# 265 Russett Road Chestnut Hill MA 02467

Mr. Jesse Geller, Chairman
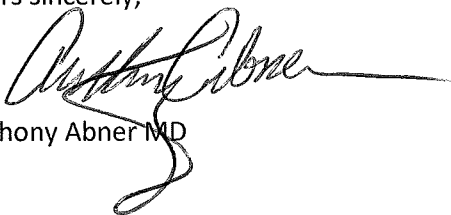
Brookline Zoning Board of Appeals

6/13/2014

Dear Mr. Geller,


At last week's meeting concerning the Hancock Village expansion, the question was raised as to whether Chestnut Hill Realty was requesting a waiver for the height of the apartment complex. I have enclosed page 122 from their original submission entitled "Project Eligibility Letter" which specifically states that they are not requesting a waiver since, according to their interpretation, the height is less than 35 feet "Per interpretation of Zoning Bylaws Section 5.01, Table of Dimensional Requirements."

Enclosed please find a detailed description of why the proposed plan is in violation of Brookline Zoning Bylaws. As there has been (to my knowledge) no revised application or request for waiver, I believe that the 82 foot tower that Chestnut Hill Realty wants to build grossly exceeds the 35 foot height restriction for M0.5 zoning and should be denied.



Yours sincerely,

Anthony Abner MD

## ZONING EAST (Parcels 2 and 3)

| DISTRICT: M-0.5 | | | |
|---|---|---|---|
| | REQUIRED | PROPOSED | WAIVER |
| Lot Size | 5,000 SF | 119,187 SF | N |
| Lot Width | NA | N/A | |
| Frontage | 20' | N/A | Y |
| Minimum Yard Setbacks | | | |
| Front | 15' | 187'-11' | N |
| Side | 10+L/10 | 14'-6"*** | Y |
| Rear | 30' | 4'-7"**** | Y |
| Height | 35' | less than 35'* | N |
| Allowed Units | 52 | 116 | Y |
| FAR | 0.50 | 1.10 | Y |
| Use | Multi-family | Multi-family | N |
| Open Space | | | |
| Landscaped | 10% of GFA | 19% | N |
| Useable | 30% of GFA | 2% | Y |

| DISTRICT: S-7 | | | |
|---|---|---|---|
| | REQUIRED | PROPOSED | WAIVER |
| Lot Size | 7,000 SF | 165,970SF | N |
| Lot Width | 65' | 11.5' | Y |
| Frontage | 25' | 105.5' INDEP. DRIVE | N |
| Minimum Yard Setbacks | | | |
| Front | 30' | 22'-8" ** | Y |
| Side | 20' | 20' ***** | Y |
| Rear | 40' | 40' ***** | Y |
| Height | 35' | less than 35'* | N |
| Allowed Units | 31 | 40 | Y |
| FAR | 0.35 | 0.36 | Y |
| Use | Single Family | Multi-family | Y |
| Open Space | | | |
| Landscaped | 30% of GFA | 35% | N |
| Useable | None | N/A | N |

* Per interpretation of Zoning Bylaws Section 5.01, Table of Dimensional Requirements
** Aligns with Abutting Buildings
*** waiver required 4'-6" to proposed Hancock Village lease line.  No waiver required for 10+L/10 side setback to Russett Road Abutting Building Line.
**** waiver required 4'-7" to proposed Hancock Village lease line.  No waiver required for 40' rear setback to VFW Parkway Abutting Building Line.
***** waiver required 2'-2" to proposed Hancock Village lease line.  No waiver required for 20' side setback to Russett Road Abutting Building Line.
****** waiver required 4'-9" to proposed Hancock Village lease line.  No waiver required for 40' rear setback to VFW Parkway Abutting Building Line.

Zoning Board of Appeals
Town Of Brookline

6/13/2014

Dear Sirs:

I would like in this letter to review the proposal by Chestnut Hill Realty (CHR) regarding the apartment tower, and explain why this violates the spirit and the letter of Brookline zoning.

The following nomenclature refers to the original plan submitted by CHR since, as of today's date, revised plans are not available for review. I understand from the oral presentation on 6/5/2014 that CHR now wants to build a 7 story tower which I assume will be 11 feet taller than the diagrams we now have.

As I have previously noted in my oral presentation, the building labeled "Apartment 13" is described as a four story building. However, as is explicitly shown in their architectural diagrams ( Attachment 1), this is a misnomer. The building is actually 72 feet above street level of Asheville Road. This is in an M0.5 area that is approved for buildings 35 feet in height. Since they now intend to have an extra level, this will be a minimum of 83 feet above street level and may be taller with the decorative attics.

How do they justify this gross deviation from the zoning standards of Brookline? This arises from their interpretation of the zoning standards listed in 5.01, Paragraph c. They have attempted to put this in a mathematical formula stating the following (Attachment 2):

## HEIGHT CALCULATION METHOD C
WHERE MEAN GRADE IS HIGHER THAN BOTH THE RECORD GRADE AT THE STREET AND THE MEAN NATURAL GRADE OF THE LOWEST ABUTTING LOT AT THE LOT LINE:

MAX. BUILDING HEIGHT ALLOWANCE = MEAN NATURAL GRADE OF LOWEST ABUTTING LOT + 1/4 OF THE CLOSEST DISTANCE FROM PROPOSED BUILDING TO LOWEST ABUTTING LOT + 35'

In their calculations, they use the absolute height above sea level from their survey as follows (Stantec L104):

BUILDING HEIGHT CHART SOUTHEAST

| BUILDING # | MEAN NATURAL GRADE AT BUILDING | RECORD GRADE AT STREET FRONTAGE | MEAN NATURAL GRADE OF LOWEST ABUTTING LOT | DISTANCE TO LOWEST ABUTTING LOT | HEIGHT CALCULATION METHOD | CALCULATION | PROPOSED FINISH FLOOR ELEVATION | PROPOSED BUILDING HEIGHT | MAX BUILDING HEIGHT ALLOWANCE |
|---|---|---|---|---|---|---|---|---|---|
| 9 | 180.73' | 156.4' | 158.91' | 462.09' | C | 158.91+(462.09*0.25)+35=309.43' | 182.50' | 215.16' | 309.43' |
| 10 | 177.39' | 156.4' | 158.91' | 353.52' | C | 158.91+(353.52*0.25)+35=282.29' | 180.00' | 212.66' | 282.29' |
| 11 | 171.73' | 156.4' | 158.91' | 197.67' | C | 158.91+(197.67*0.25)+35=243.33' | 172.00' | 204.66' | 243.33' |
| 12 | 159.09' | 156.4' | 158.91' | 59.36' | C | 158.91+(59.36*0.25)+35=208.75' | 160.50' | 193.16' | 208.75' |
| 13 | 189.75' | 156.4' | 158.91' | 420.72' | C | 158.91+(420.72*0.25)+35=299.09' | 195.00' | 237.00' | 299.09' |

Thus, they state that they can build a 143 foot tower (299 ft-156 ft) in an area zoned for a 35 foot maximum. They have not requested a waiver for this.

I believe that this calculation is seriously in error. Please note that the formula that they are using does not appear in any way in the Brookline Zoning handbook. The exact wording of the paragraph in question is as follows:

"Where the mean grade of the natural ground contiguous to the building is higher than both the record grade of the street and the mean natural grade of any abutting lot at the lot line, height shall be measured from a level not exceeding the mean grade of the lowest of any lot by more than one-fourth of the distance between the building and said abutting lot line."

There is an accompanying diagram which I have shown below:
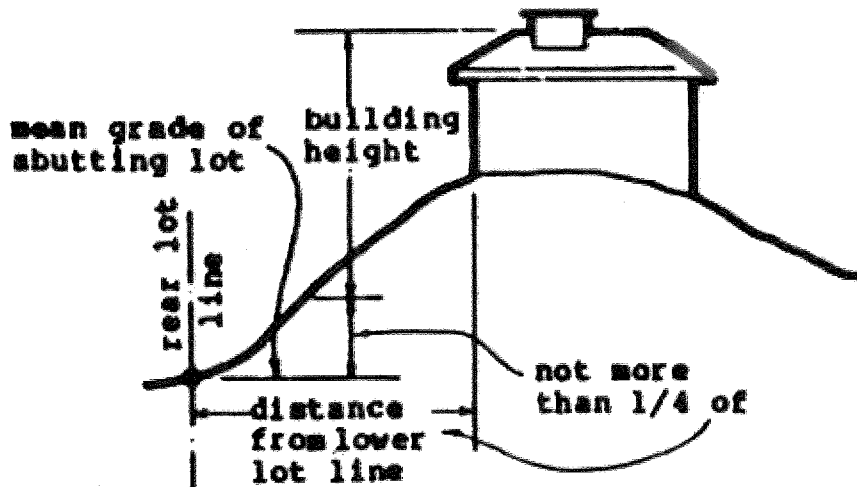


I believe that CHR is deliberately misinterpreting the use of the word "level" in their calculation of the height. As shown in the diagram, this word does not mean that they are allowed to add the distance; it means that the height is to be taken *at this point*. Thus, they have misconstrued a standard that is intended to protect the surrounding properties in such a way as to allow them virtually unlimited height in their construction.

To recognize how absurd this situation is, considering the following situation as shown in Attachment 3. This shows a property that is surrounded on three sides by lots at the same level. However, one half of a mile away, there is a lot that is one foot lower in mean elevation. By the CHR formula, this would mean that they would be allowed to build a structure of 694 feet high (2640 x 0.25 +35 – 1)—close to the height of the Hancock Tower.

A similar calculation would show that, for a lot one quarter mile long, a 1 foot difference in elevation would give them the right to build a 36 story building.

This is clearly not what the zoning manual allows. It is obvious from other sections of the manual, for example the diagram given in Section 4, that the 35 foot standard is intended to be used with minor variations allowed in cases of sloping ground or irregular heights. The goal is to protect the abutters by restricting the height of a building on a hill.

I am not aware of any other situation in Brookline where this abrogation of the zoning standard has been allowed.
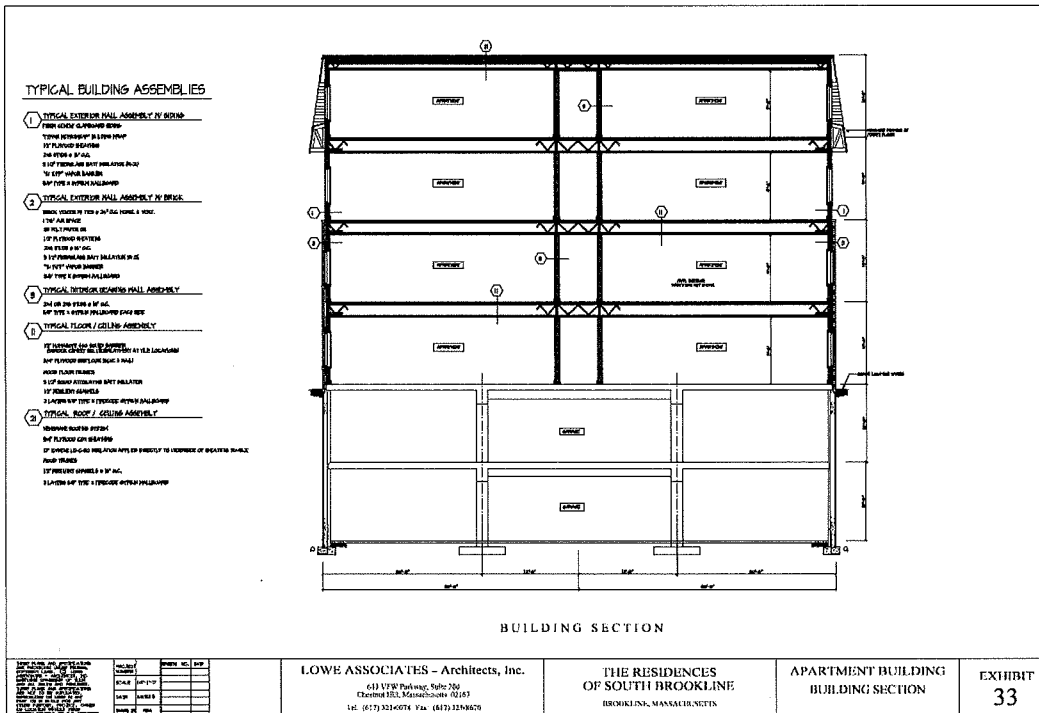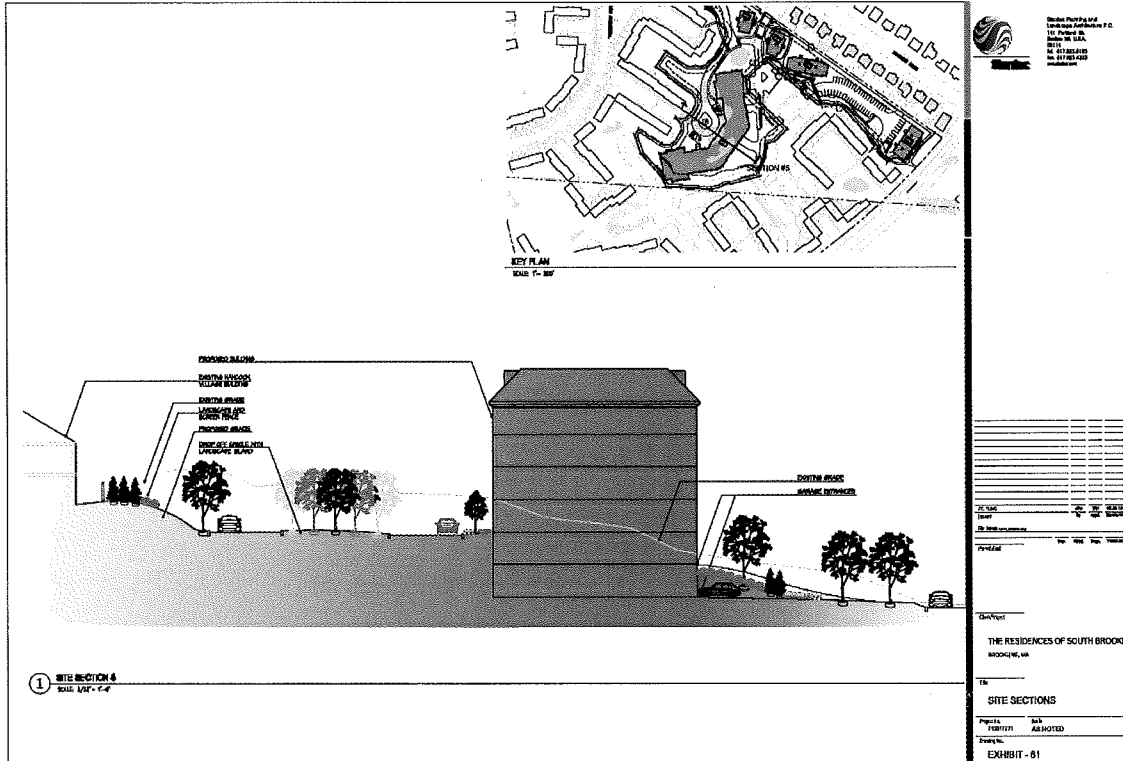
I therefore request that you find this calculation to be in error. Using the plot diagram that they have given, the building cannot be more than 30 feet above the level of Asheville Road.
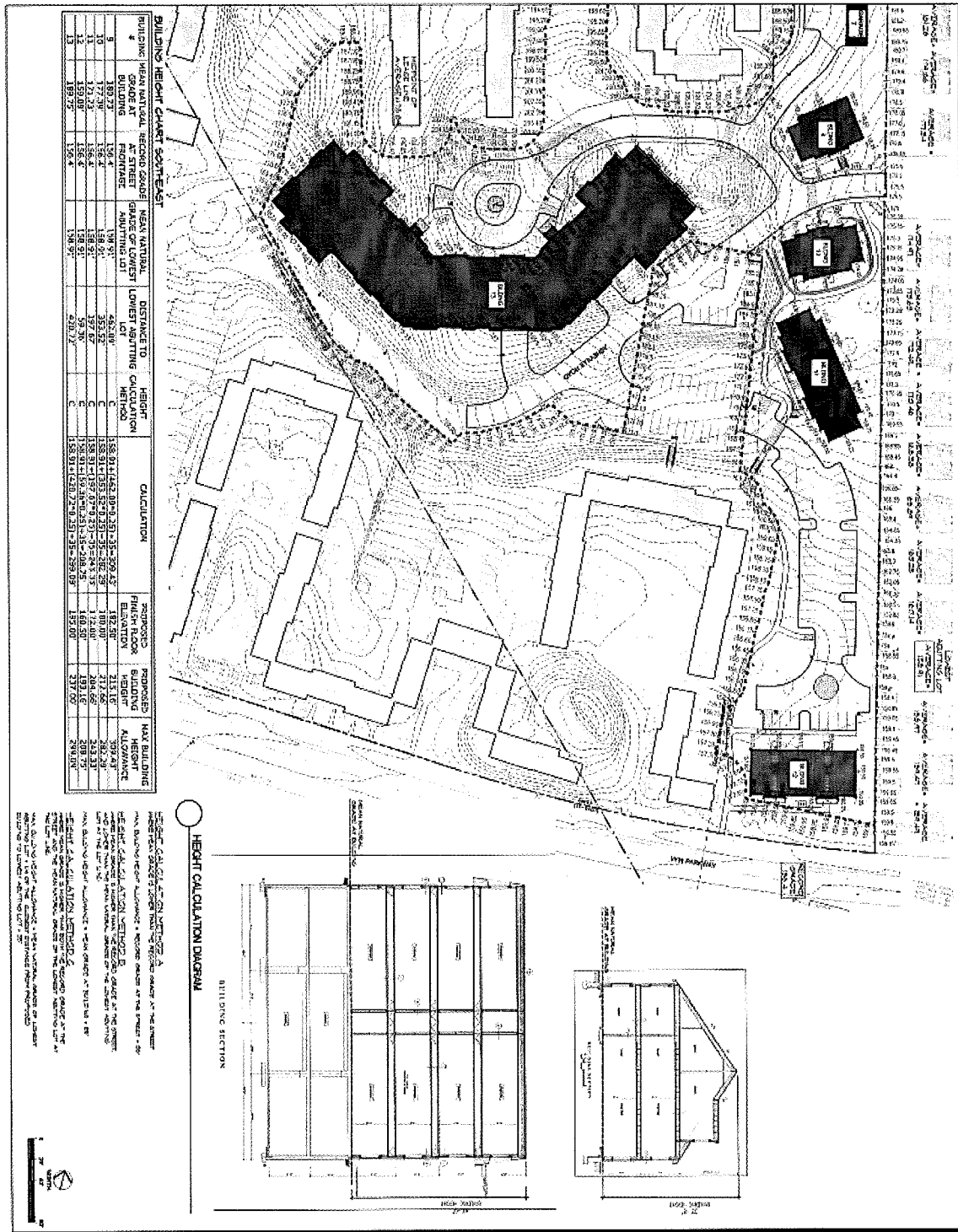
If this is allowed in Hancock Village, a precedent will be established for future developers: Find the correct piece of land and you can build to whatever height you want. For the protection of both the abutters, and for the future of zoning in Brookline. I request that you find this misinterpretation of Brookline zoning standards to be in error.

Yours sincerely,

Anthony Abner

Attachment 1.   CHR site section for Building 13 showing 72 foot elevation above Asheville Rd

# CHR Interpretation:
# 2640/4 + 35-1