessing the circular drive in the front yard to approach from the south rather than from the north to avoid making a left-hand turn into the southern entrance of drive.
29. Todd Cantor, Deputy Chief for Fire Prevention, Brookline Fire Department, stated in his May 16, 2022, letter to the Board about the Project that (a) the width of the garage driveway was acceptable for the staging of fire apparatus. (b) Emergency responders may not opt to drive apparatus to the rear of the building; therefore, the driveway and rear yard does not

need to be designed for this type of access. Instead, emergency responders would prefer to access the rear of the building through interior stairwells. (c) The tiered massing of the roof has been redesigned, which is an improvement. (d) The number of feet to at least two exterior doors is within the maximum distance required for a sprinkled building.

30. Deputy Cantor reviewed turning radii for emergency apparatus using the circular drive and garage driveway to determine that maneuvers would be feasible as long as only live parking were allowed, especially at the pinch points, on the circular driveway.
31. The Applicant agreed to provide the public improvements and mitigation for the Project as recommended by the Transportation Board in its August 1, 2022, letter to the Board including the installation of NO PARKING signs on Kent Street and accessible wheelchair ramps.
32. Dan O'Donnell, Professional Engineer, Brookline Public Works Department (DPW), stated in his June 2, 2022, memorandum to the Planning Department that the Applicant's April 18, 2022, the stormwater analysis indicates an overall reduction of stormwater flow from the site and as such the Project meets DPW's approval.
33. Mr. O'Donnell further states that the Town supports the Applicant's need to expand the Town stormwater system to provide for separation of the existing combined stormwater-sewer system east of the property. As currently shown, this expansion is allowed to be built on Kent Street and connect to the existing system on Kent Square. If the Director of Engineering and Transportation deems that a modification is required, an alternative expansion may be constructed in Kent Street to Francis Street.
34. The Project would provide approximately 2,500 square feet of usable open space outside the building footprint at the ground level in north yard of the Site available to all residents of the Project for recreation.
35. Independent design peer reviewer Clifford Boehmer, providing his initial findings on the Revised Original Project, testified at the August 25, 2021, hearing that "the scale of the structure is I think extreme" and it "virtually fills the site" and "there ~~isn't~~isn't enough space to really make it work for a building of this scale."
36. In response to the Board's direction based on expert testimony in regard to fire safety, site circulation and operations, building siting, scale, and open space amenities, the Applicant made the following improvements to the Project:
  - a. Increased front yard setback to improve scale
  - b. Provided a circular drive lane to accommodate deliveries, trash pick-up, passenger drop-off and pick-up, and moving trucks
  - c. Increased width of circular drive to accommodate live parking lane and passing lane
  - d. Decreased floor area by 9,166 square feet and reduced the number of units from 112 to 100 units to provide 2,500 square feet in an outdoor courtyard for recreation space and increase front and rear yard setbacks

- e. Separated pedestrian and bicycle rider access from vehicular garage access for safety and convenience
- f. Increased side yard setbacks to increase landscaping
- g. Improved massing of building that results in a 10-foot height reduction (no longer a high-rise)
- h. Relocated trash storage area to improve site circulation and efficient operations
- i. Reduced depth bays on façade to increase setback from Kent Street
- j. Decreased slope of garage driveway to improve safety and fire access
- k. Simplified the massing of tiered roof to improve fire safety access
- l. Stepped back the top floor to improve the scale
- m. Increased long-term bicycle parking spaces to 116
- n. Adjusted radii of curb cuts for improved maneuverability
- o. Designed all driveways to be heated to reduce ~~icing~~~~treacherous~~ conditions due to inclement weather.

37. The Applicant voluntarily submitted a sustainability ~~program narrative dated June 30, 2022~~ for the Project that includes the following ~~goals~~~~efforts to be made to try to achieve sustainable design measures criteria~~:

- a. No fossil fuels used for building heating and cooling
- b. Heating system will be high efficiency heat pumps (all electric)
- c. All hot water heaters to be electric
- d. All ranges to be induction or electric (no gas)
- e. All appliances to be energy star rated and toilets to be water sense certified
- f. Six out of 42 parking spaces to be installed with electrical vehicle chargers (per Zoning); all stacker parking spaces to have option for installation of electrical vehicle charging stations [*T-Board recommends meeting STM 2022-WA17*]
- g. All glazing to be Low E, double glazed high efficiency windows
- h. Exterior wall and roof assemblies to exceed Building and Stretch Energy Codes
- i. Photovoltaic panels installed at roof to reduce demand on electrical grid
- j. Light gray Thermoplastic Polyolefin (TPO) roofing to reduce heat island effect
- k. All common area lighting to feature timed occupancy sensors to reduce waste
- l. Retain a sustainability consultant to advise on practices used toward sustainable building certifications

38. Mr. Boehmer presented his final report on the Project at the July 6, 2022, hearing stating that extensive analysis tools were used to assess the siting of the Project, including a digital 3-D model, site sections, shadow studies, massing studies, grading plans, height calculations, landscaping plans, tree surveys, diagrams simulating both vehicular-turning maneuvers and site coordination of all operations, including pedestrian and bicycle rider travel, required to support the Project's program. He concluded that the massing was radically improved and the

design is more coherent. He further advised the Applicant in preparation of construction drawings for a building permit to:

- a. Simplify the number of building material types and tone down the colors proposed;
- b. Hire an acoustical consultant to ensure quality of life for units closes to the train tracks;
- c. Prioritize the construction management planning at the onset, especially in regard to the MBTA's Fall Zone that would impact the placement of a crane on the Site.

39. At the August 17, 2022, hearing, the Board granted all waivers requested from Zoning and Town By-Laws to the limits and scope indicated in Exhibit 3.

40. 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.

41. 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.

**Commented [JDG4]:** There was no discussion on the economics of each condition so not sure how this can be a finding, nor do I think it is necessary.

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

43. The Board acknowledges concerns raised by abutters and other interested parties concerning the size and density of the project and its lack of open space and parking as well as those who spoke in support of the Project.

44. 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 100 units of rental housing and 412 parking spaces and 2,500 square foot common area courtyard for outdoor recreation on the Site as shown on the Civil and Landscape Drawings, Stormwater Management Plan, Architectural Drawings and Plans, Trash and Recycling Plan, as shown under Item 26 under Procedural History, subject to all of the Conditions listed below.

## **CONDITIONS**

1. The Project shall include no more than 100 units of rental housing in one building and 41<sup>2</sup> parking spaces within six stories as configured on the Architectural Drawings and Plans shown in Item 26 under Procedural History.
2. The total maximum number of bedrooms shall be 132 as follows:

Unit Type	Total Number of Units	Total Number of Bedrooms
Studio	43	43
One Bedroom	36	36
Two Bedroom	10	20
Three Bedroom	11	33

3. With respect to the Applicant’s Request for Waivers from local by-laws and regulations dated June 27, 2022, the Board approves those Waivers in Exhibit 3 to the scope and limits specified by the Board as indicated in Exhibit 3. The Project must comply with by-laws and regulations not waived.

~~4. Prior to the issuance of a Building Permit, the Applicant shall provide evidence of any easements executed allowing the Applicant to install and maintain landscaping in the strip of land to the rear of the Site belonging to the abutting parcel (“Access Easement Area”).~~

**Commented [JDG5]:** This was to be provided prior to the reduction in the footprint of the building and the change in shape as recommended by Cliff and the addition of 2500 sf of open space on the project site. It is no longer required. There will be no landscaping other than on the Applicant’s site.

Housing

~~5.4.~~ As a condition of any approval hereunder, at least 25% of the units shall remain affordable in perpetuity and shall be for eligible households whose annual income may not exceed 80% 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 SHI. *[NOTE: This is a minimum requirement on all Comprehensive Permit projects and will ensure that, in the case of a rental housing project, all units will remain on the SHI.]*

~~6.5.~~ Twenty-five percent of the units in the Project shall in perpetuity be Affordable Units.

~~7.6.~~ During the affordability period required by the Subsidizing Agency, the Project shall be monitored by the Subsidizing Agency or its successors. For the period commencing at the expiration of the affordability restrictions imposed by the Subsidizing Agency, the Applicant shall retain the Town or a consultant approved by the Town as the Monitoring Agent for the Project. Any costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.

~~8.7.~~ A second Regulatory Agreement and a Monitoring Services Agreement (the terms to be included are provided in Exhibit 2) shall be prepared prior to the expiration of the initial Regulatory Agreement between the Applicant and the Subsidizing Agency, approved by Town Counsel, executed and recorded 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 agreements shall be consistent with the terms of this Decision and with the customary terms of the Town's Regulatory Agreements.

~~9.8.~~ For the period in which the Project is being monitored by the Subsidizing Agency, upon the Town's request, the Applicant/Owner shall share all monitoring reports with the Director of Planning and Community Development including annual rent increases and information verifying income eligibility for affordable units.

~~10.9.~~ ~~Lease and occupancy agreements shall be for terms of not less than six months with the exception of extensions. 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 for affordable units and must be approved by the town for any market rate units.~~

**Commented [JDG6]:** There is no jurisdiction under 40B for the town to be involved in lease agreements. I believe this was struck from other more recent decisions. At a minimum it should only apply to the affordable units and should have an exception for sub-leasing.

~~11.~~ ~~Local Preference: The Applicant shall work with the Assistant Director for Community Planning to request that no more 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.~~

**Commented [JDG7]:** Applicant does not want to be bound by the town's local preference and would like to rent to qualified applicants regardless of where they live.

~~12.10.~~ The Director of Planning and Community Development will work with the Applicant to market the Affordable Units, specifically identifying appropriate local outreach venues.

~~13.11.~~ The Town will not issue a Building Permit for the Project without approval from the Subsidizing Agency.

~~14.12.~~ 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 Units. ~~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.~~

**Commented [JDG8]:** Not understanding what this means exactly. Do you mean "No more than one....."

#### Fire Safety

~~15.13.~~ Prior to the issuance of 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:

- a. measures to decrease and/or eliminate fire safety hazards during demolition of the existing building on the Site and during all phases of the Project.

- b. direction to the builder that the stair risers be available before each floor becomes walkable and that they shall be constructed in manner that allows for easy access up and down the stairs.
- c. A standpipe riser installed to the satisfaction of the Fire Department shall be made available once the Project building reaches 30 feet tall 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.

The Fire Chief or their designee may review onsite operations during construction.

~~16.14.~~ 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 systems, and
- b. the Project's building has direct alarm notification to the Fire Department and is designed in accordance with the latest version of Building and Fire Codes.

~~17.15.~~ Prior to the issuance of a Building Permit, the Applicant shall submit a final site plan for the review and approval of the Fire Chief.

~~18.16.~~ 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.

~~19.17.~~ Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit a fire safety and emergency procedures plan for the review and approval of the Fire Chief.

~~20.18.~~ All connections for sprinklers and standpipes shall be coordinated with the approval of the Fire Chief.

~~21.19.~~ Landscaping and other installations shall not create obstacles to emergency responders.

~~22.20.~~ The Fire Department encourages the installation of a fire-alarm initiating device that activates lights on the roof of the Project's building during an emergency.

~~23.21.~~ The parking garage shall comply with NFPA 13 (2019) Section 4.3.6 as an Extra Hazard (Group 2).

~~24.22.~~ So long as there is no negative impact to any public shade tree or stormwater infiltration system as determined by the Town Engineer or his designee, the entire length of the driveway and the circular driveway shall be heated to avoid hazardous ice and snow conditions.



~~25.23.~~ The garage driveway in the right side-yard shall be designated a Fire Lane to allow Police the authorization to tow obstructing vehicles parked there.

~~26.24.~~ The segments of the circular drive from the front line to the point where the drive bends shall be designated Live Parking.

Pre-Construction / Stormwater Management / Infrastructure

~~27.25.~~ Prior to the Commencement of Construction, the Applicant shall provide to the Director of Engineering and Transportation 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.

~~28.26.~~ 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.

~~29.27.~~ The Applicant shall include the Final Construction Management Plan (“CMP”) in the contract with the Project’s general contractor and shall specify in the aforementioned contract that the Final CMP is binding on all subcontractors for the duration of construction.

~~30.28.~~ Prior to Commencement of Construction, the Applicant shall submit a plan to be included in the Final CMP 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.

~~31.29.~~ Prior to any crane equipment being located or operated on the Site, the Applicant shall submit a plan to be included in the Final CMP for the review and approval of the Building

Commissioner for the usage of crane equipment in overhead movements, including but not limited to:

- a. How the crane will be maintained on the Site during usage;
- b. The radius of the crane's overhead movements;
- c. Protection of the roofs of structures and the parking areas of abutting parcels; and
- d. Protection of public infrastructure, utilities, and public shade trees.
- e. Correspondence with the MBTA in regard to the agency's Fall Zone and locations on the Site in which a crane would be prohibited by the MBTA.

~~32-30.~~ Any damage to structures and parking areas, including but not limited to, infrastructure owned by the Commonwealth of Massachusetts, the National Park Service, the MBTA, 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.

~~33-31.~~ 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.

~~34-32.~~ 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 during the construction of the Project with all costs paid by the Applicant.

~~35-33.~~ Construction vehicles shall load and unload within the Limit of Work area designated in the Final CMP 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 Kent Street.

~~36-34.~~ 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 CMP 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.

~~37-35.~~ 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 causally connected to construction of the Project. These report/s shall be provided to any direct abutter upon request.

~~38.36.~~ There shall be no blasting during the construction of the Project without the prior approval of the Fire Department and Building Department.

**Commented [JDG9]:** Blasting is not prohibited for 40A projects. While we don't anticipate blasting we do not want a blanket prohibition.

~~39.37.~~ Prior to Commencement of Construction, the Applicant shall meet with the Town Arborist to review the health of any public shade trees and shall submit a plan for protecting the roots, limbs, and canopies of any public shade trees adjacent to the Site on Kent 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 public shade trees shall be subject to M.G.L. c.87, the "Shade Tree Act."

~~40.38.~~ Upon request by the Town, the Applicant shall ~~Contemporaneously with sending or within ten days of receiving any and all~~ provide copies of correspondence to and/or from the Brookline Conservation Commission, the MBTA, the Massachusetts Historical Commission and/or the Massachusetts Secretary of Energy and Environmental Affairs concerning the Project, ~~to the Applicant shall provide the~~ Planning Department ~~with copies.~~

~~41.39.~~ 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 26 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.

~~42.40.~~ Prior to the issuance of a Building Permit, the Applicant shall submit for the review and approval of the Assistant Director for Regulatory Planning a final site plan and final landscaping plans indicating:

- a. plant and tree types and sizes at planting and location of plants and trees;
- b. tree protection plan for existing trees on the Site and in Access Easement Area designated to be conserved;
- c. location of and materials for fences, walls, walkways, and driveway;
- d. height of fences and elevation at top of walls in relation to grade;
- e. location of utilities, mechanicals, generator, and Short-Term Bicycle Parking Spaces;
- f. location for trash pick-up area;

~~43.41.~~ Prior to the issuance of a Building Permit, the Applicant shall submit plans for review and approval of the Building Commissioner and Commissioner for Public Works or their designees indicating:

- a. compliance with Section 6.04.4.f.1 of the Zoning By-Law;
- b. tree protection plan for any public shade trees abutting the Site;

- c. evidence that accessible parking spaces and walkways for use of the residents of the Project and the Project's driveway comply with the Massachusetts Architectural Access Board design guidelines;
- d. the driveway entrance and exit shall not be depressed, but shall be constructed at the elevation of the sidewalk and with the same materials as the sidewalk to minimize impacts to pedestrians;
- e. curb cut at the Site driveway designed to accommodate the turning radius of American Emergency Vehicle Type 1 ambulances; and
- f. a "STOP" sign and stop line at the Site driveways in compliance with the Manual of Uniform Traffic Control Devices (MUTCD).

~~44.42.~~ Mechanical systems shall comply with the Town's Noise By-Law.

~~45.43.~~ Prior to the issuance of Building Permit, the Applicant shall submit an exterior 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.

~~46. The installation and/or continuation of fossil fuel infrastructure is prohibited on the Site with the following exceptions:~~ The Applicant shall make best efforts to install photovoltaic (solar) panels on the roof of the Project to generate renewable energy. ~~Prior to the issuance of a Building Permit, the Applicant shall submit plans stamped by a registered architect and/or registered engineer for the review and approval of the Building Commissioner indicating that:~~

~~a. the Project has been designed to exceed Stretch Code Standard as set forth at the date this Decision is filed;~~

~~b. the Project's cooking appliances and heating and cooling systems will not rely on fossil fuel infrastructure; and~~

~~c. The Project's domestic hot water system and back up generator are exempt from the fossil fuel infrastructure prohibition set forth in this Condition.~~

~~47.44.~~ Prior to the issuance of Demolition/Building Permit, the Applicant shall provide to the Building Commissioner evidence of an Order of Conditions issued by the Brookline Conservation Commission, if applicable.

~~48.45.~~ Prior to the issuance of a Building Permit, the Applicant shall submit a stormwater management and drainage plan for the review and approval of the Director of Engineering and Transportation.

~~49.46.~~ Prior to the issuance of a Building Permit, the applicant shall submit a plan for the proposed stormwater system in Kent Street and Kent Square or approved alternative route ("Kent Street Stormwater Expansion") designed according to Town standards as determined

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Commented [JDG10]: The FFF pilot does not apply to this application which was filed in December 2019

by the Director of Engineering and Transportation and stamped and signed by a licensed and qualified civil engineer for the review and approval by the Director of Engineering and Transportation. The Applicant shall demonstrate the Kent Street Stormwater Expansion reduces the rate and the volume of stormwater runoff to the satisfaction of the Director of Engineering and Transportation. All costs for the Kent Street Stormwater Expansion shall be borne by the Applicant.

~~50.47.~~ 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.

~~51.48.~~ Prior to the issuance of a Building Permit, all water, stormwater, and sewage facility designs shall be subject to the review and approval of the Director of Engineering and Transportation and the Director of Water and Sewer.

~~52.49.~~ 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. Indicate on the site plan the dedicated fire service line for the Project's fire protection;
- b. Provide calculations for fire and for domestic water service so that adequate sizing of these lines can be determined; and
- c. Provide sewer profile with depths and crossings with other utilities.

~~53.50.~~ 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. The Applicant shall operate and maintain all of the following specified in (a), (b), and (c) in good, safe, and working condition and repair at all times and its sole cost:

- a. The onsite stormwater management system;
- b. All sewer, stormwater, and water connections, lines and equipment required, 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.

~~54.51.~~ All utilities shall be underground.

#### Construction

~~55.52.~~ 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.

~~56.~~53. 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 (20 sf), with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.

~~57.~~54. The Applicant shall 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 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). The Applicant shall work with the Town to coordinate construction activity with improvements the Town schedules to the public way.

~~58.~~55. The Applicant shall keep in optimum working order any and all construction equipment that makes sounds.

~~59.~~56. Upon the 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

~~60.~~57. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit as-built floor plans certified by a registered architect to the Building Commissioner for his 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 Department's Certificate of Occupancy Process as verified by the review and approval of the Building Commissioner.

~~61.~~ Prior to the issuance of a Certificate of Occupancy, the stormwater system, including the Kent Street Stormwater Extension, shall be built according to the plan approved by the Director of Engineering and Transportation and constructed to the satisfaction of the Director of Engineering and Transportation.

~~58.~~  
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~~62.~~ Prior to the issuance of Certification of Occupancy, the Applicant shall plant at least one new public shade tree subject to the approval of Town Tree Warden, including species, diameter at breast-height, and planting schedule. The Applicant shall plant the

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new tree with the on-site supervision of and to standards of the Town Tree Warden. All costs thereunder shall be borne by the Applicant.

~~63-59.~~ Prior to the issuance of the Certificate of Occupancy, the applicant shall reconstruct the entirety of the sidewalk on Kent Street from the southern property line to northern property line to assure compliance with current ADA, MAAB and PROWAG standards.\* The Applicant shall mill and overlay the road (property line to property line and curb to curb) due to the required excavations necessary to support the Project. Such improvements shall be completed to the satisfaction of the Director of Engineering and Transportation. All costs thereunder shall be borne by the Applicant. *\*These terms are defined respectively as American Disabilities Act, Massachusetts Architectural Access Board, Public Right-of-Way Accessibility Guidelines.*

~~64-60.~~ 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 Project complies with the Site Plans, the Architectural Plans, and Landscape Plans, including the modifications required by this Decision.

~~65-61.~~ When fifty (50) percent of the units are legally occupied, the Applicant shall demonstrate to the Building Commissioner that the Project complies with 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.

~~66-62.~~ ~~Prior to~~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 unless the changes are deemed substantial by the Subsidizing Agency and/or the ZBA pursuant to 760 CMR 56.04(5).

~~67-63.~~ After the final Certificate of Occupancy is issued, no additional stormwater and/or wastewater load to the municipal system shall be allowed without the Director of Engineering and Transportation's approval.

#### Transportation Management

~~68.~~ All garaged parking spaces in the Project shall be EV Ready C as defined in Section 6.10 of the Zoning By Law Amendment (Warrant Article 17) passed by Spring Town Meeting 2022.

~~69-64.~~ A garage door shall be installed to limit noise and glare from garage lighting and parking activity.

~~70-65.~~ Parking spaces shall be unbundled from the leases for the residential units.

~~71-66.~~ Parking areas, driveways, and walkways shall comply with the Massachusetts Architectural Access Board accessibility guidelines as determined by the Building Commissioner.

Commented [JDG11]: This Bylaw does not apply to this project.

Commented [JDG12R11]: There will be 6 EV ready spaces per the plans.

~~72-67.~~ Lighting on the Site shall be installed to provide safe access to pedestrians and bicycle users.

~~73. The Applicant shall provide at least 1.1 Long Term Bicycle Parking spaces per Dwelling Unit as defined and specified in Section 6.05 of the Zoning By Law Amendment (Warrant Article 18) passed by Spring Town Meeting 2022.~~

Commented [JDG13]: Not applicable

~~74. At least five Short Term Bicycle Parking Spaces, as defined and specified under Section 6.05 of the Zoning By Law Amendment (Warrant Article 18) passed by Spring Town Meeting 2022 shall be installed outside the building footprint.~~

Commented [JDG14]: NA

~~75-68.~~ Prior to the issuance of a Building Permit, the Applicant shall submit a final Transportation Demand Management Plan ("TDMP") to be prepared in accordance with the Transportation Access Plan Guidelines of the Town, and subject to the review and approval of the Director of Engineering and Transportation. Mitigation in the TDMP shall include:

- a. designation of a transportation coordinator for the Project to coordinate the elements of the TDMP;
- b. installation of transit screens or similar technology such as information to a link or application ("App") to download in the onsite residential lobby displaying real time information on alternative modes of transportation;
- c. provision of a welcome packet to residents detailing available alternative transportation options; and
- d. provision of discounted public transit passes and bike-share memberships for employees of the Project;
- e. other measures as recommended or approved by the Director of Engineering and Transportation.

~~76-69.~~ Prior to the issuance of a Building Permit, the Applicant shall submit a final Transportation Access Plan Agreement including traffic monitoring to be prepared in accordance with the Transportation Access Plan Guidelines of the Town, and subject to the review and approval of the Director of Engineering and Transportation.

~~77-70.~~ Prior to the issuance of a Certificate of Occupancy-Building Permit, the Applicant shall provide \$95,000 to the Town for deposit into a segregated account to be used by the Town for the purchase and installation of Rectangular Rapid Flash Beacons and ADA compliant wheel chair ramps, signage and pavement markings meeting Town specifications, at the adjacent intersection of Kent Street at Francis Street. If the funds are not used within three years from the date of deposit for the aforementioned public improvements, the Town will return the funds to the Applicant.

Commented [JDG15]: Depositing \$95k at BP will create a hardship and the timing to coincide with CO meets the town's objective to have the \$ prior to occupancy.

~~78-71.~~ The Applicant shall construct and restore sidewalks on Kent Street adjacent to the Site according to Town of Brookline standards as determined by the Director of Engineering and Transportation with all costs thereunder borne by the Applicant.

~~79-72.~~ Vehicular and pedestrian safety measures shall all be as follows:



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- a. The Project site driveways shall be designed to accommodate the turning and maneuvering requirements of the largest anticipated responding emergency vehicle as defined by the Brookline Fire Department.
- b. Circulation within the pick-up/drop-off area of the Site's circular driveway shall be in a one-way counter-clockwise direction, consistent with the northbound traffic flow along Kent Street.
- c. The Applicant shall remove snow in the circular driveway/loading area, garage driveway, pedestrian pathways on the Site and remove snow on the public sidewalks adjacent to the Site. Snow shall not be stored in the public way or impede access and visibility at the Site's driveways Project's in accordance with Section 6.04.4f.1 of the Zoning By-Law.
- d. The Applicant shall use best practices to prevent vehicles entering the Site from queuing on Kent Street.
- e. The Applicant shall use best efforts to inform delivery drivers to approach the Site from the south to avoid making left hand turns into Site from the north and to prohibit entering the circular drive in a clock-wise direction;
- f. Parking along the Kent Street 20 feet west [to the right] of the garage driveway to 10 feet east [to the left] of the southern entrance curb cut for the U-Shape driveway be restricted as NO PARKING ANYTIME/TOW AWAY ZONE. Prior to the issuance of Certificate of Occupancy, the Applicant shall install the aforementioned signage and poles in the public way to the specifications and standards of the Public Works Departments with all costs thereunder borne by the Applicant.

80.73. Prior to the issuance of a Building Permit, the Applicant shall submit a final trash/recycling plan and schedule to the Assistant Director of Health and Human Services for review and a determination of compliance with Town regulations. Said plan shall include provisions guaranteeing that:

- a. Two compactors, one for trash and one for recycling;
- b. Four two-yard dumpsters;
- c. Sufficient space must be provided in the compactor room to accommodate storage of the four two-yard dumpsters (two active and two spares);
- d. a plan to repair/replace the compactor within a reasonable timeline if/when the compactor fails;
- e. Trash and recycling for the Project shall be picked-up twice per week on the same days;
- f. The Applicant shall contract a private waste management service and assume all costs thereunder;

- g. The Applicant shall not store trash and recycling containers in the public way on Kent Street at any time.
- h. Once trash and recycling for the Project is collected, the Applicant shall ensure that emptied trash and recycling receptacles are immediately returned to the trash storage rooms serving the Project.
- i. Pick-up frequency may increase if trash production is in excess of the current capacity only with the Brookline Department of Public Health's prior approval;
- j. The trash rooms, including the compactor room and trash rooms on the building floors, shall be constructed and equipped with a sound proofing material to prevent noise and must also contain an odor control element;
- k. The trash chutes shall be constructed and equipped with sound proofing material to prevent noise.
- l. The Applicant shall provide a cleaning schedule for maintaining trash rooms in sanitary condition;
- m. A licensed pest control contractor must be secured to provide routine pest control services;
- n. The noise generated by the trash compactors shall not exceed the thresholds indicated in the Town's Noise By-Law; and
- o. The Applicant shall inform the Public Health Department when the Project's residential units are at 90 percent occupancy 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.

**Commented [JDG16]:** We would like to exclude the sound proofing requirement from the trash room in the parking garage.

General

- 81.74. 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.
- 82.75. 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.
- 83.76. 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.
- 84.77. 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 by certified mail, return receipt requested.

~~85-78.~~ Any person aggrieved by this Decision may appeal pursuant to M.G.L. c.40B, Sec. 21.

~~86-79.~~ 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).

~~87-80.~~ 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).

~~88-81.~~ This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).

~~89-82.~~ Applicant shall pay for the Town's cost of police and fire details for the construction of the Project, in accordance with the Town's standard practices.

~~90-83.~~ All Conditions in this Decision are to be interpreted and enforced to the extent permitted by M.G.L. c.40B and the Regulations thereunder.

~~91-84.~~ Prior to thirty (30) days subsequent to the end of all applicable appeal periods, the Applicant shall record this Decision in the Norfolk County Register of Deeds and shall provide the Zoning Board of Appeals, the Director of Planning and Community Development, and the Building Commissioner with a copy of this Decision endorsed with the applicable recording information.

~~92-85.~~ There shall be no structures or buildings or paved surfaces or other improvements on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.

~~93-86.~~ As a courtesy to neighbors, the Applicant shall use best efforts to notify abutters with 100 feet of the Site's property lines of the Commencement of Construction and of the issuance of the Building Permit (the "Courtesy Notice"). Action of the Applicant pursuant to this Decision shall in no event be conditioned on such Courtesy Notice nor shall failure of receipt of any Courtesy Notice be a default of the Applicant under this Decision.

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

*This summary is provided for the benefit of convenience. In the event of any inconsistencies between the list below and the Conditions above, the Conditions above shall supersede.*

#### **Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:**

Conditions 15, 16, 27, 28, 30, 33, 36, 37, 39: The Applicant has met these requirements prior to Commencement of Construction and/or the issuance of a Demolition Permit as set forth in the Conditions.

Condition 4: The Applicant shall provide evidence of easements filed with the Registry of Deeds.

Condition 17: The Applicant shall submit a final site plan for the review and approval of the Fire Chief.

DRAFT v1

Condition 18: The Applicant shall submit plans for roof access for the review and approval of the Fire Chief.

Condition 41: The Applicant shall submit final floor plans and elevations for the review and approval of the Assistant Director for Regulatory Planning.

Condition 42: The Applicant shall submit a final site plan and landscaping plan for the review and approval of the Assistant Director for Regulatory Planning.

Condition 43: The Applicant shall submit plans for the review and approval the Building Commissioner and Commissioner of Public Works.

Condition 45: The Applicant shall submit an exterior lighting and photometric plan for the review and approval of the Building Commissioner and the Director of Engineering and Transportation.

Condition 46: The Applicant shall submit plans indicating compliance with the requirements of the Project's sustainability program for the review and approval of the Building Commissioner.

Conditions 47-48: The Applicant shall submit a stormwater management plan and drainage plan for the review and approval of the Director of Engineering and Transportation.

Condition 49: The Applicant shall submit plans indicating compliance with the Public Works Department Site Plan Review Checklist for the review and approval of the Building Commissioner and the Director of Engineering and Transportation.

Condition 50: The Applicant shall submit plans for the water, stormwater, and sewage facility designs for the review and approval of the Director of Engineering and Transportation and the Director of Water and Sewer.

Condition 51: The Applicant shall submit plans as specified under this Condition for the review and approval of the Director of Engineering and Transportation and the Director of Water and Sewer.

Condition 74: The Applicant shall submit a final Transportation Demand Management Plan for the review and approval of the Director of Engineering and Transportation.

Condition 75: The Applicant shall submit a final Transportation Access Plan Agreement for the review and approval of the Director of Engineering and Transportation.

Condition 76: The Applicant shall provide \$95,000 to the Town for deposit in a segregated account for the Town to make public improvement as specified under this Condition.

Condition 79: The Applicant shall submit a final trash and recycling plan for the review and approval of the Assistant Director of Health and Human Services.

ATTACHED:

Exhibit 1 Notice of Hearing

Exhibit 2 Terms to be included in Second Regulatory Agreement

Exhibit 3 List of Waivers from Town and Zoning By-Laws and Regulations with Zoning Plan

DRAFT v1

RECORD OF VOTE

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

\_\_\_\_\_ (signed) \_\_\_\_\_ (dated)  
Johanna Schneider, Chairperson

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

Filed with the Town Clerk on \_\_\_\_\_ (date)

ATTEST:

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Benjamin Kaufman, Town Clerk

Twenty-Day Appeal Period Ended (Town Clerk stamp)