

# **JFK CROSSING**

**BROOKLINE, MA**

Comprehensive Permit Application  
Under M.G.L. Chapter 40B, Sections 20-23

*Submitted by:*  
420 Harvard Associates, LLC  
May, 2016

# JFK CROSSING

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**SECTION 1**

**REQUEST FOR FINDINGS OF FACT**

Town of Brookline, Massachusetts  
**ZONING BOARD OF APPEALS**

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Premises affected: An 10,851 square foot parcel of land, on 420 Harvard Street

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**APPLICATION FOR A COMPREHENSIVE PERMIT  
UNDER GENERAL LAW CHAPTER 40B, SECTIONS 20-23**

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420 Harvard Associates LLC, (hereinafter the "Applicant") hereby applies to the Board of Appeals of the Town of Brookline, Massachusetts, pursuant to General Laws, Chapter 40B, Section 20 through 23, as amended, for the issuance of a Comprehensive Permit authorizing the applicant to construct 36 rental units (27 market rate and 9 affordable units) and 2,650 square foot of commercial space on land located at 420 Harvard Street in Coolidge Corner. The applicant and the development are more particularly described in the exhibits hereto annexed and submitted simultaneously herewith, all of which are incorporated herein by reference and constitute the documents required to be submitted by Sections 30.00 and 31.00 of the Rules and Regulations of the Housing Appeals Committee of the Department of Communities and Development.

**REQUEST FOR FINDINGS OF FACT**

The applicant requests that the Board of Appeals make the following findings of fact in connection with the action of the Board on this application:

1. 420 Harvard Associates LLC, a limited dividend organization within the meaning of General Laws, Chapter 40B, is eligible to receive a subsidy under a state or federal affordable housing program after a Comprehensive Permit has been granted.
2. The applicant has shown evidence of its legal interest in the proposed site sufficient to qualify it as a recipient of a Comprehensive Permit for this site.

3. Massachusetts Housing Partnership (“MHP”), will be the subsidizing agency within the meaning of the procedural regulations of the Housing Appeals Committee (760 CMR:30.01(C)).
4. The number of low or moderate income housing units in the Town of Brookline constitutes less than ten percent (10%) as reported in the latest decennial census of the town and reported by the Department of Housing & Community Development as of December 5, 2014. 8.1% is the reported percentage.
5. The development as proposed in the application is consistent with local needs within the meaning of General Laws, Chapter 40B, Section 20.

The applicant respectfully requests the Board of Appeals after complying with the procedural requirements as provided by law, to issue to the applicant a Comprehensive Permit for the development.

420 Harvard Associates LLC

By:   
Victor Sheen, Manager

## **SECTION 2**

### **PROJECT DATA SUMMARY**

## PROJECT DATA SUMMARY

### 1. Applicant

420 Harvard Associates LLC (the "Applicant") has been organized under the General Laws of the State of Massachusetts and is qualified for the express purpose of undertaking the planning, development and operating of "JFK Crossing", a mixed-use apartment development in the Coolidge Corner neighborhood of Brookline. The Applicant will develop 36 rental units and 2,650sf. of commercial space on a limited dividend basis, as required under all laws and regulations of the Commonwealth of Massachusetts. Robert Engler of SEB, LLC, is the Applicant's 40B housing consultant with extensive experience numerous housing developments over the past 40 years. The Applicant respectfully requests that all notices from the Board in connection with this Application be sent to Robert Engler/SEB, LLC, 165 Chestnut Hill Avenue #2, Brighton, MA 02135.

### 2. Description of the Development

JFK Crossing will consist of 36 rental units on 5 floors above a ground floor commercial space and parking garage containing 29 parking spaces. The units will range in size from 520sf. Studios to 1365sf. 3-bedroom units; 8 of the 36 units will be available to households qualifying under DHCD and 40B guidelines as low or moderate income, in this case 80% of Area Median Income. These units will remain affordable in perpetuity.

The bedroom mix will be as follows:

2	Studios
20	1 BR
10	2 BR
4	3 BR

Preliminary architectural and engineering drawings are attached hereto under separate cover.

### 3. Local Need

According to figures compiled by the DHCD in December 2015, Brookline's subsidizing housing inventory represents 9.2% of its total housing stock, below the threshold requirements established in 1969 under Chapter 40B.

### 4. Exceptions and Approvals Required

The proposed site is located in a local business zone (L-1) which does allow for multifamily uses. A Comprehensive Permit will be requested as well as other exceptions to the underlying zoning in order to develop this project as proposed.

## CONCLUSION

For all of the foregoing reasons, and for the additional reasons the Applicant will present at the scheduled public hearing on this Application, the Applicant respectfully requests the Board, after complying with the procedural requirements as provided by law, to issue to the Applicant a Comprehensive Permit for the development.

**SECTION 3**

**APPLICANT STATUS**

## APPLICANT STATUS

420 Harvard Associates LLC agrees to conform to the limited dividend requirements of Chapter 40B which, in turn, require that the developer abide by whatever such requirements are imposed by the affordable housing program being proposed, in this case – Massachusetts Housing Partnership. Accordingly, the Applicant will be signing a Regulatory Agreement which will govern both the affordable housing requirements and the limited dividend restrictions over time. An annual report addressing these issues will be filed by the Applicant's CPA and provided to Massachusetts Housing Partnership with copies to the Town.

**SECTION 4**

**PROJECT ELIGIBILITY LETTER**



**Massachusetts  
Housing  
Partnership**

May 17, 2016

Mr. Victor Sheen  
Oakgrove Residential, Inc.  
420 Harvard Street  
Brookline, MA 02446

160 Federal Street  
Boston, Massachusetts 02110  
Tel: 617-330-9955  
Fax: 617-330-1919

Re: JFK Crossing, 420 Harvard Street, Brookline (the "Project") - Determination of Project Eligibility under MHP's Permanent Rental Financing Program - Fannie Mae MBS Affordable

Dear Mr. Sheen:

462 Main Street  
Amherst, Massachusetts 01002  
Tel: 413-253-7379  
Fax: 413-253-3002

This letter is in response to your request for a determination of Project Eligibility under the provisions of the Commonwealth of Massachusetts comprehensive permit process (M.G.L. Chapter 40B, 760 C.M.R. 56, and the Massachusetts Department of Housing and Community Development's Comprehensive Permit Guidelines) (collectively, the "Comprehensive Permit Rules") for the above-referenced Project. The Project, as proposed in your application dated February 23, 2016, as revised on April 11, 2016 and May 10, 2016 shall consist of thirty-six (36) rental housing units, consisting of two (2) studio units, twenty (20) one-bedroom units, ten (10) two-bedroom units and four (4) three-bedroom units located in one building at 420 Harvard Street, Brookline, Massachusetts on a 10,851 square foot parcel. A total of twenty-nine (29) parking spaces will be developed, twenty-three (23) spaces within the building utilizing a mechanical parking system along with six (6) surface parking spaces. The project will include 2,650 square feet of ground floor commercial space. The land is currently occupied by a mixed use structure with ground floor commercial space and three residential units above.

www.mhp.net

In connection with your request, and in accordance with the Comprehensive Permit Rules, MHP has performed an on-site inspection of the Project, and has reviewed initial pro forma and other pertinent information submitted by 420 Harvard Associates, LLC ("Applicant"), and has considered comments received from the Town of Brookline and Brookline residents.

Based upon our review, we find the following:

- (i) The Project, as proposed, appears generally eligible under the requirements of MHP's Permanent Rental Financing Program - Fannie Mae MBS Affordable (the "Program"), certain terms of which are set forth on Exhibit A, attached hereto, subject to final approval.
- (ii) The site of the proposed Project is generally appropriate for residential development with a current use of ground floor retail and multifamily rental units above. The location is in JFK Crossing, a mixed-use commercial/residential section of the relatively densely developed north Brookline area within eight blocks of Coolidge Corner, Brookline's largest commercial center.

The site is immediately accessible to an MBTA bus line (Route 66) running along Harvard Street and is within a half mile of two branches of the MBTA's Green Line; the "B" line along Commonwealth Avenue to the north and the "C" line along Beacon Street to the south. The Mass Pike (Interstate 90) is

approximately three quarters of a mile northeast of the site. The location has a very high "Walk Score" of 94 indicating that most retail and service needs can be accessed on foot.

The Town of Brookline's Subsidized Housing Inventory (SHI) is 9.22%. Approximately 40% of the Town's SHI units are reserved for elderly/disabled persons. The Town is working on, but does not have, a Housing Production Plan. The Town's Comprehensive Plan covered the period from 2005-2015. The Town has 19 zoning districts that permit multi-family housing; eight districts allow up to five units by right, a special permit is required at six or more units.

The Town has expended substantial municipal resources in support of affordable housing programs and initiatives including: financial support and assistance to developers of new affordable housing on private property as well as Town and other publicly-owned properties; funding for capital improvements at existing affordable housing developments; funding for the redevelopment of existing market rate housing into affordable housing; preservation of "expiring use" developments; and funding for affordable homeownership.

These municipal actions to meet housing needs are positive but, given the need for affordable housing, including as documented by the Metropolitan Area Planning Council (MAPC) (<http://www.housing.ma/brookline/report>), these actions do not warrant a conclusion that the site is not generally appropriate for residential development.

- (iii) The proposed conceptual Project design is generally appropriate for the site. Residential units and mixed use development are acceptable and compatible in an area of mixed used development and adjacent uses typical of a mixed use/residential district. The relationship between the building mass and adjacent lower-scale buildings has precedent elsewhere in Brookline. The proposed building form is designed to treat the bulk and form in ways to mitigate its dimensions. The articulation of the building, with façade treatments, balconies and variations of materials mitigates the bulk. The revised building design mitigates the impact of the Project on the adjacent residences. The step-backs on the northwestern side along Fuller Street and the building tower setback on the northeastern side towards Coolidge Street provide improved sky plane views to the adjacent residential properties. As a fully developed site, there are no sensitive environmental resources, wetland or floodplain issues to address. There are no grading issues associated with the site.

Further design details should address the following during the comprehensive permit process:

- The Applicant's landscape architect should provide details for preservation of the street trees and appropriate landscape treatments on the street level.
- As a mixed use building, attention should be made to aspects that encourage the success of the commercial space and street presence including signage; lighting and entrance treatment; and the relationship of the commercial space to the street and to the adjacent commercial properties.
- The shadow study submitted to the Town should differentiate the added shadow with a different color to help illustrate the change.

MHP expects that the Town of Brookline's concerns regarding parking (including relating to the mechanical parking element), traffic, and public safety will be addressed through the comprehensive permit process.

- (iv) Based upon comparable rentals and potential competition from other projects, the proposed Project appears financially feasible within the Brookline market.
- (v) The Project appears financially feasible on the basis of estimated development and operating costs set forth in the initial pro forma provided by the Applicant and a land value determination consistent with the Comprehensive Permit Rules. In addition, the Project budgets are consistent with the Comprehensive Permit Rules relative to cost examination and limitations on profit and distributions.
- (vi) The Project will be owned by the Applicant and will be subject to MHP's limited dividend requirements. The Applicant meets the general eligibility standards of the Program; and
- (vii) The Applicant controls the site through ownership.

This letter is intended to be a written preliminary determination of Project Eligibility under the Comprehensive Permit Rules, establishing fundability by a subsidizing agency under a low and moderate income housing subsidy program, which qualifies the Project for consideration for a Comprehensive Permit under M.G.L. Chapter 40B.

This preliminary determination of eligibility is subject to final review of eligibility and final approval by MHP, and is expressly limited to the specific Project proposed in the request for determination of Project Eligibility submitted to MHP and subject to the minimum affordability and additional requirements set forth in Exhibit A hereto. The requirements of the Comprehensive Permit must not result in a loan to value ratio exceeding MHP requirements. Changes to the proposed Project, including without limitation, alterations in unit mix, proposed rents, development team, unit design, development costs and/or income restrictions may affect eligibility and final approval. Accordingly, you are encouraged to keep MHP informed of the status and progress of your application for a Comprehensive Permit and any changes to the Project that may affect program eligibility and/or financial projections. In addition, MHP requires that it be notified (1) when the applicant applies to the local ZBA for a comprehensive permit; (2) when the ZBA issues a decision; and (3) when any appeals are filed.

Please note that this preliminary determination of Project Eligibility is not a commitment or guarantee of or by MHP for financing, either expressed or implied, and, in the event that you determine not to apply to MHP for permanent financing and/or in the event that your application for permanent financing with MHP is denied, this letter shall be of no further force and effect. Also, please note that this letter shall be of no force or effect if the applicant has not filed for a Comprehensive Permit within two years of the date of this letter.

Final review and approval under the Comprehensive Permit Rules will be undertaken by MHP only in conjunction with an application to MHP for permanent mortgage financing for the Project. After the issuance of a Comprehensive Permit for the Project, MHP would be pleased to entertain a request for permanent mortgage financing pursuant to and in accordance with MHP's standard underwriting process. At that time, MHP shall require a complete loan application, a copy of the decision of the ZBA and any amendments thereto, a copy of the decision, if any, by the Housing Appeals Committee and revised preliminary plans and designs, if applicable, as well as such additional documents and information as is required as part of the loan underwriting process.

**Massachusetts  
Housing  
Partnership**

Should you have any comments or questions concerning this letter, please do not hesitate to call me at 617-330-9944 x338.

Sincerely,

A handwritten signature in black ink, appearing to read "David Hanifin", with a long horizontal flourish extending to the right.

David Hanifin  
Senior Loan Officer

cc: Roberta Rubin, Chief Counsel, Department of Housing and Community Development  
Neil Wishinsky, Chair of Board of Selectmen, Town of Brookline  
Jesse Geller, Chair, Zoning Board of Appeals, Town of Brookline  
Allison Steinfeld, Director, Planning and Community Development Department, Town of Brookline

EXHIBIT A

**Affordability Requirements:** At least nine (9) of the units must be affordable to households earning up to eighty percent (80%) of the median area income. Such units shall include a mix of bedroom sizes satisfactory to MHP. The affordability requirements will be documented through an affordable housing agreement that will be recorded prior to the mortgage and shall create covenants running with the Property for a minimum period of thirty (30) years. Comprehensive permit requirements may extend the affordability requirements beyond the initial 30-year term.

**Limited Dividend Policy:** The owner must comply with MHP's limited dividend policy.

**SECTION 5**

DEVELOPMENT TEAM

## DEVELOPMENT TEAM

DEVELOPER: 420 Harvard Associates LLC  
420 Harvard Street  
Brookline, MA 02446  
Tel: 617 721 3342  
Contact: Victor Sheen  
vsheen@OakgroveRes.com

DEVELOPMENT CONSULTANT: SEB, LLC  
165 Chestnut Hill Avenue  
Brighton, MA 02135  
Tel: 617 782 2300 x 201  
Contact: Robert Engler  
bob@s-e-b.com

ARCHITECT: EMBARC Studio  
60 K Street, Floor 3  
Boston, MA 02127  
Tel: 617 766 8330  
Contact: Dartagnan Brown  
dbrown@embarcstudio.com

CIVIL ENGINEER: McKenzie Engineering Group, Inc.  
150 Long Water Drive, Suite 101  
Norwell, MA 02061  
Tel: 617 206 8737  
Tel: 781 792 3900  
Contact: Brad McKenzie

TRAFFIC CONSULTANT: Vanasse & Associates, Inc.  
35 New England Business Center  
Andover, MA 01810  
Tel: 978 474 8800  
Contact: Scott Thornton  
sthornton@rdva.com

LANDSCAPE ARCHITECT: Paul Simon  
56 Grey Meadow Drive  
Burlington, VT 05408  
Tel: 617 905 0467  
Contact: Paul Simon  
parkarchitecture@gmail.com

LEGAL COUNSEL:

Eckert Seamans Cherin & Mellott, LLC  
2 International Place, Floor 16  
Boston, MA 02110  
Tel: 617 342 6816  
Contract: Todd Whilton  
twhilton@eckertseamans.com

**SECTION 6**  
**SITE CONTROL**

RECEIVED AND RECORDED  
NORFOLK COUNTY  
REGISTRY OF DEEDS  
DEDHAM, MA

MASSACHUSETTS STATE EXCISE TAX  
Norfolk Registry of Deeds  
Date: 11-25-2015 @ 01:12pm  
Ct1#: 863 Doc#: 117497  
Fee: \$16,416.00 Cons: \$3,600,000.00

CERTIFY  
*William P. O'Donnell*  
WILLIAM P. O'DONNELL, REGISTER

420 Harvard Street, Brookline, MA

QUITCLAIM DEED

**Fuller Street 420, LLC**, a Massachusetts limited liability company, with an office at 420 Harvard Street, Brookline, Norfolk County, Massachusetts 02446 ("Grantor")

For consideration paid and for full consideration of Three Million Six Hundred Thousand Dollars (\$3,600,000.00)

Grants to **420 Harvard Associates, LLC**, a Massachusetts limited liability company with a business address of 420 Harvard Street, Brookline, Massachusetts 02446

The following two parcels of land located in Brookline, County of Norfolk, Massachusetts, with the buildings and other improvements thereon bounded and described as follows:

Parcel 1

A certain parcel of land with the buildings and other improvements thereon situated in said Brookline at 420 Harvard Street and being shown as Lot 1 on a plan by French & Bryant, C.E. dated December 18, 1894, recorded with Norfolk County Registry of Deeds in Book 730, Page 242, and bounded and described as follows:

- NORTHEASTERLY: on Harvard Street 76.90 feet;
- SOUTHEASTERLY: on Fuller Street 70 feet;
- SOUTHWESTERLY: on Lot 2 as shown on said plan 97.67 feet; and
- NORTHWESTERLY: by land now or formerly of Anna E. Browne 84.76 feet.

Containing 6,288.7 square feet of land according to said plan.

Parcel 2

The land with the building and other improvements thereon numbered 48 Fuller Street in said Brookline being shown as Lot 2 on a plan by French & Bryant, C.E. dated December 18, 1894, recorded with said Deeds Book 730, Page 242, bounded and described as follows:

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SOUTHEASTERLY: on Fuller Street 50 feet;  
SOUTHWESTERLY: on land now or formerly of Jacob C Morse 94.84 feet;  
NORTHWESTERLY: on land now or formerly of Hannah E. Brown 50.50 feet;  
NORTHEASTERLY: on Lot 1 as shown on said plan 87.67 feet.

Containing about 4,562.7 square feet.

The Grantor means and intends to convey, and does hereby convey to the Grantee, all the same property conveyed to it by deed dated November 10, 2004 and recorded with the Norfolk Registry of Deeds in Book 21885, Page 502.

The entire premises conveyed by this deed is subject to the following perpetual restriction (or, if a perpetual restriction is not permitted by applicable law, such restriction shall remain in effect for the longest period permitted by the law), which shall bind and run with the land and shall be deemed to be a right appurtenant to, and benefit, the Levine Chapel, Inc.'s land located at 470 Harvard Street, Brookline, Norfolk, Massachusetts (for title of Levine Chapel, Inc.'s benefited land see Deed of Jennic R. Levine to Levine Chapel, Inc. dated December 31, 1946 and recorded in Norfolk County Registry of Deeds, Book 2656, Page 227):

Said premises at 420 Harvard Street, and 48 Fuller Street, Brookline, Norfolk County, Massachusetts shall not be used for the conduct of a funeral home or for any commercial funeral related activities such as the making of funeral burial arrangements, funeral preparations, embalming, body removals, viewing, conduct of wakes or memorial services, or any other commercial funeral related activity whatsoever.

Levin Chapel, Inc., or its successor in title as the owners of the benefited land, shall have the benefit of, and be subject to, the provisions of Massachusetts General Laws Chapter 184, Section 27, as the same may be amended, relative to the filing of an extension of such restrictions by the recording of a notice of extension.

The address of the locus is 420 Harvard Street, Brookline, Massachusetts 02446.

Grantor hereby certifies that it is not classified during its current taxable year as a corporation for federal income tax purposes.

<The remainder of this page is intentionally left blank.>

Executed as a sealed instrument as of the 24th of November, 2015.

Fuller Street 420, LLC

By: [Signature]  
Name: James F. McHugh

Title: Authorized Signatory

Middlesex, ss.

On this 24 day of November, 2015, before me, the undersigned notary public, personally appeared James F. McHugh, proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Authorized Signatory for Fuller Street 420, LLC, a Massachusetts limited liability company.

Maureen S Hoffmann

(official signature and seal of notary)

My Commission expires 8-19-22



**MAUREEN S. HOFFMANN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
August 19, 2022

**SECTION 7**

**DHCD SUSIDIZED HOUSING INVENTORY**

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT CH40B SUBSIDIZED HOUSING INVENTORY**

**Brookline**

DHCD ID #	Project Name	Address	Type	Total SHI Units	Affordability Expires	Built w/ Comp. Permit?	Subsidizing Agency
474	Arthur O'Shea House	61 Park St.	Rental	100	Perp	No	HUD
475	Kickham Apartments	190 Harvard St.	Rental	39	Perp	No	HUD
476	Sussman House	50 Pleasant St.	Rental	100	Perp	No	HUD
477	Theresa J. Morse Apts	90 Longwood. Ave.	Rental	99	Perp	No	HUD
478	Walnut Street Apts	22 High St./ 16 Walnut	Rental	100	Perp	No	HUD
479	Egmont St. Veterans	338-348 St. Paul/51-85 Egmont/209-221 Pleasant	Rental	114	Perp	No	DHCD
480	Egmont St. Veterans	44-79 Egmont Street	Rental	6	Perp	Yes	DHCD
481	High St. Veterans	176-224 High/6-30 New Terrace/186-218 Chestnut	Rental	177	Perp	No	DHCD
482	High St. Veterans	New Terrace Road and High Street	Rental	9	Perp	Yes	DHCD
483	Col. Floyd	32-40 Marion/19-36 Foster St	Rental	60	Perp	No	DHCD
484	Condos	Browne & St.Paul Streets	Rental	2	Perp	No	DHCD
485	McCormack House	151-153 Kent St.	Rental	10	Perp	No	DHCD
486	Benjamin Trustman	337-347 St. Paul/144-156 Armory/7-33 Egmont	Rental	86	Perp	No	DHCD
487	100 Center Plaza	Centre & Williams	Rental	211	2042	No	MassHousing
488	1027 Beacon St	1027 Beacon St	Rental	9	2030	No	DHCD FHLBB
489	1045 Beacon St	1043-1045 Beacon St.	Rental	28	2015*	No	HUD DHCD

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT CH40B SUBSIDIZED HOUSING INVENTORY**

**Brookline**

<b>DHCD ID #</b>	<b>Project Name</b>	<b>Address</b>	<b>Type</b>	<b>Total SHI Units</b>	<b>Affordability Expires</b>	<b>Built w/ Comp. Permit?</b>	<b>Subsidizing Agency</b>
489	1045 Beacon St	1043-1045 Beacon St.	Rental	28	2015*	No	HUD
490	120 Centre Court	120 Centre Court	Rental	125	2042	No	HUD MassHousing
491	1550 Beacon Plaza	1550 Beacon St.	Rental	180	2042	No	MassHousing
492	Beacon Park	1371 Beacon Street	Rental	80	12/31/2028	No	MassHousing
493	10 Juniper St	10 Juniper St	Ownership	32	perp	No	DHCD
494	Village at Brookline	55 Village Way/72 Pearl St	Rental	307	09/15/2028	No	DHCD DHCD MassHousing
495	Kilgallon House	11 Harris Street	Rental	8	Perp	No	DHCD
496	Sara Wallace House	1017 Beacon Street	Rental	16	2016	No	HUD HUD
497	Connelly House	1057 Beacon Street	Rental	13	Perp	No	DHCD
498	Goddard House	165 Chestnut Street	Rental	13	perp	No	DHCD
499	1162-1164 Boylston Street	1162-1164 Boylston Street	Ownership	6	perp	No	DHCD
500	1470 Beacon Street	1470 Beacon Street	Rental	4	perp	No	DHCD
501	Kendall Crescent	243, 245, 275 Cypress Street	Ownership	4	perp	No	DHCD
502	The Lofts at Brookline Village	77 Linden Street Unit, 74 Kent Street	Rental	2	perp	No	DHCD
3751	1754 Beacon St	1754 Beacon St	Rental	14	10/17/2032	No	DHCD

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT CH40B SUBSIDIZED HOUSING INVENTORY**

**Brookline**

DHCD ID #	Project Name	Address	Type	Total SHI Units	Affordability Expires	Built w/ Comp. Permit?	Subsidizing Agency
3751	1754 Beacon St	1754 Beacon St	Rental	14	10/17/2032	No	DHCD  DHCD
3752	1876 Beacon St	1876 Beacon St	Rental	15	2023	No	MassHousing  MHP
3753	77 Marion St/ 1405 Beacon St	77 Marion St/ 1405 Beacon St	Rental	4	perp	No	DHCD
3951	St. Aidan's	Crowninshield, Pleasant & Freeman Streets	Mix	35	Perp	Yes	DHCD  DHCD
4228	DDS Group Homes	Confidential	Rental	32	N/A	No	DDS
4549	DMH Group Homes	Confidential	Rental	37	N/A	No	DMH
7126	St. Paul Crossing	St. Paul Street	Ownership	3	perp	No	DHCD
7127	Cypress Lofts	110 Cypress Street	Rental	5	Perp	No	DHCD
8154	154-156 Bolyston St	154-156 Bolyston St	Rental	6	2035	NO	HUD  MHP
9050	Scattered Sites	Park Street, Boylston Street	Ownership	6	Perp	NO	DHCD
9068	1600 Beacon Street	1600 Beacon Street	Ownership	6	Perp	NO	HUD
9740	Hammond Pond Place	321 Hammond Pond Parkway	Ownership	3	Perp	NO	DHCD
9741	Englewood Residences	20 Englewood Avenue	Rental	2	Perp	NO	DHCD
9742	109 Sewall Avenue	109 Sewall Avenue	Ownership	2	Perp	NO	DHCD

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT CH40B SUBSIDIZED HOUSING INVENTORY**

**Brookline**

DHCD ID #	Project Name	Address	Type	Total SHI Units	Affordability Expires	Built w/ Comp. Permit?	Subsidizing Agency
9832	The Residences of South Brookline	Independence Drive	Rental	161	Perp	YES	<i>MassDevelopment</i>
9868	86 Dummer Street	86 Dummer Street	Rental	32	Perpetuity	NO	<i>HUD</i>  <i>DHCD</i>
9869	51-57 Beals Street	51-57 Beals Street	Rental	31	Perpetuity	NO	<i>DHCD</i>  <i>HUD</i>
9870	45 Marion Street	45 Marion Street	Rental	64	2045	YES	<i>MassHousing</i>
9871	Olmsted Hill	2-8 Olmsted Road	Ownership	12	Perpetuity	NO	<i>DHCD</i>  <i>DHCD</i>
<b>Brookline Totals</b>				2,410	<b>Census 2010 Year Round Housing Units</b>		26,201
					<b>Percent Subsidized</b>		9.20%

**SECTION 8**

**SAMPLE REGULATORY AGREEMENT**



Massachusetts  
Housing Partnership Fund

## CHAPTER 40B REGULATORY AND AFFORDABLE HOUSING AGREEMENT FOR LIMITED DIVIDEND ORGANIZATIONS

This Chapter 40B Regulatory and Affordable Housing Agreement For Limited Dividend Organizations ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 201\_ by and between \_\_\_\_\_, a \_\_\_\_\_ [corporation] [\_\_\_\_\_ limited liability company][\_\_\_\_\_ limited partnership], having a mailing address of \_\_\_\_\_ (the "Borrower"), and the MASSACHUSETTS HOUSING PARTNERSHIP FUND BOARD, a Massachusetts body politic and corporate with its principal place of business at 160 Federal Street, Boston, Massachusetts 02110 (the "Lender").

### RECITALS

- A. The Borrower is the owner of certain real property known and numbered as \_\_\_\_\_, \_\_\_\_\_, Massachusetts, being more particularly described on Exhibit A attached hereto (the "Mortgaged Property"), on which the Borrower intends to construct a housing development known as "\_\_\_\_\_" consisting of \_\_\_\_\_ (\_\_\_\_) units of residential rental housing (the "Housing Development").
- B. The Mortgaged Property is subject to and has the benefit of a comprehensive permit, issued by the Town of \_\_\_\_\_, acting by and through its Zoning Board of Appeals (the "Municipality") pursuant to M.G.L. c. 40B, §§ 20-23 and regulations promulgated thereunder (the "Act") and recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_, Page \_\_ (the "Comprehensive Permit").
- C. The Lender is a subsidizing agency under the Act and has agreed to make a permanent mortgage loan to the Borrower in the original principal amount of \$ \_\_\_\_\_ (the "Loan") as provided in a certain Commitment Letter dated \_\_\_\_\_.
- D. The Lender requires, as a condition to making the Loan, that the Borrower enter into this Agreement in order to create certain covenants running with the Mortgaged Property for the purpose of ensuring that the Affordable Housing Units (as defined below) are rented to Families (as defined below) who meet the income and other eligibility criteria set forth in this Agreement for the period set forth herein.
- E. The Borrower has agreed to enter into this Agreement imposing covenants running with the Mortgaged Property as a condition of the Loan, which Agreement shall be binding upon the Borrower and all subsequent owners of the Mortgaged Property, for the purposes of providing for the monitoring and enforcement of the limited dividend requirement, the affordable housing restrictions and the affirmative marketing requirements for the period set forth herein.

Please return to:  
Judith S. Jacobson, Deputy Director & General Counsel  
Massachusetts Housing Partnership  
160 Federal Street  
Boston, MA 02110

## A G R E E M E N T

For good and valuable consideration, and with the intent of being legally bound, the parties hereto agree as follows:

1. Paragraphs A through E set forth in the Recitals section above are incorporated herein by reference as if fully re-stated.
2. Definitions.
  - (a) Affordable Housing Unit: An [80%][50%] AMI Unit.
  - (b) AMI: The median income for the area in which the Mortgaged Property is located, adjusted for household size, as determined by HUD.
  - (c) Annual Limited Dividend Financial Report: An annual report to be prepared by the Borrower on a form prescribed by the Lender pursuant to Lender's Limited Dividend Policy.
  - (d) Base Fee: The Base Fee adopted by the Lender and further defined in Section 14(c) of this Agreement in connection with determining the annual monitoring services fees for monitoring the Borrower's compliance with this Agreement during the Fee-Based Monitoring Period.
  - (e) Borrower's Equity: \$ \_\_\_\_\_, as the same may be adjusted from time to time, as determined by and in accordance with Lender's Limited Dividend Policy defined below. The parties acknowledge that Borrower's Equity is based on projected project costs and will be updated on or before the Loan Closing Date to reflect actual costs or as-complete appraised value, as Borrower shall select.
  - (f) CPI-U: The Consumer Price Index for Urban Consumers, further distinguished as the index for "Selected Areas, Northeast-Urban, Size A" published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by the Lender appropriately adjusted.
  - (g) Default. As defined in Section 15(a).
  - (h) Development Revenues: All rental income, receipts and other revenue derived from the operation of the Mortgaged Property other than revenues derived from any sales, financing, or other capital transaction.
  - (i) DHCD: The Massachusetts Department of Housing and Community Development or any successor agency overseeing the implementation of the Act.
  - (j) [80% AMI Unit]: A unit that is rented to and occupied by, or is available for rent to and occupancy by, a Family with income at or below eighty percent (80%) of AMI.]
  - (k) Event of Default. As defined in Section 15(a).
  - (l) Excess Equity: Annual net cash flow as calculated in accordance with the Annual Limited Dividend Report in excess of the MAALD (as defined below).
  - (m) Excess Equity Account: An interest-bearing account maintained by the Lender for the benefit of the Mortgaged Property during the Limited Dividend Term (as defined below) containing Excess Equity.
  - (n) Family : One or more individuals occupying a unit in accordance with the definition adopted by HUD for the so-called Section 8 program under the United States Housing Act of 1937, as amended, and the regulations promulgated thereunder (the "Section 8 Program"). Notwithstanding the foregoing, a household comprised of a full-time student or students shall not qualify as a Family except as permitted under the Low-Income Housing Tax Credit Program, Internal Revenue Code Section 42(i)(3)(D).
  - (o) Fee-Based Monitoring Period: The period commencing on the earlier of (i) prepayment of the Loan or (ii) maturity of the Loan, and continuing until the expiration of the Term.

- (p) 50% AMI Unit: A unit that is rented to and occupied by, or is available for rent to and occupancy by, a Family with income at or below fifty percent (50%) of AMI.]
- (q) Fiscal Year: The fiscal year of the Borrower ending \_\_\_\_\_.
- (r) HUD: The United States Department of Housing and Urban Development.
- (s) Lender's Limited Dividend Policy: The Lender's policy, so captioned, dated [September 2013], which is fully incorporated herein by reference. Notwithstanding anything in this Agreement to the contrary, in the event of any conflict between the terms of this Agreement and the terms of the Limited Dividend Policy, the terms of this Agreement shall control.
- (t) Limited Dividend Distribution: The aggregate annual distributions permitted to be made to the Borrower from time to time as calculated pursuant to the Annual Limited Dividend Financial Report or as otherwise permitted pursuant to this Agreement.
- (u) Limited Dividend Organization: Any applicant which proposes to sponsor housing under the Act and is not a public agency or non-profit corporation, and is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to limit the dividend on the invested equity to no more than that allowed by the Lender's Limited Dividend Policy during the Limited Dividend Term. Lender acknowledges that Borrower qualifies as a Limited Dividend Organization by executing this Agreement and performing its obligations hereunder.
- (v) Limited Dividend Term: The period commencing on the date of this Agreement and ending on the date that shall be [fifteen (15) years] from the date that the Mortgaged Property begins to generate Development Revenues, as such date shall be certified in writing by Borrower to Lender. The parties agree to execute a supplemental instrument in recordable form setting forth the precise Limited Dividend Term once the same is established. [longer of loan term or 15 years]
- (w) Loan Closing Date: The date the Lender funds the Loan to the Borrower. The parties acknowledge that the deadline for the closing of the Loan is \_\_\_\_\_, unless extended by the Lender in writing.
- (x) Loan Documents: As defined in the loan agreement to be entered into between Borrower and Lender (including, without limitation, this Agreement, but only during the period that the Loan is outstanding). During the period that the Loan is outstanding, in the event of any conflict between the terms of the other Loan Documents and this Agreement, the terms of the other Loan Documents shall control. Notwithstanding the use of the terms "Borrower" and "Lender" in this Agreement, the parties acknowledge and agree that this Agreement may remain in effect during the Fee-Based Monitoring Period, and at that time Lender and Borrower shall no longer have the relationship of borrower and lender, but Lender shall act solely in its capacity as the enforcer of this Agreement pursuant to 760 CMR 56.05(13).
- (y) MAALD: The maximum allowable annual limited dividend as determined in accordance with Lender's Limited Dividend Policy.
- (z) Mortgage: The Mortgage and Security Agreement to be recorded with respect to the Mortgaged Property.
- (aa) Mortgage Debt: All sums due or required to be paid pursuant to the Loan Documents.
- (bb) Municipality: The Town of \_\_\_\_\_, acting by and through its Zoning Board of Appeals.
- (cc) Occupancy Requirements. As defined in Section 6(b).
- (dd) Registry: The \_\_\_\_\_ Registry of Deeds [and/or the \_\_\_\_\_ County Registry of the Land Court].
- (ee) Term: The period commencing on the date this Agreement is recorded at the Registry and ending on the later of (a) the date on which the Mortgage is discharged or (b) the date which is [thirty (30)] years from the Loan Closing Date, unless earlier terminated in accordance with Section 4 hereof, subject however, to the provisions hereof relative to the Limited Dividend

Term. [for new construction: 30 years][for substantial rehabilitation: loan term but minimum of 15 years]

3. Affordable Housing Restrictions. The Borrower intends, declares and covenants that, during the Term of this Agreement, this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Mortgaged Property (i) shall be and are covenants running with the Mortgaged Property, encumbering the Mortgaged Property for the Term of this Agreement, binding upon the Borrower, the Borrower's successors in title and all subsequent owners and operators of the Mortgaged Property; (ii) are not merely personal covenants of Borrower; and (iii) shall inure to the benefit of the Lender and its respective successors and assigns during the Term of this Agreement. The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the full Term hereof. Unless the covenants contained herein have been released by the Lender in writing, they shall survive and be effective for the Term of this Agreement regardless of whether any obligations owed to the Lender or to any assignees of the Lender in connection with the Loan have been fully paid and/or performed. The Borrower acknowledges that regardless of the duration of the Term of this Agreement, the Affordable Housing Units shall, pursuant to the Comprehensive Permit, remain affordable in "perpetuity", meaning for so long as the Housing Development is maintained and occupied on the Mortgaged Property as contemplated by the Comprehensive Permit. The Lender shall provide written notice to the Chief Executive Officer of the Municipality of the expiration of the Term of this Agreement at least six (6) months prior thereto.

4. Term and Effective Date.

(a) This Agreement shall become effective upon the recording of this Agreement with the Registry, and shall continue for the Term, notwithstanding any sale or refinance of the Mortgaged Property or payment or prepayment of the Loan and the obligations secured by the Mortgage. Notwithstanding the foregoing, the Lender may release and discharge this Agreement prior to the expiration of the Term if a regulatory agreement sufficient for the Mortgaged Property to comply with the requirements of the Act, its implementing regulations and DHCD guidance, as reasonably determined by Lender, is recorded in the Registry that, inter alia, provides for monitoring and enforcement of the requirements of the Comprehensive Permit and continued compliance by the Project with the Comprehensive Permit and the Act. Prior to any such release and discharge, notice of such regulatory agreement shall be sent to the Municipality, which may review any such regulatory agreement for compliance with the Act and the Comprehensive Permit. If, within twenty (20) days of receipt of any such regulatory agreement, the Municipality notifies Lender in writing that it believes such regulatory agreement does not comply with the Act or the Comprehensive Permit, Lender shall, in good faith, make all reasonable efforts to address the Municipality's concerns. Upon expiration of the Term of this Agreement, the rights and obligations of the Lender, its designee, successors and/or assigns hereunder with respect to the monitoring and enforcement of compliance with the terms hereof shall automatically terminate without the need of either party to execute or record any additional document. Notwithstanding anything to the contrary contained herein, any provision of this Agreement (the "Limited Dividend Provisions") relative to the limitation of the use or distribution of Development Revenues, and any reporting or enforcement rights with respect thereto (including without limitation, the provisions of Sections 11, 12 and 13(b) below) shall bind, and the benefits shall inure to, respectively, Borrower and Lender and their respective successors and assigns, only until the expiration of the Limited Dividend Term and the satisfaction of all obligations herein applicable during the Limited Dividend Term, upon which the Limited Dividend Provisions shall be of no further force and effect.

(b) In the event that the Loan does not close prior to the Loan Closing Date, as the same may be extended by Lender in writing, or in the event that Borrower at any time elects not to accept the Loan, but Borrower has constructed or still intends to construct the Housing Development, then (i) Borrower shall be required to obtain a replacement subsidy as may be required under the Act as expeditiously as is reasonably practical; and (ii) Borrower shall execute and record a replacement regulatory agreement with the entity providing such replacement subsidy. Simultaneously with the recording of the replacement regulatory agreement, Borrower and Lender shall execute and record a release and termination of this Agreement. The Borrower's failure to comply with this Section 4(b) shall be a default of this Agreement; provided, however that Borrower shall not be in default so long as it is using commercially reasonable efforts to obtain a replacement subsidy.

(c) In the event that Borrower or its successor in title elects not to construct the Housing Development on the Mortgaged Property pursuant to the Comprehensive Permit, then Borrower or its successor may notify Lender in writing that it intends not to exercise its rights under the Comprehensive Permit, and within thirty (30) days after receipt of such written notice, Lender shall execute, deliver and record a termination of this Agreement.

5. Priority of Agreement. This Agreement is senior to the Mortgage and to any other mortgage encumbering the Mortgage Property. In the event of foreclosure of the Mortgage or deed in lieu of foreclosure, the Lender may, at its option, unilaterally discharge this Agreement or subordinate this Agreement to the Mortgage, and the Borrower agrees to execute any documents required by Lender to so discharge or subordinate this Agreement. Furthermore, the Borrower understands and agrees that, in the event of foreclosure of the Mortgage and the exercise by the Lender of the Power of Sale therein, the Mortgaged Property will be sold subject to the restrictions imposed hereby unless the Lender exercises its rights to discharge or subordinate this Agreement prior to such sale. Notwithstanding the foregoing, the Lender shall not take any actions to discharge or terminate this Agreement if such actions would cause the units in the Housing Development to not comply with the Act or the Comprehensive Permit issued thereunder. Borrower acknowledges that any discharge or termination of this Agreement shall not affect the validity or enforceability of the Comprehensive Permit or the obligations of the Borrower to comply with the provisions thereof.

6. Restrictions. This section specifies a Family's eligibility to occupy an Affordable Housing Unit and the maximum rent that such a Family may be charged.

(a) The Borrower shall ensure that all Affordable Housing Units shall be of comparable quality to the other units in the Mortgaged Property (provided that the interior finishes of the Affordable Housing Units may differ from the market-rate units), [subject to and as further specified in the Comprehensive Permit] and shall be dispersed evenly throughout the Mortgaged Property as required by the Comprehensive Permit and as shown on the floor plans attached and incorporated into the Comprehensive Permit. If the Mortgaged Property is comprised of more than one building, each building shall have a proportionate share of Affordable Housing Units [, as required by the Comprehensive Permit]. The Affordable Housing Units shall include [\_\_\_\_\_ ( ) single-room occupancy units], [\_\_\_\_\_ ( ) studio apartments], [\_\_\_\_\_ ( ) one-bedroom units],[\_\_\_\_\_ ( ) two-bedroom units], [\_\_\_\_\_ ( ) three-bedroom units], and [\_\_\_\_\_ ( ) four-bedroom units]. The Borrower shall use commercially reasonable efforts to ensure that the Affordable Housing Units are, at all times, fully occupied and shall require that tenants occupy the Affordable Housing Units as their domiciles and principal residences.

(b) Income Restrictions. At least \_\_\_\_\_ ( ) of the housing units in the Mortgaged Property shall be rented to Families whose annual incomes are equal to or less than [eighty percent (80%)] [fifty percent (50%)] of AMI (the "Occupancy Requirements"). [If 80% AMI add: Notwithstanding

the foregoing, in the event that at the time the Borrower commences marketing the Affordable Housing Units for rental, the rents for such Affordable Housing Units are not at least ten percent (10%) below market rents as determined by Lender, the maximum income limit for Families renting Affordable Housing Units shall be reduced with a corresponding decrease in the initial maximum rents so that such rents are at least ten percent (10%) below market. Such maximum income limit shall become the Occupancy Requirement and remain effective for the Term.]

A Family's annual income will be the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family (other than children under the age of 18 years), including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual income shall be determined in a manner consistent with either (i) the Section 8 Program or (ii) such other methodology approved by Lender; annual income specifically includes and excludes certain types of income as set forth in, and shall be determined in accordance with the regulations promulgated under the Section 8 Program (or any successor regulations) or in any other manner approved by Lender.

As a condition to occupancy, each potential tenant of an Affordable Housing Unit shall be required to sign and deliver to the Borrower an income certification using a form adopted for such use by the Borrower with the prior written consent of the Lender, such consent not to be unreasonably withheld or delayed.

If, after initial occupancy, the income of a tenant of an Affordable Housing Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Borrower shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted or (ii) the Borrower rents the next available unit at the Mortgaged Property as an Affordable Housing Unit in conformance with the Occupancy Requirements, or otherwise demonstrates compliance with the Occupancy Requirements.

(c) Rent Restrictions. The annual rental expense for each Affordable Housing Unit, including the provision of heat, electricity, water and hot water, shall not exceed thirty percent (30%) of the applicable income limit for the Affordable Housing Unit, adjusted for household size, assuming that a unit which does not have a separate bedroom is occupied by one individual, and that a unit which has one or more separate bedrooms is occupied by 1.5 individuals for each separate bedroom. However, the maximum annual rent for any Affordable Housing Unit shall not fall below the rent level set at the time that the Mortgaged Property is first occupied in accordance with this Agreement. Notwithstanding the above, if an Affordable Housing Unit has a subsidy commitment through the Section 8 Program, or any comparable rental assistance program, then the maximum rent shall be that permitted by the Section 8 Program, or the comparable program.

If, after initial occupancy, the income of a tenant in an Affordable Housing Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(d) Subsidized Housing Inventory. It is the intent of Borrower and Lender that all of the units in the Housing Development shall be included in the Subsidized Housing Inventory maintained by DHCD in accordance with current DHCD policies and DHCD regulations implementing the Act, but in no event shall Borrower be in breach or default under this Agreement due to any change in such policies or regulations which affect the counting of units.

## 7. Affirmative Marketing and Tenant Selection.

(a) The Borrower shall not discriminate on the basis of race, color, creed, religious creed, sex, age, handicap, marital status, sexual orientation, national origin or any other basis prohibited by law in the lease, use or occupancy of units at the Mortgaged Property, or in the employment or application for employment of persons for the operation and management of the Mortgaged Property. Prior to the Housing Development's construction loan closing and marketing any of the rental units at the Housing Development for rental the Borrower shall submit to Lender, and obtain the Lender's written approval of, an affirmative fair housing marketing and resident selection plan conforming to the requirements of the Act, its implementing regulations and applicable DHCD guidance, such approval not to be unreasonably withheld or delayed. Once approved, the affirmative fair housing marketing and resident selection plan shall be incorporated herein by reference as if fully set forth herein. Borrower shall notify Lender in writing at least thirty (30) days prior to commencing marketing of the rental units at the Housing Development. The Borrower's affirmative fair housing marketing and resident selection plan shall be implemented for the full Term of this Agreement and must at all times during the Term comply with all requirements of the Act and guidelines established by DHCD. The Borrower must, during the Term of this Agreement, demonstrate that it is qualified to implement the affirmative fair housing marketing and resident selection plan in accordance with applicable DHCD guidance. The affirmative fair housing marketing and resident selection plan shall be updated during the Term as required by applicable DHCD guidance. The Borrower shall advertise the availability of Affordable Housing Units in one or more newspapers that serve minority groups and other groups protected under fair housing laws and vacancies will be listed with fair housing organizations in such area. The Borrower shall select tenants for the Mortgaged Property in a fair and impartial manner, based on objective criteria made known to such tenants upon request. Written applications will be accepted and time stamped upon receipt, so that such applications may be considered in the order in which they were received; and a waiting list of applicants not accepted as tenants will also be established.

(b) [Consistent with the foregoing Section 7(a), the Borrower, in renting the Affordable Housing Units, will be allowed to give the maximum preference allowed by law to current residents of the Municipality, employees of the Municipality, employees of businesses located in the Municipality and households with children attending school in the Municipality (a "Local Preference"); provided that (i) Borrower shall only implement such a Local Preference in conformity with the fair housing requirements of HUD, DHCD, the Massachusetts Commission Against Discrimination, or any authority with jurisdiction and like purpose; and (ii) Municipality has provided to Borrower and Lender the information required to justify such a Local Preference in accordance with applicable laws, regulations and policies of Lender and DHCD.]

8. Management and Maintenance of the Mortgaged Property. For so long as the Loan is outstanding, the Borrower shall manage and maintain the Mortgaged Property in the condition required by the applicable provisions of the Loan Documents pertaining to management, operation and condition of the Mortgaged Property. During the Fee-Based Monitoring Period, the Borrower shall maintain the Housing Development in good physical condition in accordance with DHCD's requirements, the Comprehensive Permit and standards and the requirements of any subsequent mortgage lender, ordinary wear and tear and casualty excepted. The Borrower covenants, agrees and warrants that the Mortgaged Property and the Affordable Housing Units at all times shall be suitable for occupancy and in compliance with all applicable laws including, without limitation, health, safety and building codes. The Borrower hereby grants to the Lender and its duly authorized representatives the right to enter the Mortgaged Property and the Affordable Housing Units at reasonable times and upon reasonable notice for the purpose of inspecting the Mortgaged Property and the Affordable Housing Units to determine compliance and with this Agreement and to enforce the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

9. Borrower's Representations, Covenants and Warranties. The Borrower hereby represents, covenants and warrants as follows:

(a) The Borrower (i) is a [corporation] [\_\_\_\_\_] duly organized under the laws of \_\_\_\_\_, and is qualified to transact business under the laws of the Commonwealth of Massachusetts; (ii) is and shall remain a sole purpose, single entity mortgagor; (iii) is and shall remain a Limited Dividend Organization during the Limited Dividend Term; (iv) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (v) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Borrower (i) will not violate and has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate and has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Borrower is a party or by which it or the Mortgaged Property is bound, and (iii) will not result and has not resulted in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Borrower will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Mortgaged Property or an enforceable leasehold interest in the Mortgaged Property free and clear of any lien or encumbrance senior to this Agreement other than encumbrances approved by Lender in writing, such approval not to be unreasonably withheld, conditioned or delayed.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Borrower, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

10. Change in Composition of Borrower; Change in Use of Mortgaged Property; and Transfer of Mortgaged Property.

(a) During the period that the Loan is outstanding, the Borrower shall not, without the prior written consent of the Lender and modification to the Comprehensive Permit, change the type or number of residential units, or permit the use of the dwelling accommodations of the Mortgaged Property for any purpose except residential units and appurtenant uses, if any, permitted by the Comprehensive Permit (collectively, a "Use Change"). During the Fee-Based Monitoring Period, Borrower shall provide Lender with prompt notice of any amendment to the Comprehensive Permit effectuating a Use Change. So long as the Mortgaged Property is used for multi-family housing pursuant to the Comprehensive Permit, no Use Change shall result in the Mortgaged Property not meeting the requirements of the Act relative to the provision of Affordable Housing Units. In the case of casualty to all or a portion of the Mortgaged Property, Borrower shall not be required to restore any such casualty (except to the extent mandated by the Loan Documents), but if Borrower partially restores the Housing Development, the Borrower shall provide the appropriate percentage of Affordable Housing Units and unit mix based on the total number of units after such restoration. During the period that the Loan is outstanding, the Borrower shall not, without the prior written consent of the Lender, sell or otherwise transfer its interest or any part thereof in the Mortgaged Property, except to the extent permitted under any of the Loan Documents. In the event the Lender grants such consent when it is required, prior to any transfer of ownership of the Mortgaged Property or any portion thereof or interest therein, the Borrower agrees to secure from the transferee a written agreement stating that transferee will assume in full the Borrower's obligations and duties under this Agreement.

(b) During the Fee-Based Monitoring Period, the Borrower shall provide Lender with thirty (30) days prior written notice of the following:

- (i) any change, substitution or withdrawal of any general partner, manager or agent of Borrower; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Borrower; or
- (iii) any sale, conveyance, transfer, ground lease, exchange, pledge, assignment or mortgage of the Housing Development, whether direct or indirect, that materially affects the Borrower's obligations under this Agreement.

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

(c) The Mortgaged Property shall not be converted to a condominium or cooperative form of ownership, without modification of the Comprehensive Permit by the Municipality and, while the Loan is outstanding, the prior written consent of the Lender. During the Fee-Based Monitoring Period, if Borrower wishes to convert the Mortgaged Property to a condominium or cooperative form of ownership, Lender consent shall not be required, provided that Borrower obtains a replacement subsidizing agency in connection with such conversion to the extent that the Lender is unwilling to continue as the subsidizing agency upon such conversion.

#### 11. Use of Development Revenues.

(a) During the Limited Dividend Term, all Development Revenues shall, if not held by the Lender in one of its accounts, be deposited in an account held in the name of Borrower or a nominee for Borrower in a bank or banks, whose deposits are insured by the Federal Deposit Insurance Corporation or otherwise deposited in funds and accounts established hereunder (a "Development Bank Account"). The Lender shall at all times be advised of the names of the accounts and the names of the banks. Development Revenues shall be used only in accordance with the provisions of this Agreement. Any person receiving Development Revenues other than as permitted by this Agreement shall immediately deposit such funds in a Development Bank Account, or failing to do so in violation of this Agreement, shall hold such funds in trust for the Mortgaged Property.

(b) During the Limited Dividend Term, Borrower shall apply Development Revenues in the following order of priority: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage Debt; and (ii) payment of or adequate reserve for all reasonable and appropriate expenses of the Mortgaged Property as identified in Subsection (c), below. Any amounts remaining after application of Development Revenue as provided above shall be applied as provided in Section 12 below.

(c) With respect to the application of Development Revenues as described above, Borrower shall be allowed to use Development Revenues to pay for any and all taxes, impositions, services, supplies, or materials or other costs or liabilities incurred in the ownership, operation, management, maintenance and improvement of the Mortgaged Property, provided:

(i) Payment for any and all services, supplies, or materials shall not exceed the amount ordinarily and reasonably paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;

(ii) Reasonable and necessary expenses which may be payable pursuant to subsection 11(c)(i), above, shall be directly related to the operation, maintenance or management of the Mortgaged Property; and

(iii) Without the Lender's prior written consent, Borrower may not assign, transfer, create a security interest in, dispose of, or encumber any Development Revenues except as expressly permitted herein.

(d) In operating the Mortgaged Property during the Limited Dividend Term, except with regard to (i) Limited Dividend Distributions, or (ii) proceeds of any sale, financing or other capital transaction not subject to provisions of this Agreement relative to Limited Dividend Distributions, Borrower shall not use any Development Revenues to pay any liability, either direct or contingent, that is not related to the Mortgaged Property or the Housing Development.

(e) Repayment of developer's fee loaned is treated as a Limited Dividend Distribution and is subject to the limitations set forth herein.

## 12. Limited Dividend Distributions

(a) Timing and Conditions. Except as provided in subparagraph (h) below, during the Limited Dividend Term no distributions may be made to the Borrower other than Limited Dividend Distributions. Except as provided in subparagraphs (c), (e) and (h) below, Limited Dividend Distributions may be made: (i) only following completion of the Fiscal Year; (ii) only once all currently payable amounts as identified in Section 11 (c) above are paid as evidenced by a certificate provided by an independent accountant certifying that no such obligations are more than thirty (30) days past due and that there are no outstanding material extraordinary obligations incurred outside the ordinary course of business, even if thirty (30) or less days past due; and (iii) only after submission by Borrower of the Annual Limited Dividend Financial Report pursuant to Paragraph 13(b) below and receipt by Borrower of written notice from Lender approving said report (such approval to be given, or any alleged deficiency identified, within thirty (30) days after Lender's receipt of a complete Annual Limited Dividend Report).

(b) Restrictions on Distributions. During the Limited Dividend Term no Limited Dividend Distribution for any Fiscal Year may exceed ten percent (10%) of Borrower's Equity. For so long as the Loan is outstanding, no Limited Dividend Distributions may be made when: (i) a default or an event of default has occurred and is continuing under any Loan Document; (ii) where there has been failure to comply with the Lender's notice of any reasonable requirement for proper maintenance of the Mortgaged Property; or (iii) there is outstanding against all or any part of the Mortgaged Property any lien or security interest other than a lien securing the Loan or a lien expressly permitted under the Loan Documents. During the Fee-Based Monitoring Period, no Limited Dividend Distributions may be made when: (i) a Default or an Event of Default has occurred and is continuing under this Agreement; or (ii) where there has been failure to

comply with the Lender's notice of any reasonable requirement for proper maintenance of the Mortgaged Property.

(c) Monthly Limited Dividend Distributions. Notwithstanding anything to the contrary in this Agreement, Limited Dividend Distributions may be made to Borrower at any time during a Fiscal Year, and as often as monthly, based on an operating budget for the Housing Development prepared by Borrower and approved by Lender. In the event Borrower's Annual Limited Dividend Financial Report demonstrates that the aggregate amount so distributed to Borrower during the applicable Fiscal Year exceeds ten percent (10%) of Borrower's Equity, then not later than ten (10) business days after receipt of Lender's notification to the Borrower, Borrower shall deposit into the Excess Equity Account a sum equal to the difference between the amount actually distributed and the maximum allowable Limited Dividend Distribution for the applicable Fiscal Year.

(d) Recalculation of Borrower's Equity. For the purposes hereof the amount of "Borrower's Equity" shall be as set forth in Section 2(e) of this Agreement, as the same may be adjusted from time to time, as determined by and in accordance with Lender's Limited Dividend Policy. The parties acknowledge that Borrower's Equity is based on projected project costs and will be updated on or before the Loan Closing Date to reflect actual costs or as-complete appraised value, as Borrower shall elect. Thereafter, Borrower's Equity may be adjusted from time to time pursuant to the Lender's Limited Dividend Policy; provided, however, that if the Lender's Limited Dividend Policy later is amended to allow for more frequent adjustments to Borrower's Equity, the Borrower shall be allowed to make adjustments to Borrower's Equity at such times as are allowed under the amended Limited Dividend Policy.

(e) Excess Equity. In the event that the amount available for Limited Dividend Distribution in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Borrower's Fiscal Year pursuant to Section 12(b) above, such excess shall be deposited and administered in accordance with Section 12(f) below. Amounts deposited into the Excess Equity Account may, subject to subsections (a) through (c) above, and pursuant to the Lender's Limited Dividend Policy, be distributed by the Lender to the Borrower in amounts equal to the difference between the amount by which Limited Dividend Distributions actually made in any prior Fiscal Year were less than the amount permitted to be distributed under Section 12(b) hereof for such Fiscal Year, plus simple interest in accordance with the Lender's Limited Dividend Policy. In the event that annual net cash flow as determined in pursuant to the Annual Limited Dividend Financial Report is insufficient to allow the Borrower to take its MAALD, and there are funds in the Excess Equity Account, Lender shall distribute to Borrower an amount equal to the unpaid portion of the MAALD for such Fiscal Year, provided that, in no event shall the amount so distributed exceed the amount available in the Excess Equity Account.

(f) Excess Equity Account. Any Excess Equity shall be deposited in the Excess Equity Account. No distributions may be made to Borrower from the Excess Equity Account except those permitted pursuant to Section 12(e) hereof. For so long as the Loan is outstanding, upon the occurrence of an event of default under the Loan Documents, the Lender may apply any amounts in the Excess Equity Account to the payment of all or any portion of the Mortgage Debt. During the Fee-Based Monitoring Period, the Lender may, in its sole discretion, make amounts available from the Excess Equity Account to pay all or a portion of the annual monitoring fee that remains outstanding thirty (30) days after its due date. Upon Borrower's request, amounts may also be withdrawn from the Excess Equity Account during the Term hereof and applied for the following purposes: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage, or during the Fee-Based Monitoring Period, any mortgage on the Mortgaged Property; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Housing Development as reasonably determined by Borrower; (iii) deposit of all amounts as may be deposited in a reserve fund for capital replacements reasonably determined by Borrower to be sufficient to

meet anticipated capital needs of the Housing Development which may be held by Lender or a lending institution reasonably acceptable to Lender and which reserves shall be used for capital expenditures for the Housing Development reasonably determined to be necessary by the Borrower; (iv) payment of operating expense loans made by the partners, managers or members of Borrower for expenses of the Housing Development, provided that Borrower shall have obtained prior written approval for such loans from the Lender (or, during the Fee-Based Monitoring Period, from the holder of the mortgage loan encumbering the Mortgaged Property and if there is no mortgage, from Lender) and shall have supplied the applicable lender with such evidence as the applicable lender may reasonably request as to the application of the proceeds of such operating expense loans to the Housing Development; or (v) for any other purposes, subject to a determination by the Lender (or during the Fee-Based Monitoring Period, from the holder of the mortgage loan encumbering the Mortgaged Property and if there is no mortgage, from Lender) that the expenditure if necessary to address the Housing Development's physical or financial needs and that no other Housing Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii), (iii) and (v) above by the Borrower shall be subject to the prior written approval of Lender, which approval shall not be unreasonably withheld or delayed; it being agreed by Lender that if the Borrower can demonstrate that its proposed operating expenditures, capital expenditures and reserves are substantially consistent with those made for other comparable housing developments in the Commonwealth of Massachusetts, Lender shall approve such request. Further, in no event shall such review or approval be required by Lender to the extent such capital expenditures or reserves are mandated by the holder of any mortgage loan encumbering the Mortgaged Property during the Fee-Based Monitoring Period.

Further, Lender agrees that it shall not unreasonably withhold or delay its consent to release of any amounts held in the Excess Equity Account, upon the written request of the Borrower that: (i) provide a direct and material benefit to tenants in the Affordable Housing Units; or (ii) reduce rentals to tenants in the Affordable Housing Units.

In the event that Lender's approval is requested pursuant to this Section 12(f) for expenditures out of the Excess Equity Account, and Lender fails to respond within thirty (30) days of Lender's receipt thereof, then Lender shall be deemed to have approved the request, and Lender shall have no further rights to object to, or to place conditions upon, the same.

In any event, cash available for distribution in any year in excess of twenty percent (20%) of Borrower's Equity, subject to payment of accumulated and unpaid Limited Dividend Distributions, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by Lender as provided herein, or as otherwise directed by Lender. Upon the expiration of the Limited Dividend Term, any balance remaining in the Excess Equity Account shall, if deemed necessary by Lender to address current or future physical needs at the Housing Development, be deposited in the Housing Development's replacement reserve account or, if not deemed necessary by the Lender for such purpose, distributed to the Municipality for the purpose of developing and/or preserving affordable housing.

(g) Lender's Interest in Excess Equity. All funds in the Excess Equity Account shall be considered additional security for the performance of obligations of the Borrower under the Loan Documents and the Borrower hereby pledges and grants to Lender a continuing security interest in said funds. Furthermore, the Borrower recognizes and agrees that (i) possession of said funds by the Lender constitutes a bona fide pledge of said funds to the Lender for security purposes, (ii) to the extent required by applicable law, this Agreement, in combination, as necessary, with other documents referred to herein, constitutes a valid and binding security agreement, and (iii) the validity and effectiveness of said pledge will not be compromised if said funds are held in a bank or other financial institution. The Borrower further acknowledges and agrees that, notwithstanding any nomenclature or title given to the Excess Equity Account by the bank or other financial institution at which the Excess Equity Account is held, or the fact that the

Borrower's tax identification number is used with respect to the Excess Equity Account, the Lender, and not the Borrower, shall be the customer of the bank or other financial institution holding the Excess Equity Account; such bank or other financial institution shall comply with instructions originated by the Lender directing the disposition of funds in the Excess Equity Account, without further consent of the Borrower; and the Lender, and not the Borrower, shall have the exclusive right to withdraw funds from the Excess Equity Account.

(h) Distributions from Certain Capital Events. Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Mortgaged Property shall not be deemed to be a Limited Dividend Distribution, and shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Borrower's Equity. In clarification of the preceding sentence, upon any refinancing, the amount of Borrower's Equity shall remain the same, notwithstanding the fact that the amount of the mortgage loan secured by the Mortgaged Property may change. Per Lender's Limited Dividend Policy, a re-evaluation of Borrower's Equity shall occur no more frequently than once every five (5) years, and only pursuant to the methodology set forth in said policy.

### 13. Information.

(a) The Borrower covenants and agrees to secure and maintain on file for inspection and copying by the Lender such information, reports and certifications as the Lender may reasonably require in writing in order to insure that the Occupancy Requirements contained herein are being complied with. The Borrower further covenants and agrees to submit to the Lender annually, or more frequently if required in writing by the Lender, reports detailing such facts as the Lender reasonably determines are sufficient to establish compliance with the restrictions contained hereunder, copies of leases for all Affordable Housing Units, and a certification by the Borrower that, to the best of its knowledge, the restrictions contained herein are being complied with. The Borrower further covenants and agrees promptly to notify the Lender if the Borrower discovers noncompliance with any restrictions hereunder.

(b) In addition to the financial information required to be furnished by the Borrower to the Lender pursuant to the Loan Documents and Section 13(a) above, the Borrower shall furnish to the Lender, during the Limited Dividend Term, within ninety (90) days of the end of its Fiscal Year, an audited Annual Limited Dividend Financial Report. The Lender's agreement to waive or modify the requirement of an audited Annual Limited Dividend Financial Report for a given year shall not be deemed to constitute a waiver or modification of the requirement of an audited Annual Limited Dividend Financial Report in any subsequent year. Should the Borrower fail in any given year to comply with its obligations under this subparagraph, the Borrower acknowledges and agrees that such failure constitutes a knowing waiver and relinquishment of any Limited Dividend Distributions to which it might otherwise be entitled for such year pursuant to Sections 12(c) and/or 12(e) above.

(c) Annually, during the Term, no later than September 30, the Borrower shall submit to DHCD, via the web-based annual reporting system located at <https://hedhsgdevannualreport.azurewebsites.net/>, or as otherwise instructed, an annual report containing the following in a form approved by DHCD and containing such supporting documentation as DHCD shall require:

- (i) Data required by DHCD regulations at 760 CMR 61.00 promulgated pursuant to Chapter 334 of the Acts of 2006 (the "Data Collection Act") and all applicable DHCD directives, guidelines and forms as may be amended from time to time and such data fields as are contained in the web-based system. The Borrower shall collect said data for the express purpose of reporting to DHCD, and the collection and reporting of said data shall comply with said regulations, directives, guidelines and forms.

- (ii) The Borrower shall submit such additional reports to DHCD as deemed necessary to ensure compliance with the Data Collection Act and the regulations promulgated thereunder.
- (iii) A certification by the Borrower or the Borrower's managing agent that the information submitted pursuant to this Subparagraph (c) is true and accurate.

The Lender and the Borrower shall treat as confidential any of the foregoing information relating to a specific tenant or Affordable Housing Unit in compliance with all applicable state and federal statutes and regulations, including, without limitation, M.G.L c. 66A, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but the Lender and Borrower may release general statistical and other information about the Mortgaged Property, so long as the privacy rights and interests of the individual tenants are protected). The Lender and the Borrower shall not use any of the information obtained and/or furnished pursuant to Subparagraph (c) for any purpose described in the federal Fair Credit Reporting Act (15 U.S.C. §1681a(d)(1)) and Section 603(d)(1) of Public Law No. 91-508 or in any manner that would cause a lender or borrower to be considered a "consumer reporting agency" under the federal Fair Credit Reporting Act (15 U.S.C. §1681a(f) and 603(f) of Public Law No. 91-508).

14. Monitoring.

(a) For the period commencing on the date this Agreement is recorded, and continuing until the earlier of (i) the maturity of the Loan or (ii) repayment of the Loan, the Lender shall monitor the Borrower's compliance with this Agreement at no cost to the Borrower.

(b) For the duration of the Fee-Based Monitoring Period, the Lender, its designee or assignee shall continue to monitor the Borrower's compliance with all or a portion of the ongoing requirements of this Agreement. As partial compensation for its services in monitoring compliance with this Agreement, on or about commencement of the Fee-Based Monitoring Period, the Lender shall invoice the Borrower for the annual monitoring services fee (calculated in accordance with subparagraphs (c) and (d) below) due to be paid by the Borrower to the Lender for the portion of the calendar year remaining after commencement of the Fee-Based Monitoring Period. Thereafter, for each calendar year of the Fee-Based Monitoring Period, the Lender shall, after publication of the CPI-U, invoice the Borrower for the annual monitoring services fee due for such calendar year. The Borrower shall pay such invoice in full within thirty (30) days of the date of the invoice. The Borrower's failure or refusal to pay the monitoring fee to the Lender in a timely manner shall constitute an Event of Default hereunder.

(c) The base monitoring fee is \$150.00 per Affordable Housing Unit per year (the "Base Fee"). The annual invoice shall state the monitoring services fee calculated by multiplying the most recent Adjusted Base Fee, defined below, by the total number of Affordable Housing Units. The Base Fee shall be adjusted annually (commencing with the year following the Loan Closing Date), following publication of the CPI-U for the immediately preceding calendar year by the Bureau of Labor Statistics yielding, for each year, an "Adjusted Base Fee". The Lender shall furnish the Borrower annually with a Notice of Adjusted Base Fee (designated, by way of example: "Adjusted Base Fee: Year 2011"), beginning in the year following the Loan Closing Date. The initial adjustment to the Base Fee shall be calculated by multiplying the Base Fee by the lesser of (a) 110% or (b) (1+ CPI-U) for the immediately preceding calendar year. Adjustments to the Adjusted Base Fee for each subsequent year shall be made by multiplying the most recent Adjusted Base Fee (as set forth in the Lender's most recent Notice of Adjusted Base Fee) by the lesser of (a) 110% or (b) (1 + CPI-U) for the immediately preceding calendar year.

(d) If the Bureau of Labor Statistics should cease to publish such the CPI-U in its present form and calculated on the present basis, a comparable price index or a price index reflecting changes in the cost of living determined in a similar manner shall be chosen at the sole discretion of the Lender, with notice to the Borrower. The level of the CPI-U or comparable price index as of any day relevant to the application of any part of this Section dealing with an “adjustment” shall be that published by the Bureau of Labor Statistics for the immediately preceding calendar year.

(e) The Borrower acknowledges that in performing its monitoring services hereunder the Lender is not acting as agent or fiduciary for the Municipality, and any waiver by the Lender of any requirement hereunder shall not be binding upon the Municipality and shall not be deemed a waiver of any obligation of the Borrower under the Comprehensive Permit.

(f) The Lender may, from time to time, and after notice to the Municipality, engage the service of a qualified third party monitoring agent for purposes of monitoring the Borrower’s performance under this Agreement. If, within twenty (20) days of receipt of any such notice, the Municipality notifies Lender in writing that it believes that such proposed monitoring agent is not properly qualified, Lender shall, in good faith, make all reasonable efforts to address the Municipality’s concerns. In the event a third party monitoring agent is engaged, such monitoring agent shall have authority to act in all matters relating to the Lender’s obligations under this Agreement and shall apply and adhere to the standards and policies of DHCD relative to the administrative responsibilities of subsidizing agencies under the Act. Such monitoring agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

15. Enforcement.

(a) If the Lender provides written notice in accordance with Section 19 hereof of any default, violation or breach of any provision of this Agreement by the Borrower (“Default”) and such Default is not cured to the satisfaction of the Lender within thirty (30) days after the giving of notice to the Borrower or such a longer period of time as is necessary to cure such Default so long as Borrower is diligently and continuously pursuing a cure (“Event of Default”), the Lender may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or for such other relief as may be appropriate, since the injury to the Lender arising from the default under any of the terms of this Agreement would be irreparable and the amount of damages cannot be ascertained and/or compensated by money alone; and the Lender may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement; or Lender may terminate this Agreement.

(b) In the event the Lender brings an action to enforce this Agreement and prevails in any such action, the Borrower shall pay all fees and expenses, including reasonable attorneys’ fees and costs of the Lender (including court costs and the time of any in-house counsel of Lender charged at the same rate as comparable outside attorneys).

(c) The Borrower hereby grants to the Lender or its designee or agent the right to enter upon the Mortgaged Property at reasonable times and upon reasonable notice for the purpose of monitoring and enforcing the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

(d) No act or omission by the Lender other than a writing signed by it waiving a breach by the Borrower shall constitute a waiver thereof.

16. Successors and Assigns. This Agreement shall bind and the benefits shall inure to the Borrower and the Lender, and their respective successors and assigns for the Term of this Agreement. Upon a sale or other conveyance of the Mortgaged Property, the new owner shall assume and perform all of the duties and obligations of the Borrower pursuant to this Agreement arising or accruing on or after the date of such sale or other conveyance. The prior owner shall have no obligation or liability under this Agreement by reason of any action, inaction or default which occurs on or after the date of the sale or other conveyance. Any successor owner must demonstrate that it is qualified to implement the Housing Development's affirmative fair housing marketing and resident selection plan in accordance with applicable DHCD guidance.

17. Amendment and Modification. This Agreement may not be modified or amended except in a writing signed by the Lender and the Borrower or by their respective successors and assigns. Notice of such amendment shall be sent to the Municipality, which may review the form for compliance with the Act and the Comprehensive Permit. If, within twenty (20) days of receipt of any such amendment, the Municipality notifies Lender in writing that it believes such amendment does not comply with the Act or the Comprehensive Permit, Lender shall, in good faith, make all reasonable efforts to address the Municipality's concerns.

18. Limitation on Liability and Indemnification.

(a) The Lender shall not be liable for any action taken or omitted under this Agreement so long as its actions do not constitute gross negligence or willful misconduct. Subject to the foregoing, the Borrower indemnifies and holds the Lender harmless of, from and against all damages, costs, claims and liabilities, including reasonable attorneys' fees and costs, asserted against the Lender arising from, relating to or in connection with this Agreement and/or the Mortgaged Property.

(b) Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any breach or default by Borrower hereunder, the Lender will look solely to the Mortgaged Property for satisfaction of any judgment against Borrower and no officer, partner, manager, member, agent or employee of Borrower shall have any personal liability hereunder or for the performance of any obligation of Borrower hereunder. Nothing in this paragraph shall affect or derogate from Lender's rights against any guarantor or any other party who may have liability under the Loan Documents while the Loan is outstanding.

19. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be hand-delivered by a reputable delivery service or sent by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth on the first page of this Agreement or to such other place as the Lender or the Borrower from time to time designate in writing in accordance with this provision. A notice shall be deemed received on the date of delivery.

20. Severability. All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision or part hereof shall be determined to be invalid, illegal or unenforceable, this Agreement shall be construed as if such invalid, illegal or unenforceable provision or part thereof has not been contained herein.

21. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

22. Recording. Borrower, at its cost and expense, shall cause this Agreement to be duly recorded or filed and rerecorded or refiled at the Registry and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Lender to enforce this Agreement. Borrower shall provide Lender with satisfactory evidence that there are no mortgages or other encumbrances senior to this Agreement.

23. Applicability. Notwithstanding anything to the contrary in this Agreement, Lender and Borrower agree that this Agreement shall be given effect and shall apply to the Mortgaged Property only if and to the extent that the Borrower or Borrower's successor in title constructs the Housing Development on the Mortgaged Property. Nothing in this Agreement shall require the construction of the Housing Development nor preclude the Borrower from using the Mortgaged Property for any other purpose.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the date and year first written above.

BORROWER:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Hereunto Duly Authorized

LENDER:

MASSACHUSETTS HOUSING  
PARTNERSHIP FUND BOARD

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 201\_

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me the undersigned notary public, personally appeared the above-named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, proved to me by satisfactory evidence of identification, consisting of: [circle one] (a driver's license) (a passport) (my personal knowledge) (other: \_\_\_\_\_), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:  
SEAL

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 201\_

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me the undersigned notary public, personally appeared the above-named \_\_\_\_\_, \_\_\_\_\_ of the Massachusetts Housing Partnership Fund Board, proved to me by satisfactory evidence of identification, consisting of: [circle one] (a driver's license) (a passport) (my personal knowledge) (other: \_\_\_\_\_), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:  
SEAL

**[ACKNOWLEDGEMENT OF ZONING BOARD OF APPEALS**

The undersigned duly authorized Chair of the \_\_\_\_\_ Zoning Board of Appeals hereby acknowledges that the foregoing Agreement (“Agreement”) satisfies the requirements for a “Regulatory Agreement” in the Comprehensive Permit, as defined therein, and that the Comprehensive Permit is subject to M.G.L. Chapter 40B, Sections 20-23; 760 CMR 56.00; and the Comprehensive Permit Guidelines issued by the Massachusetts Department of Housing and Community Development (DHCD) (collectively, the “Comprehensive Permit Rules”). Without limiting the generality of the foregoing, the units in the Housing Development required to be affordable under the Comprehensive Permit shall be affordable if such units are rented in accordance with the Agreement; any local preference set forth in the Comprehensive Permit shall be implemented only in compliance with applicable state and federal fair housing rules and the Comprehensive Permit Rules; compliance with the Agreement shall be determined solely by the Lender during the initial thirty (30) year term in accordance with the Comprehensive Permit Rules; and the transfer of the Comprehensive Permit shall be governed exclusively by the Comprehensive Permit Rules. In addition, the Agreement shall control over the Comprehensive Permit with respect to any matter which is addressed by the Agreement.

\_\_\_\_\_  
Name:  
Chair, \_\_\_\_\_ Zoning Board of Appeals

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the Chair of the \_\_\_\_\_ Zoning Board of Appeals, proved to me through satisfactory evidence of identification, which was [a current driver’s license][a current U.S. passport][my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed.

\_\_\_\_\_  
Notary Public  
My commission expires:]

**EXHIBIT A**

**(Mortgaged Property Description)**

**SECTION 9**

**LIST OF EXCEPTIONS TO THE ZONING BYLAWS AND  
OTHER LOCAL LAND USE REQUIREMENTS**

**JFK CROSSING  
PROPOSED WAIVER LIST  
L-1.0 Zoning District  
May 2016**

<b>Brookline Zoning By-Laws</b>				
<b>Bylaw Section</b>	<b>Requirement</b>	<b>Requested Waiver(s)</b>	<b>Details of Proposal Requiring Waiver</b>	<b>Waiver Number</b>
<b>§4.08</b>	Affordable Housing Requirements	Waiver to allow affordable housing requirements under Chapter 40B, rather than under 4.08.	The Development is a multi-family housing development under c.40B, so the affordable housing requirements are governed by the comprehensive permit.	A
<b>§5.09</b>	Design Review	Design Review requirements not applicable under M.G.L. c. 40B.	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	B
<b>Table §5.01</b>	Maximum Floor Area	Waiver from maximum ratio of gross floor area to lot area (1.0 in L-1.0 District)	The Development is on a 10,851 sf. lot and will have a floor area ratio of approximately 3.76	C
<b>Table §5.01</b>	Maximum Height of Buildings	Waiver from maximum building height limitations (40' in L-1.0 District)	The height of the Development will be 64' at its maximum.	D
<b>Table 5.01</b>	Minimum Front Yard	Waiver from 10'	The proposed front yard is 3.5'	E
<b>Table 5.01</b>	Minimum Side Yard	Waiver from 10'+L/10'	The proposed side yard is 5'	F
<b>Table 5.01</b>	Minimum Rear Yard	Waiver from 30'	The proposed rear yard is 5'	G
<b>Table 5.01</b>	Maximum Building Stories	N/A	6 stories are proposed	H
<b>Table 5.01</b>	Maximum Lot Coverage	Waiver from 80%	82% proposed lot coverage	I
<b>Table 5.01</b>	Minimum Open Space (landscaped)	Waiver from 10%	2.3% (940 SF) proposed	J
<b>Table 5.01</b>	Minimum Open Space (usable)	Waiver from 20%	3.0% (1,220 SF) proposed	K

<b>Table 6.02</b>	Parking Spaces – 2.0/residential unit	Waiver to allow 0.8 spaces/unit	The proximity to public transportation and the parking lots nearby allow for a lower parking ratio	L
<b>§3.17</b>	Department of Public Works	Waiver from the Department of Public Works site plan approval process, curb cut procedure, tree removal, and construction and maintenance related parking permits.	Comprehensive Permit, as may be granted by Zoning Board of Appeals shall provide all local permits per M.G.L. c. 40B § 20-23.	M

**SECTION 10**

**TRAFFIC IMPACT ASSESSMENT**

# MEMORANDUM

**TO:** Mr. Victor Sheen  
Oakgrove Residential  
420 Harvard Street  
Brookline, MA 02446

**FROM:** Scott W. Thornton, P.E., Associate *and*  
Derek Roach E.I.T., Transportation  
Engineer  
Vanasse & Associates, Inc.  
35 New England Business Center Drive  
Suite 140  
Andover, MA 01810  
(978) 474-8800

**DATE:** May 25, 2016

**RE:** 7368

**SUBJECT:** Preliminary Transportation Assessment,  
420 Harvard Street, Brookline, MA

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## **INTRODUCTION**

Vanasse & Associates, Inc. (VAI) has prepared this preliminary Transportation Assessment in order to identify the traffic impacts associated with a proposed residential and office development (the "Project") located at 420 Harvard Street in Brookline, Massachusetts. This report identifies existing transportation conditions, estimates traffic generation, and reviews site access for the Project.

## **PROJECT DESCRIPTION**

The Project entails a transit oriented development of 36 apartments and 2,650 square feet (sf) of office to be located at 420 Harvard Street in Brookline, Massachusetts. Currently, 420 Harvard Street is an older residential building which has been expanded to provide office space. The existing building has with three residential apartments and two commercial office tenants. The site is situated on the southwest corner of the intersection of Harvard Street and Fuller Street. Access to the project site will be provided by way of an existing curb cut on Fuller Street. Parking will be provided for 29 vehicles.

## **STUDY AREA**

### **Fuller Street**

Fuller Street, in the vicinity of the site, is a roadway under local jurisdiction that generally travels in a northeast/southwest orientation in Brookline. Fuller Street is a single-lane roadway with travel separated by a double yellow centerline. Concrete sidewalks are provided along both sides of Fuller Street. Illumination is provided by way of street lights mounted on wood poles. Land use along Fuller Street consists primarily of residential and commercial properties.

### **Harvard Street at Fuller Street**

Harvard Street is intersected by Fuller Street from the east and west to form this four-way intersection currently under signalized control. The Harvard Street northbound approach consists of an approximately 10.5-foot wide

exclusive left turn lane and an 11-foot wide shared through movement and right-turn lane, with a 7-foot wide shoulder for on street parking and a 12-foot wide sidewalk. North of the intersection, a five-foot wide bike lane exists. An approximately 9.5-foot wide crosswalk is provided across this approach. The Harvard Street southbound approach consists of an approximately 10-foot wide exclusive left turn lane and an 11-foot wide shared through movement and right-turn lane, with a 7-foot wide shoulder for on street parking and a 13-foot wide sidewalk. South of the intersection, a five-foot wide bike lane exists. An approximately 10.5-foot wide crosswalk is provided across this approach. Direction of travel on Harvard Street is separated by a double yellow centerline. The Fuller Street eastbound approach consists of an approximately 11.5-foot general purpose travel lane, with a 7.5-foot wide sidewalk. An approximately 10-foot wide crosswalk is provided across this approach. The Fuller Street westbound approach consists of a 14-foot wide general purpose travel lane, with a 6.5-foot wide sidewalk. An approximately 10-foot wide crosswalk is provided across this approach. Direction of travel on Fuller Street is separated by a double yellow centerline. Pedestrian signal heads are present at the intersection and “No Turn on Red” signs are provided for each approach. All pedestrian equipment and signal heads were observed to be operating and in good general condition. Land use in the vicinity of this intersection consists of commercial properties.

### **PARKING SUMMARY**

Parking is provided along Harvard Street via metered parking. The meters are active Monday through Saturday from 8:00 AM to 8:00 PM with a maximum stay of 2 hours. Sunday and Holidays are excluded. No parking is available along either side of Fuller Street in the vicinity of the site.

### **PUBLIC TRANSPORTATION**

Public transportation services are provided within the study area by the Massachusetts Bay Transit Authority (MBTA). The MBTA operates fixed-route bus services in the vicinity of the site. Bus Route 57/57A – Watertown Yard or Oak Square – Kenmore Station stops at the intersection of Brighton Avenue at Commonwealth Avenue which is approximately 2,700 feet north of the project site. Bus Route 66 – Harvard Station – Dudley Station stops at the intersection of Harvard Street at Coolidge Street which is approximately 200 feet northeast of the project site. The MBTA Green Line B Branch runs along Beacon Street and Commonwealth Avenue with local stops at Packards Corner and Harvard Avenue which are approximately 2,400 feet north and 2,100 feet northwest from the project site respectively. The Green Line C Branch runs from Cleveland Circle to North Station with local stops at Coolidge Corner and Summit Avenue which are approximately 2,100 feet southeast and 1,700 feet south from the project site respectively.

### **PROJECT-GENERATED TRAFFIC**

The project entails the development of 36 apartments and 2,650 square feet (sf) of office space. In order to develop the traffic characteristics of the proposed project, trip-generation statistics published by the Institute of Transportation Engineers (ITE)<sup>1</sup> for LUC 220 – Apartment and LUC 710 – General Office Building was used. Based upon US Census data, the following mode split is assumed: 44% vehicle trips and 56 % public transit/other travel modes (non-vehicle trips).

A comparison was conducted between the existing uses and the proposed uses using data from the ITE. The results of this comparison are presented in Table 1.

---

<sup>1</sup>*Trip Generation Manual*, Ninth Edition; Institute of Transportation Engineers; Washington, DC; 2012.



**Table 1  
TRIP GENERATION SUMMARY**

Time Period	Current Land Use				Proposed Land Use				Current Compared to Proposed Land Use
	Residential Trips <sup>a</sup> 3 Units (A)	Office Trips <sup>b</sup> 6,177 sf (B)	Public Transit/Other Travel Mode Trips <sup>c</sup> (56%) (C)	Net Vehicle Trips D=(A+B)-C	Residential Trips <sup>a</sup> 36 Units (E)	Office Trips <sup>b</sup> 2,650 sf (F)	Public Transit/Other Travel Mode Trips <sup>c</sup> (56%) (G)	Net Vehicle Trips H=(E+F)-G	
Average Weekday Daily Traffic	20	68	49	39	240	30	151	119	80
<i>Weekday Morning Peak Hour:</i>									
Entering	0	9	5	4	4	4	4	4	0
Exiting	2	1	2	1	14	0	8	6	5
Total	2	10	7	5	18	4	12	10	5
<i>Weekday Evening Peak Hour:</i>									
Entering	1	2	2	1	14	1	9	6	5
Exiting	1	7	4	4	8	3	6	5	1
Total	2	9	6	5	22	4	15	11	6

<sup>a</sup>Based on ITE LUC 220, Apartments.

<sup>b</sup>Based on ITE LUC 710, General Office Building

<sup>c</sup>Based on journey to work data for Brookline obtained from the United States Census Bureau, ACS 2009-2013.



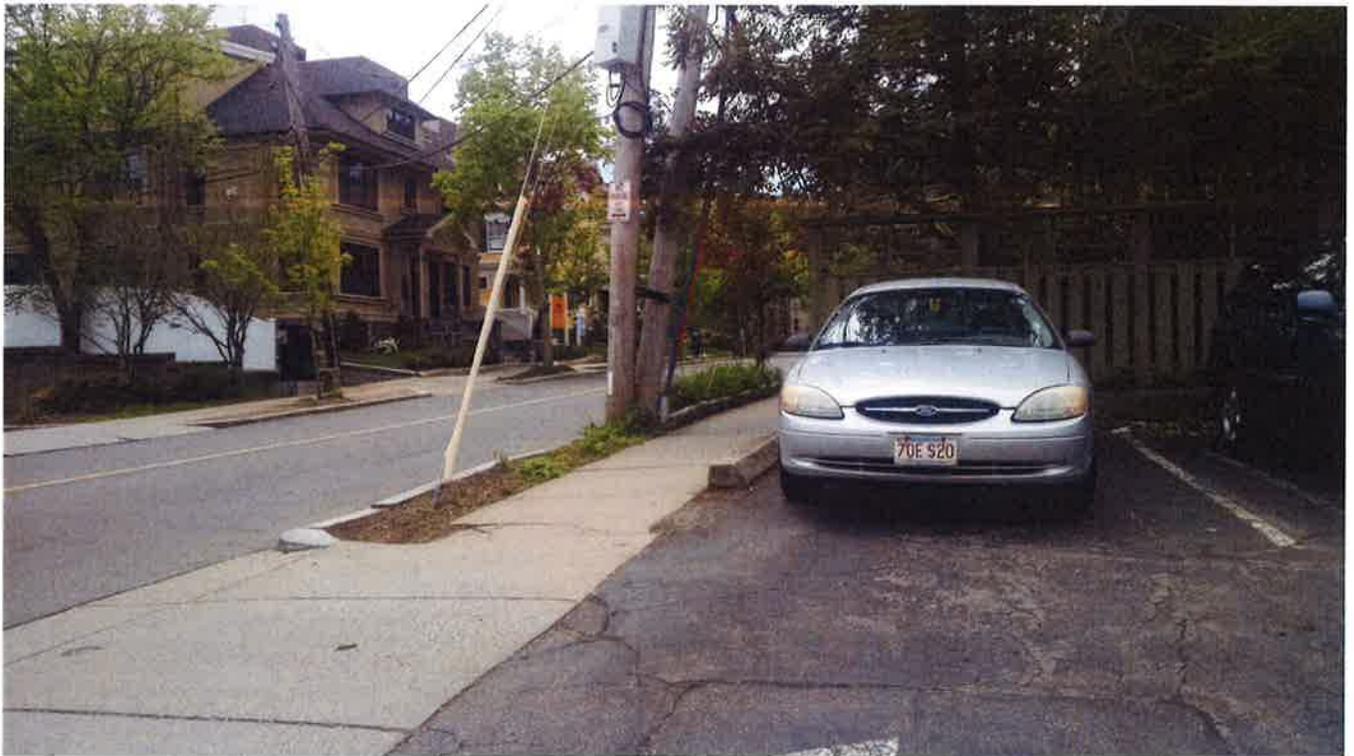
As can be seen in Table 1, the Project is expected to generate approximately 80 new vehicle trips on an average weekday (two-way, 24-hour volume) compared to the current land use at the site. Approximately 5 new vehicle trips (0 vehicles entering and 5 exiting) are expected during the weekday morning peak-hour. During the weekday evening peak hour the Project is expected to generate approximately 6 new vehicle trips (5 vehicles entering and 1 exiting). These project trip increases are equivalent to one trip every 10 to 12 minutes during the peak hours under review, which is a small increase and not likely to be noticed by the public in the area.

### **DRIVEWAY SIGHT DISTANCE**

A review of driveway sight distance was conducted in order to determine the safety of the driveway. No speed limit signs were observed on Fuller Street in the vicinity of the site; therefore speeds were assumed to be 30 miles per hour (mph), consistent with Massachusetts General Laws (MGL) Chapter 90 Section 17 indicating 30 mph in a thickly settled or business district. Assuming a 30 mph design speed, the measured sight distance of 200 feet is required. Figure 1 and Figure 2 depict the sight distance in each direction.



*Figure 1 - Sight Distance from Driveway Looking Northeast (Left)*



***Figure 2 - Sight Distance from Driveway Looking Southwest (Right)***

The sight distance for motorists approaching the driveway is between 340 feet (approaching from the east) and over 500 feet (approaching from the west); therefore the minimum sight distance is more than met. Looking to the left from the driveway, approximately 301 feet of sight distance exists while looking to the right, approximately 199 feet of sight distance is present. These distances are essentially unchanged from the present condition and are satisfactory given the traffic demands of the Project.

## **CONCLUSIONS**

The following aspects of the Project are noted:

### **Site Access**

Access to the Project site will be provided via a single 32-foot wide driveway onto Fuller Street. This is adequate given the projected traffic volumes of the Project.

### **Parking**

Parking will be provided for 29 vehicles which should be adequate given the extensive use of public transportation and alternative transportation modes available in the area.

### **Transit/Bicycle**

Bike racks should be installed in the garage and transit schedules should be posted on site.

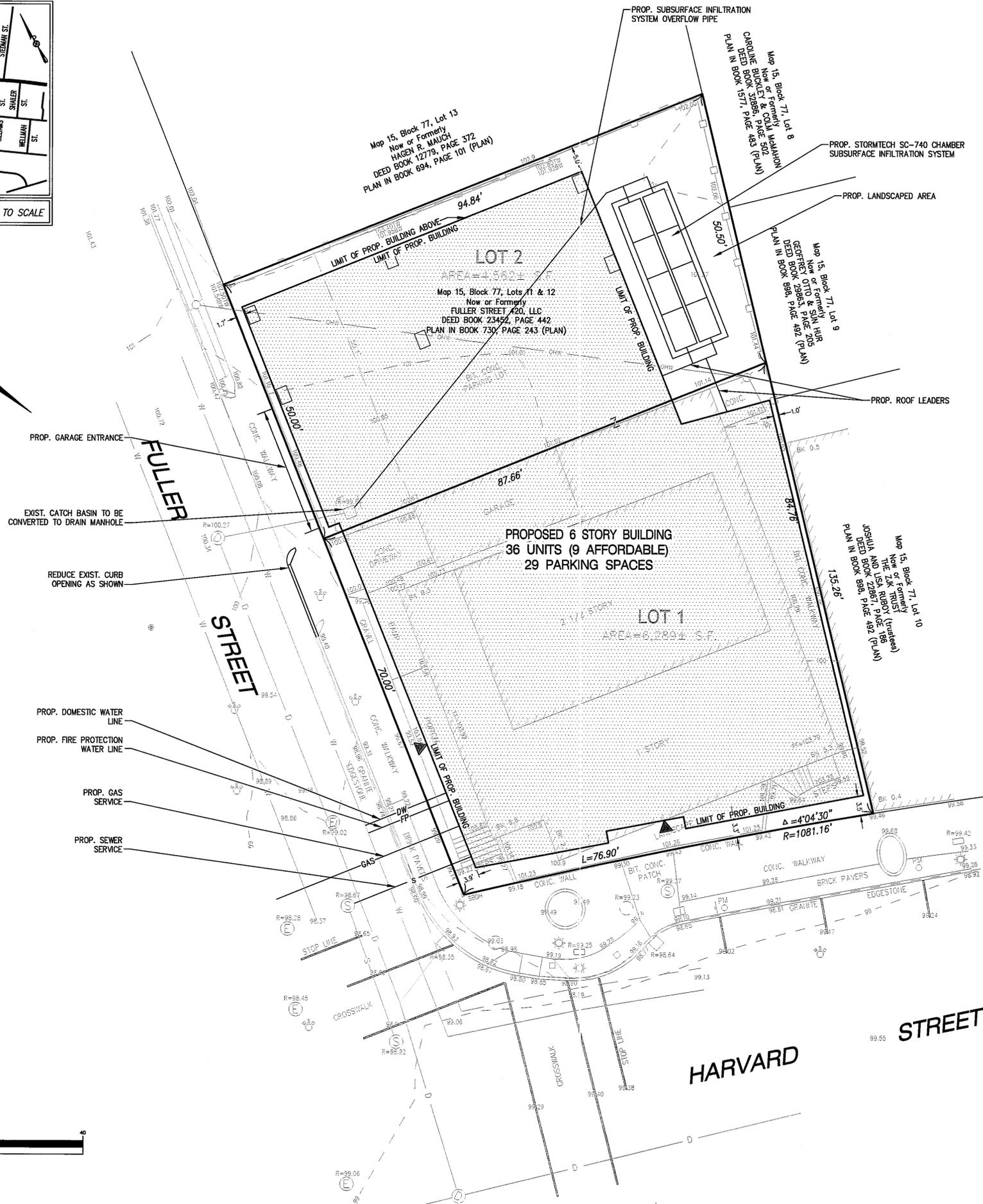
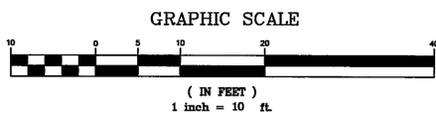
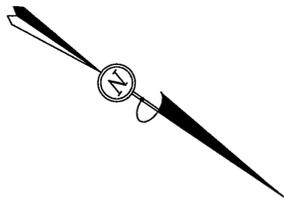
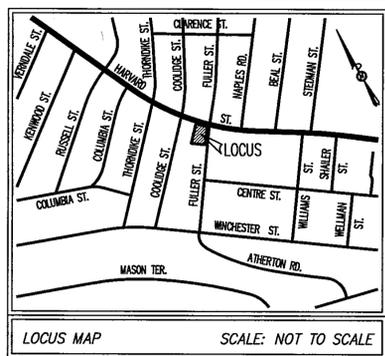
### **Net Traffic Increases**

The Project was shown to generate approximately 80 new vehicle trips on an average weekday (two-way, 24-hour volume), with approximately 5 new vehicle trips (0 vehicles entering and 6 exiting) expected during the weekday morning peak-hour. During the weekday evening peak hour the Project is expected to generate approximately 6 new vehicle trips (5 vehicles entering and 1 exiting). This is a minor increase in site traffic and is not likely to be noticed in the area.

Overall, the nature of the project as a redevelopment of an existing active land use minimizes the net impact and therefore the Project can be accommodated with minimal effects to the existing traffic conditions in the area.

**SECTION 11**

**SITE ENGINEERING PLANS**



LEGEND		ABBREVIATIONS	
	CATCH BASIN	AC	AIR CONDITIONING UNIT
	DRAIN MANHOLE	ASPH.	APPROXIMATE ASPHALT
	DRAIN PIPE	BCC	BITUMINOUS CONCRETE CURBING
	SEWER MANHOLE	BOL	BOLLARD
	SEWER PIPE	CB	CATCH BASIN
	WATER GATE/SHUTOFF	CLF	CHAIN LINK FENCE
	WATER MAIN	CO	CLEANOUT
	ELECTRIC MANHOLE	CONC.	CONCRETE
	HANDHOLE	CRW	CONCRETE RETAINING WALL
	GAS GATE/SHUTOFF	DUMP	DUMPSTER
	UTILITY POLE	EL	ELEVATION
	GUY WIRE	EOP	EDGE OF PAVEMENT
	OVERHEAD WIRES	EPLP	ENGINEERING PIN/LEAD PLUG
	LIGHT POLE	F.F.	FIRST FLOOR
	SIGN	FND	FOUND
	FLAGPOLE	GUY	GUY WIRE
	ROOF DRAIN	HH	HANDHOLE
	PARKING METER	HR	HANDRAIL
	MAJOR CONTOUR	I.P.	IRON PIPE
	MINOR CONTOUR	LP	LIGHT POLE
	SPOT GRADE	(M)	MARKED
	PROPOSED BUILDING ENTRANCE	MHB	MASSACHUSETTS HIGHWAY BOUND
		N/F	NOW OR FORMERLY
		No.	NUMBER
		O/H	OVERHANG
		R	OVERHEAD WIRES
		RD	ROOF DRAIN
		RRT	RAILROAD TIE
		SMH	SEWER MANHOLE
		T.O.F.	TOP OF FOUNDATION
		TYP	TYPICAL
		UEM	UTILITY ELECTRIC METER
		UP	UTILITY POLE
		VGC	VERTICAL GRANITE CURB
		WP	WOODEN POST
		WSF	WOODEN STOCKADE FENCE

- NOTES**
- EXISTING CONDITIONS INFORMATION TAKEN FROM A PLAN ENTITLED "PLAN OF LAND, 420 HARVARD STREET, BROOKLINE, MASSACHUSETTS (NORFOLK COUNTY)" DATED OCTOBER 5, 2015 AND PREPARED BY GREATER BOSTON SURVEYING AND ENGINEERING.  
  
ELEVATIONS SHOWN HEREON REFER TO AN ASSUMED DATUM.  
  
UNDERGROUND UTILITIES ARE PARTIALLY SHOWN HEREON BASED ON DIG SAFE PAINT MARKS. EVIDENCE OF ADDITIONAL UTILITIES EXIST WITHIN THE PROJECT LIMITS. RECORD PLANS FOR SHOWING ADDITIONAL INFORMATION ON THE UTILITIES HAS BEEN REQUESTED BUT NOT RECEIVED AS OF THIS DATE.
  - PROPOSED UTILITY CONNECTIONS ARE PRELIMINARY IN NATURE.



REV	DATE	DESCRIPTION	BY	APP

PREPARED BY:

**McKenzie Engineering Group, Inc.**  
PROFESSIONAL CIVIL ENGINEERING AND LAND SURVEYING  
180 LONGWATER DRIVE  
NORWELL, MA 02061  
PHONE: (781) 768-3800  
FAX: (781) 768-3883

**PROPOSED COMPREHENSIVE PERMIT DEVELOPMENT**  
(ASSESSOR'S PARCEL 077-11-12)  
420 HARVARD STREET  
BROOKLINE, MASSACHUSETTS

PROFESSIONAL ENGINEER:

OWNER/APPLICANT:  
**Oakgrove Residential, Inc.**

**NOT FOR CONSTRUCTION**

DRAWN BY:	AWL
DESIGNED BY:	AWL
CHECKED BY:	BCM
APPROVED BY:	BCM
DATE:	MAY 19, 2016
SCALE:	1"=10'
PROJECT NO.:	216-140
DWG. TITLE:	

**Site Feasibility Plan**

DWG. No: **1**

**SECTION 12**

EXISTING CONDITIONS SUMMARY

420 Harvard Street  
Brookline, MA

## PROJECT NARRATIVE

Located at the intersection of Harvard Street and Fuller Street, the proposed building replaces a once funeral home that was converted in the late 1990's, currently housing Re-Max (a real-estate agency) and 3 residential rental units above the first floor commercial space. Currently there are 9 surface parking spaces provided, and this area in addition to the extent of the asphalt paving and current building covers over 90% of the entire site. The existing building will be replaced with a single thirty-six unit, six-story building with covered parking accessed off of Fuller Street. This design has incorporated a fully automated parking system that allows for 23 parking spaces in addition to the 6 surface spaces for a total of 29 parking spaces.

The ground floor (first level) of the proposed building will house 2,650 square feet of new commercial space with entrances along Harvard Street, similar to those of commercial entries in adjacent buildings to this project. A separate lobby off of Fuller Street will provide access to the residential units. On the rear of the site, the design has allocated place for a 15'x15' open space area, loading zone along with access to bike storage and a trash room for use by both the residential and commercial spaces.

The exterior of the building has been designed with elements that promote a horizontal aesthetic for the building: A combination of full height store front system and large format stone veneer panels ground the base of the building. The second through fifth floors housing the residential units play off of the traditional Brookline vernacular with materials that will draw from the neighboring structures (various cladding, siding materials and color palate). The residential floors have been designed to step back as each floor goes up on the west side of the building adjacent to the home on Fuller Street opening up the skyline to the abutting property, which in turn helps to reduce the visual height of the building. For the north side of the building facing Coolidge Street, the rear of the building has been pulled back towards Harvard Street to align with the property line to the rear of the Butchery Building, increasing the rear open space in working discussions with MHP. All units throughout the building have been designed to provide layouts that promote open kitchen/living/dining spaces, with comfortably sized bedrooms, bathrooms, laundry, storage areas and private balconies. All units will have individual washer and dryer units, along with individual heating and cooling systems. Specific attention will be placed on making this a "sustainable" project, carefully selecting products from appliances through building components to achieve this level of sustainability.

The design provides for a range of unit sizes, coupled with the affordable component that will provide much needed quality housing that fits well within the immediate context and surrounding neighborhoods of Brookline.



Map 15, Block 77, Lot 13  
 Now or Formerly  
 HAGEN R. MAUCH  
 DEED BOOK 12779, PAGE 372  
 PLAN IN BOOK 694, PAGE 101 (PLAN)

Map 15, Block 77, Lot 8  
 Now or Formerly  
 CAROLINE BUCKLEY & COLM McMAHON  
 DEED BOOK 32866, PAGE 502  
 PLAN IN BOOK 1577, PAGE 483 (PLAN)

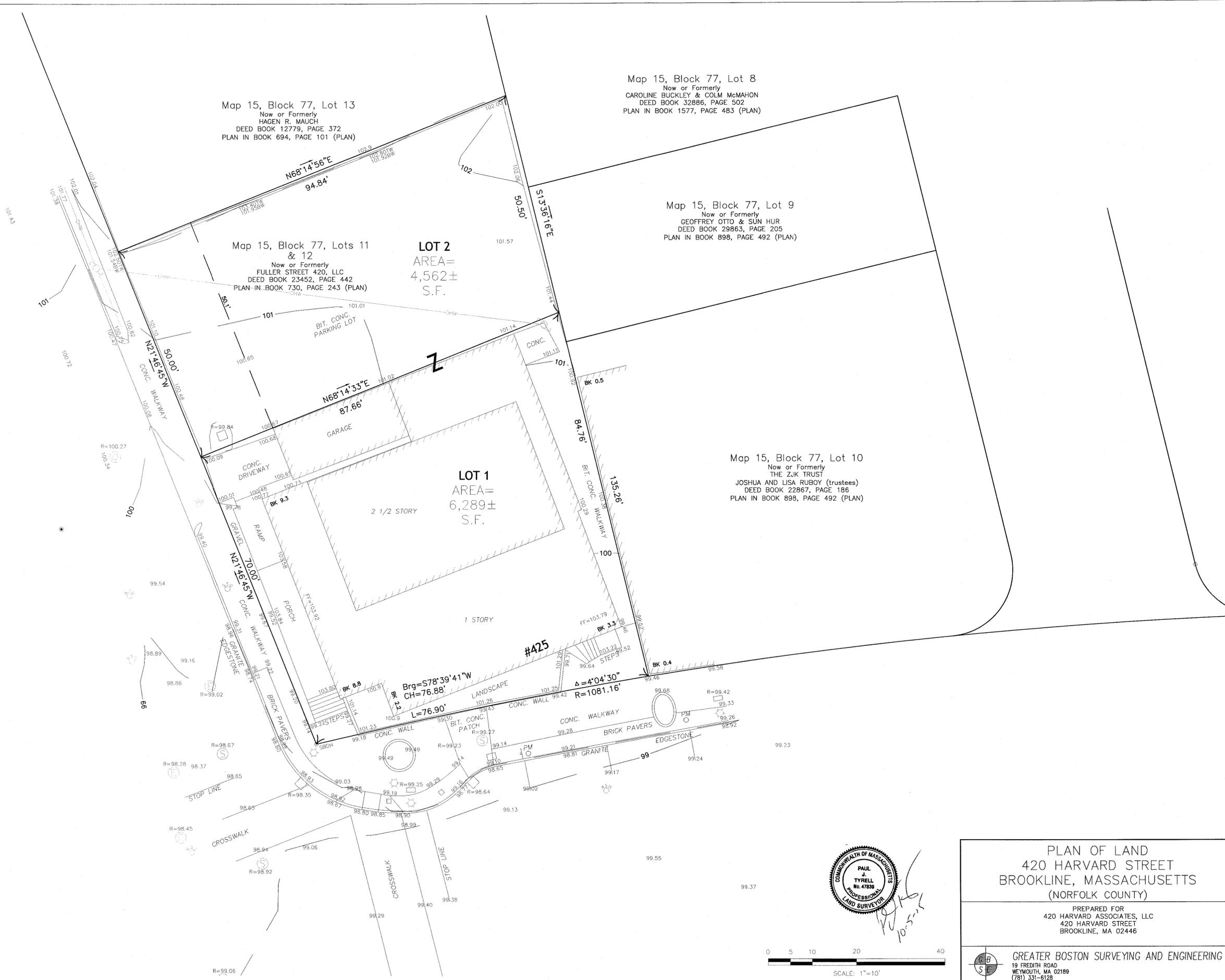
Map 15, Block 77, Lots 11  
 & 12  
 Now or Formerly  
 FULLER STREET 420, LLC  
 DEED BOOK 23452, PAGE 442  
 PLAN IN BOOK 730, PAGE 243 (PLAN)

**LOT 2**  
 AREA=  
 4,562±  
 S.F.

Map 15, Block 77, Lot 9  
 Now or Formerly  
 GEOFFREY OTTO & SUN HUR  
 DEED BOOK 29863, PAGE 205  
 PLAN IN BOOK 898, PAGE 492 (PLAN)

Map 15, Block 77, Lot 10  
 Now or Formerly  
 THE ZJK TRUST  
 JOSHUA AND LISA RUBOY (trustees)  
 DEED BOOK 22867, PAGE 186  
 PLAN IN BOOK 898, PAGE 492 (PLAN)

**LOT 1**  
 AREA=  
 6,289±  
 S.F.



NOTES:

- 1) ELEVATIONS SHOWN HEREON REFER TO AN ASSUMED DATUM.
- 2) UNDERGROUND UTILITIES ARE PARTIALLY SHOWN HEREON BASED ON DIG SAFE PAINT MARKS. EVIDENCE OF ADDITIONAL UTILITIES EXIST WITHIN THE PROJECT LIMITS. RECORD PLANS FOR SHOWING ADDITIONAL INFORMATION ON THE UTILITIES HAS BEEN REQUESTED BUT NOT RECEIVED AS OF THIS DATE.



<p>PLAN OF LAND          420 HARVARD STREET          BROOKLINE, MASSACHUSETTS          (NORFOLK COUNTY)</p>		
<p>PREPARED FOR          420 HARVARD ASSOCIATES, LLC          420 HARVARD STREET          BROOKLINE, MA 02446</p>		
	<p>GREATER BOSTON SURVEYING AND ENGINEERING          19 FREDRICH ROAD          WEYMOUTH, MA 02189          (781) 331-6128</p>	
CALC BY: DM	DATE: OCTOBER 5, 2015	SCALE: 1"=10'

**SECTION 13**

**ARCHITECTURAL AND LANDSCAPING PLAN**

# 420 HARVARD ST

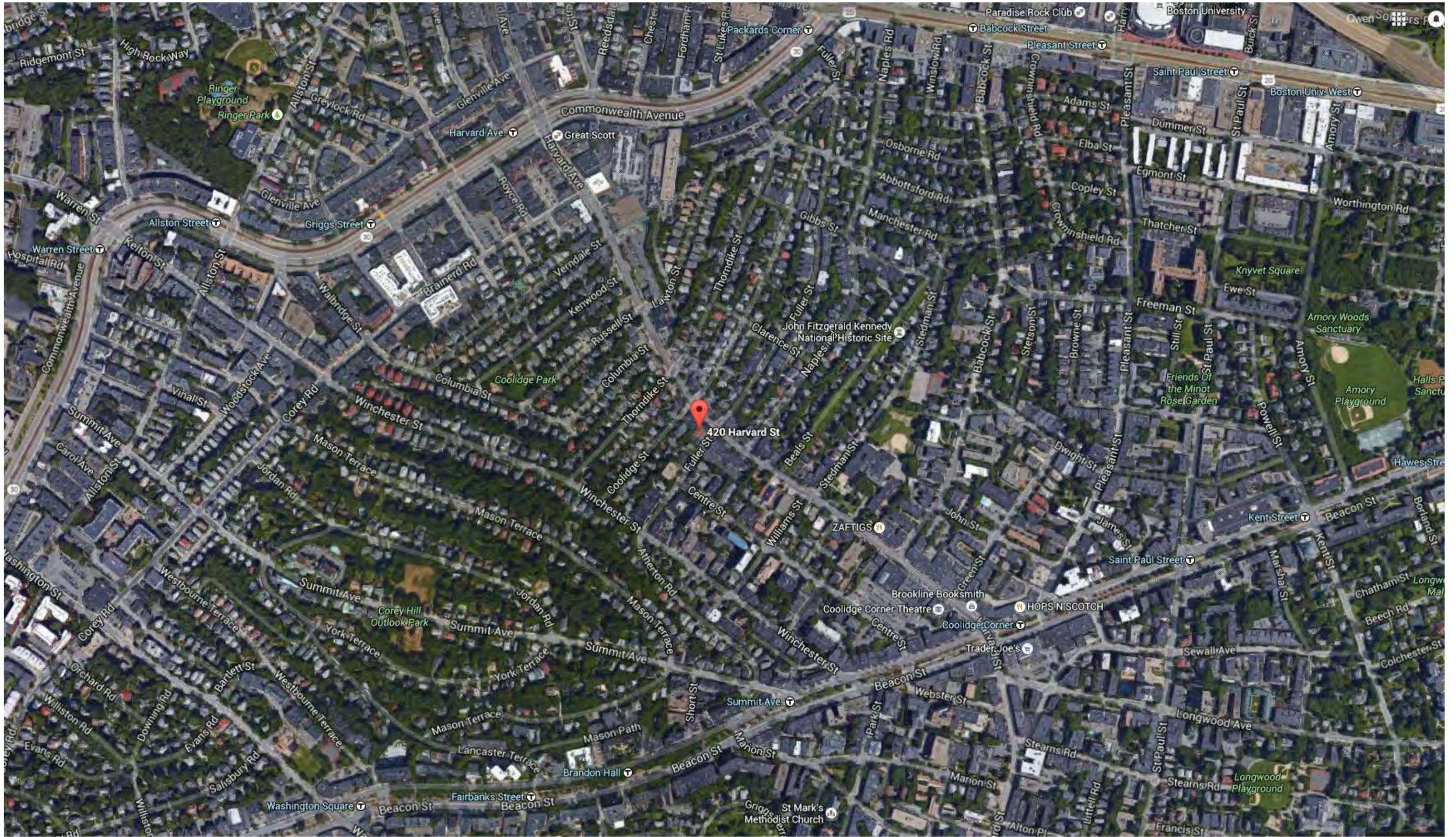
BROOKLINE, MA

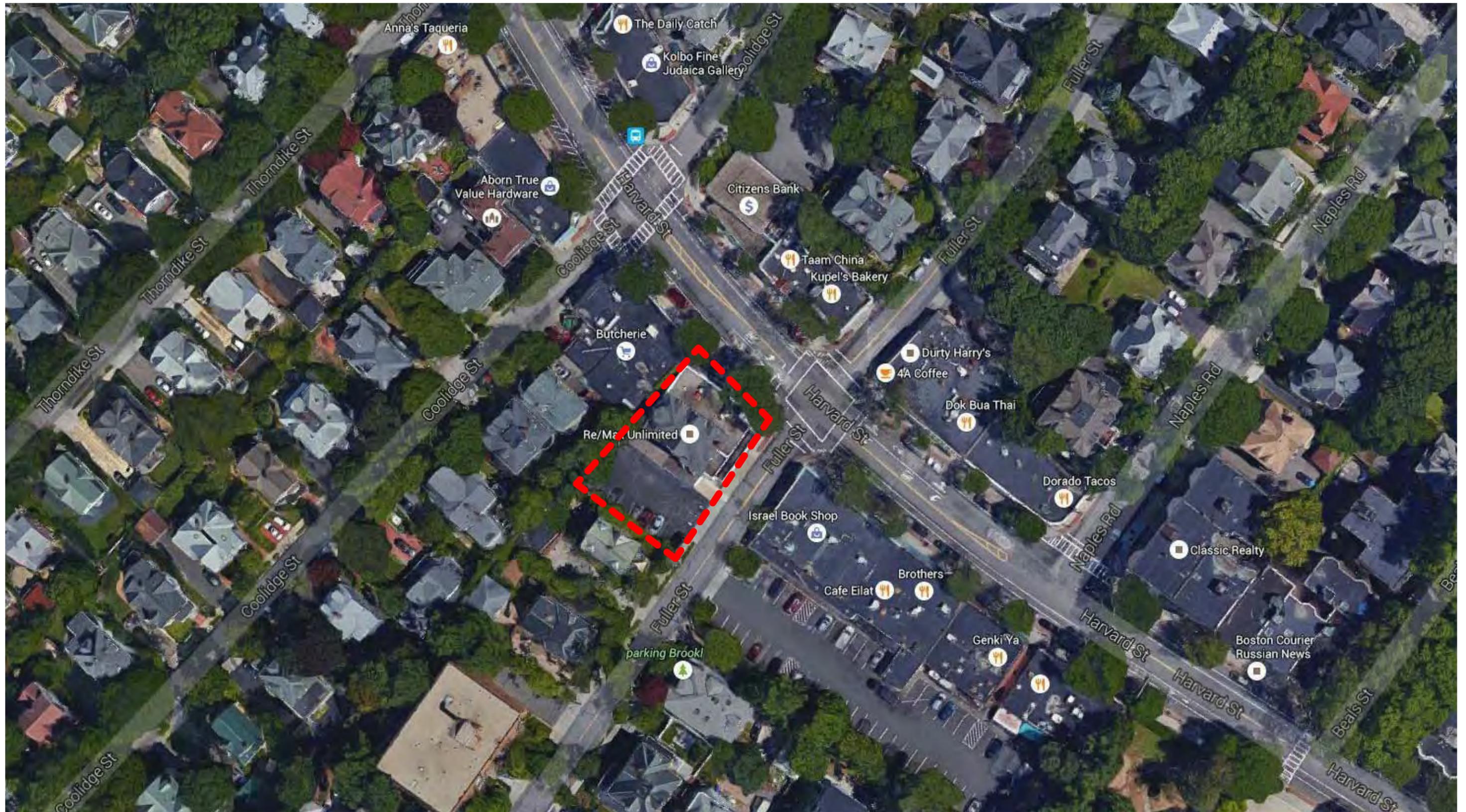
OAKGROVE RESIDENTIAL, INC.

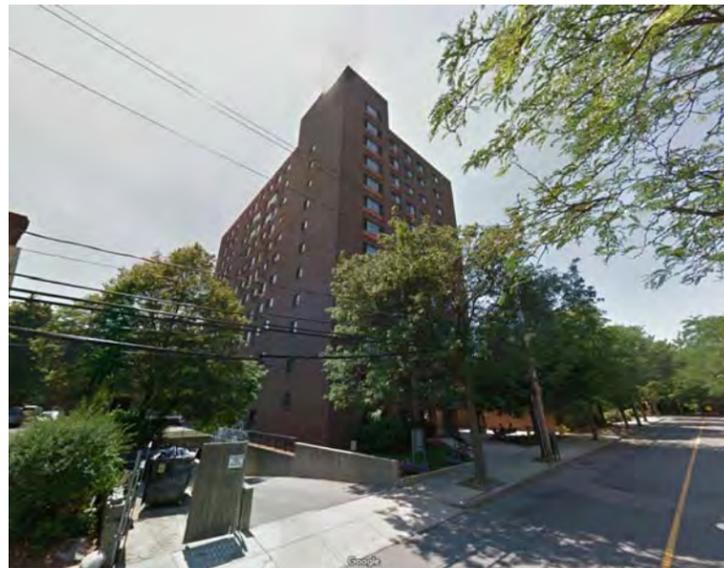
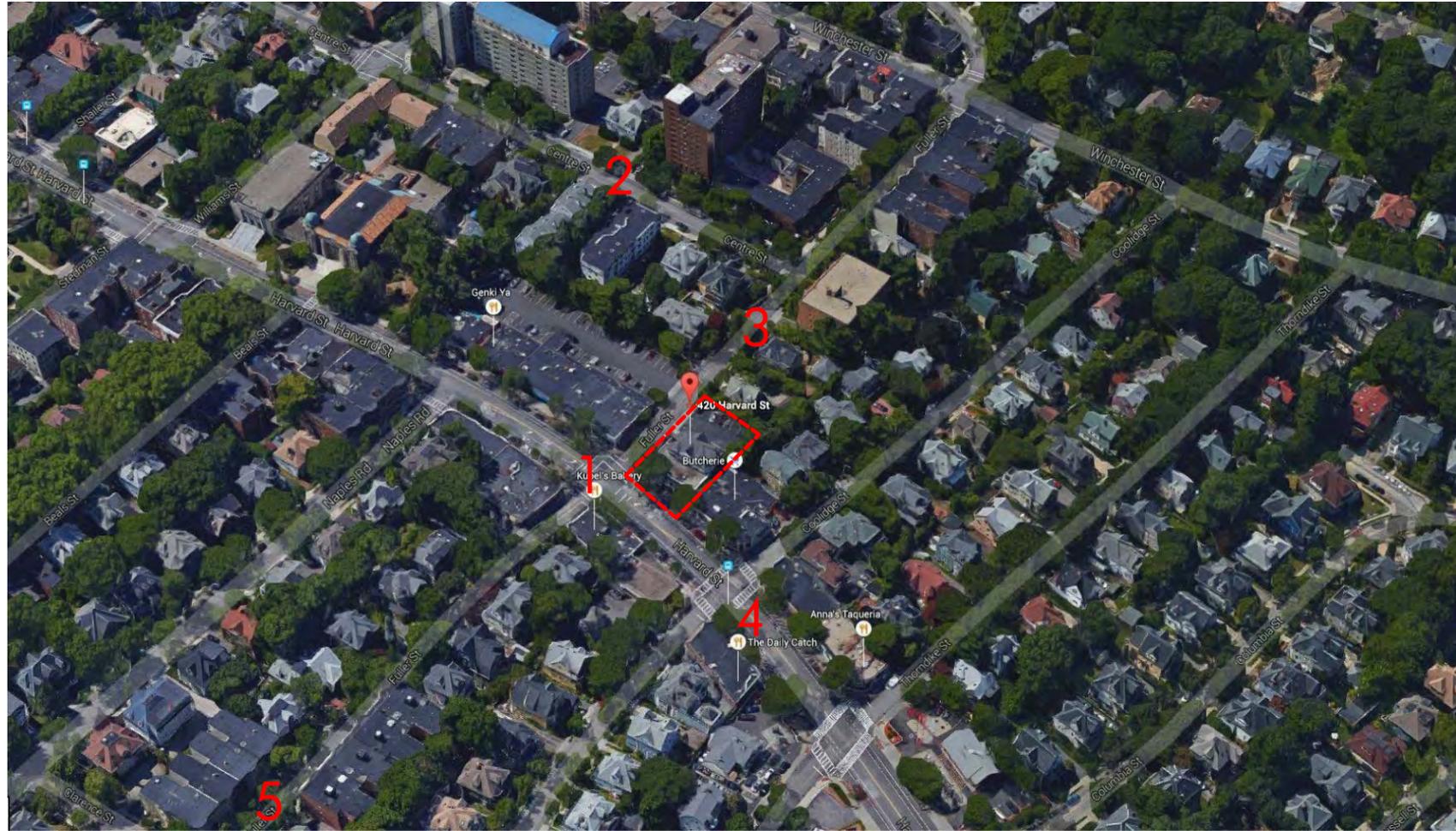
MAY 3, 2016

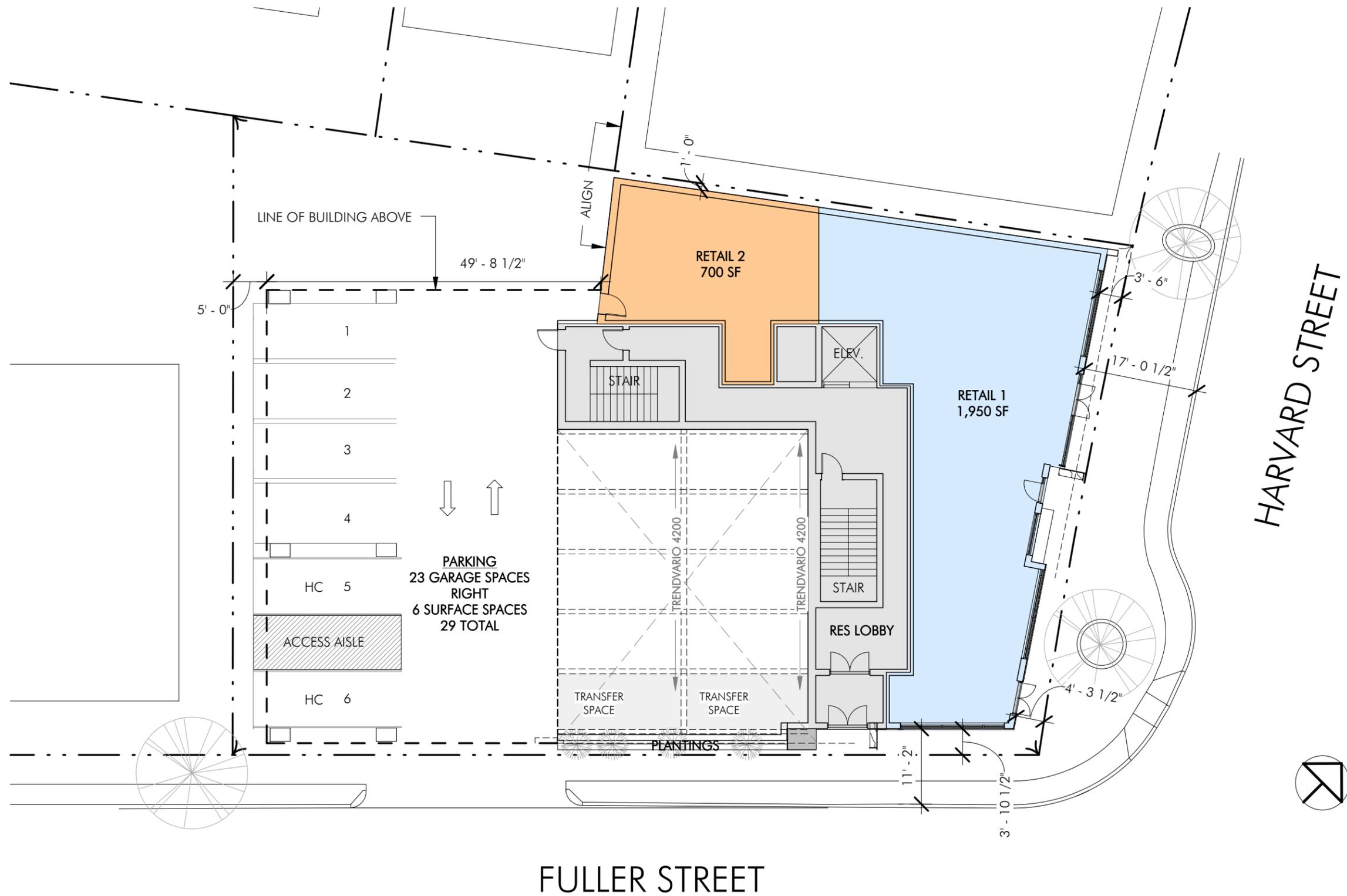


**EMBARC** STUDIO  
ARCHITECTURE + DESIGN

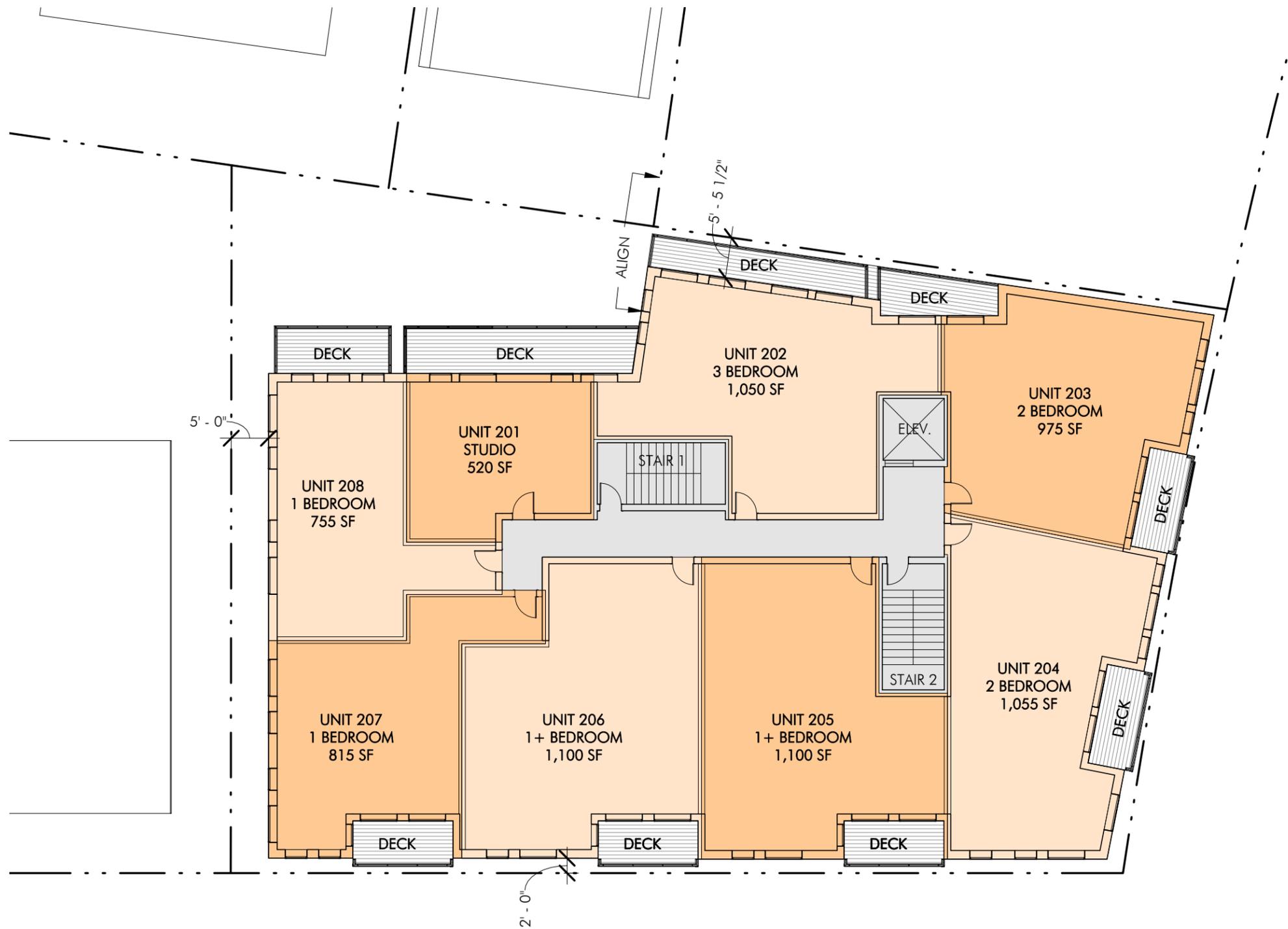






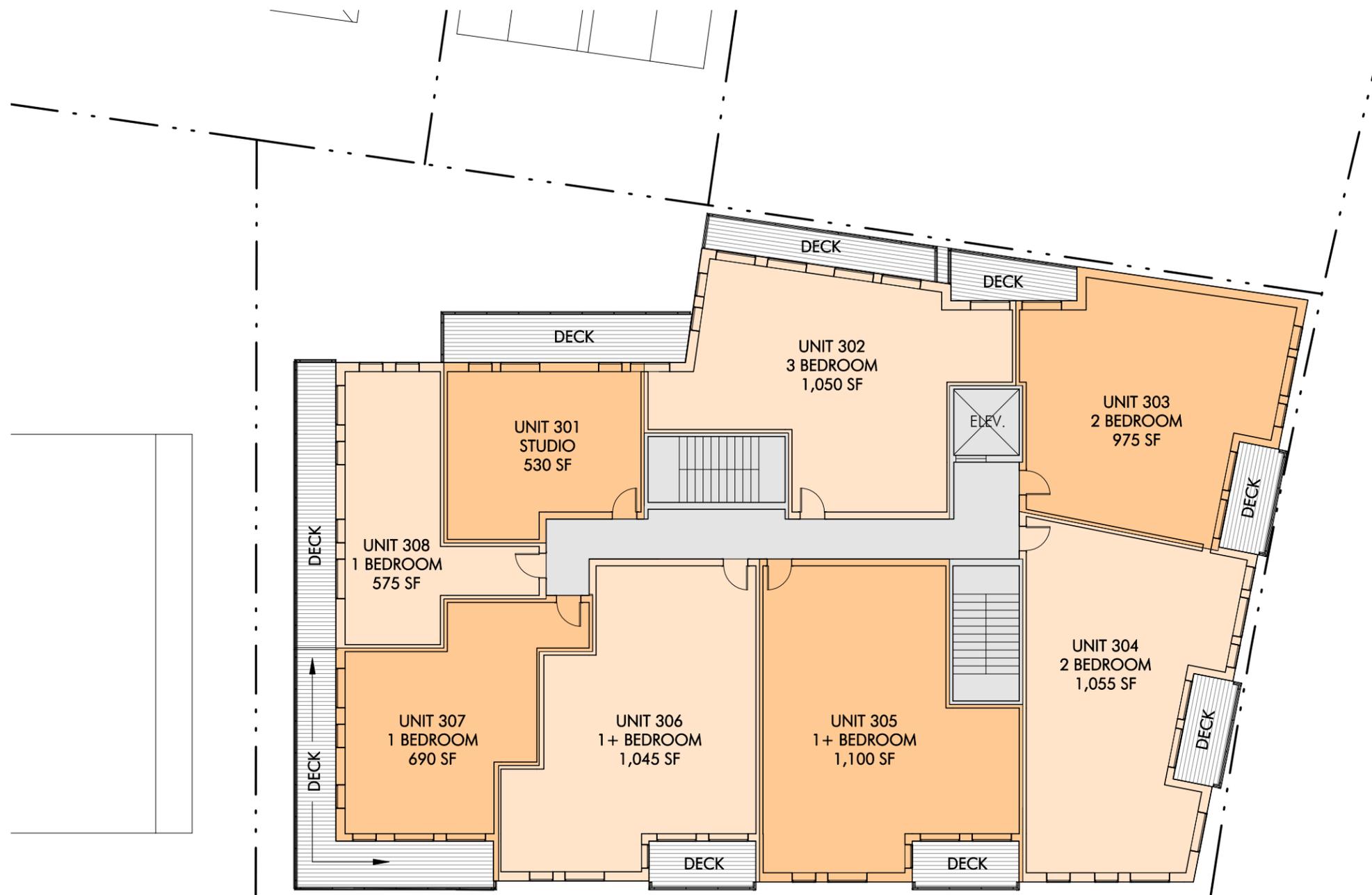


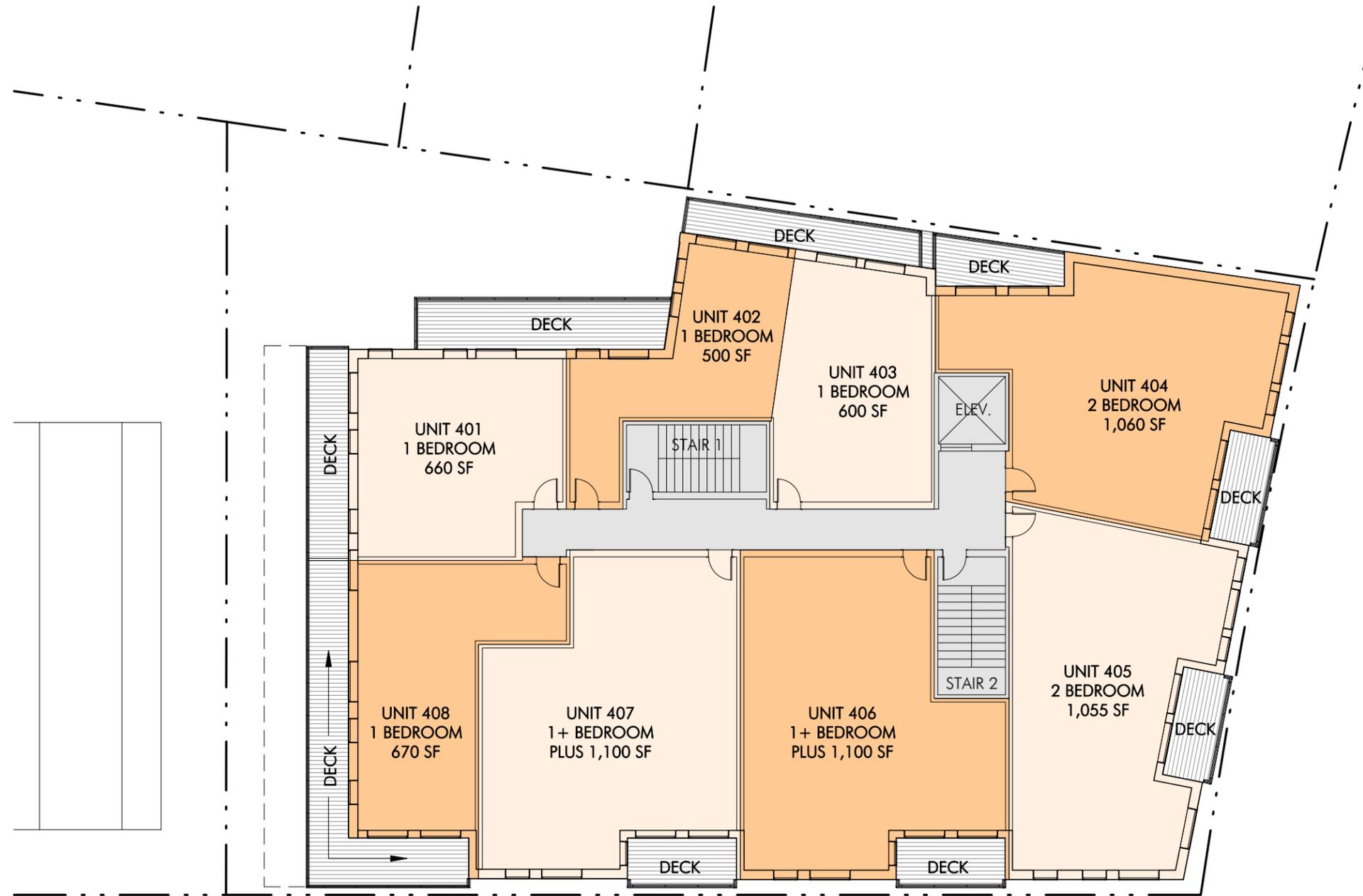
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 1/16" = 1'-0"

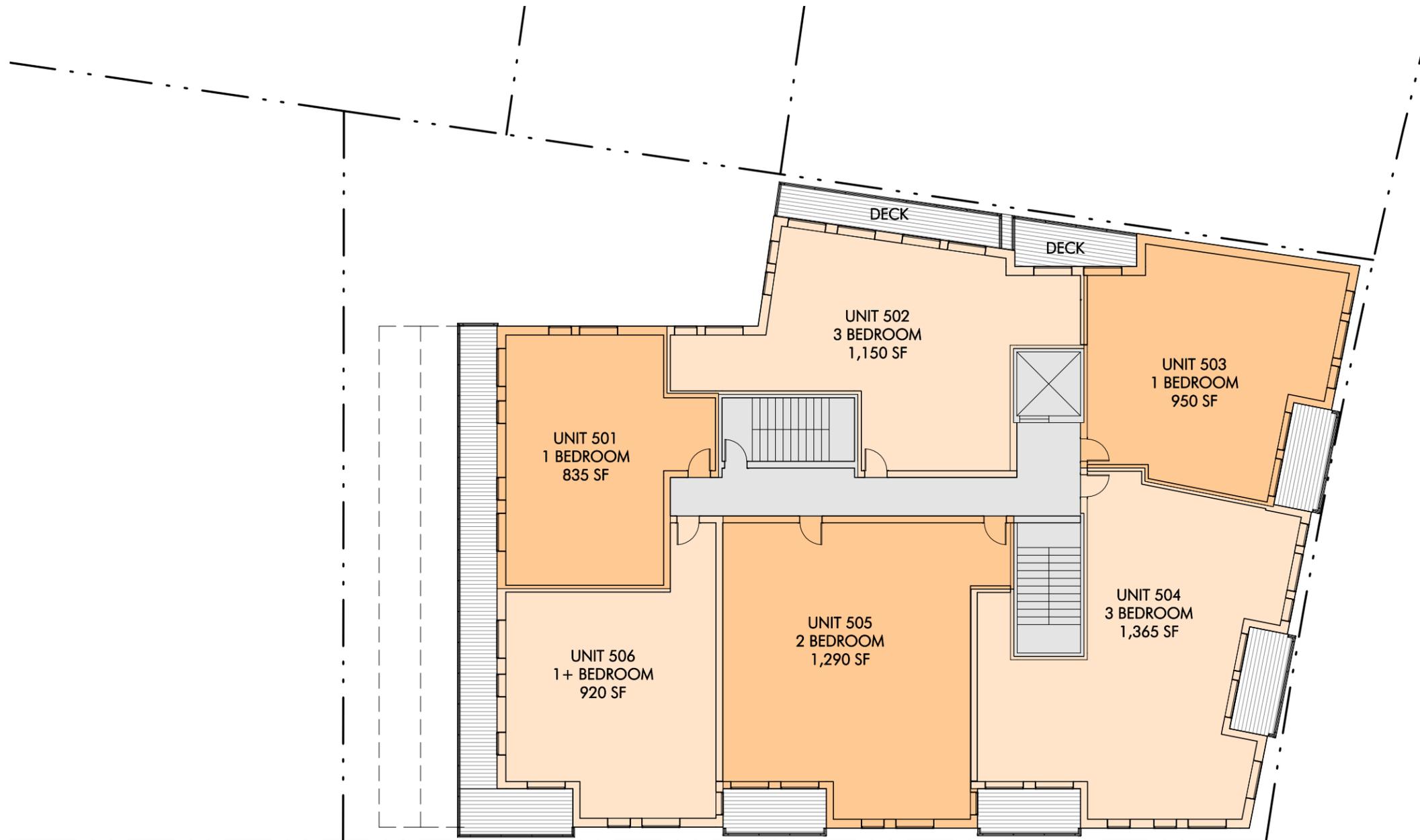


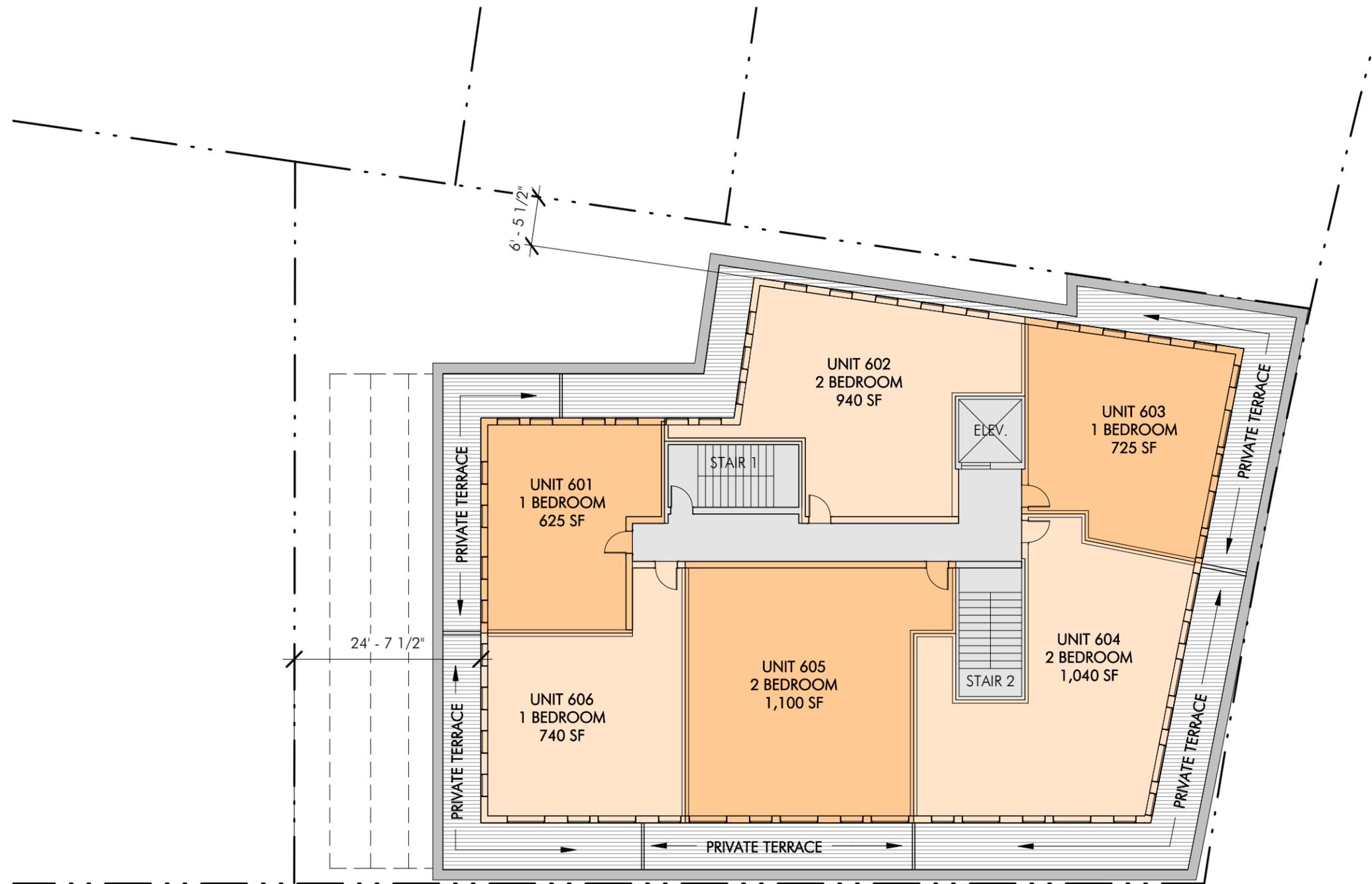
TOTAL GSF TYPICAL FLOOR: 8,770 SF

1/16" = 1'-0"









TOTAL GSF PENTHOUSE FLOOR: 6,890 SF

GROSS SQUARE FEET						
RENTABLE				COMMON		
		AFFORDABLE	UNIT TYPE	GSF		GSF
GROUND LEVEL	RETAIL 1			700	HALL   STAIRS   LOBBY	1,360
	RETAIL 2			1,950		
LEVEL 2	UNIT 201		STUDIO	520	HALL   STAIRS	835
	UNIT 202	X	3 BED	1,050		
	UNIT 203	X	2 BED	975		
	UNIT 204		2 BED	1,055		
	UNIT 205		1+ BED	1,100		
	UNIT 206		1+ BED	1,100		
	UNIT 207		1 BED	815		
	UNIT 208	X	1 BED	755		
LEVEL 3	UNIT 301		STUDIO	530	HALL   STAIRS	835
	UNIT 302		3 BED	1,050		
	UNIT 303	X	2 BED	975		
	UNIT 304		2 BED	1,055		
	UNIT 305		1+ BED	1,100		
	UNIT 306		1+ BED	1,045		
	UNIT 307		1 BED	690		
	UNIT 308	X	1 BED	575		
LEVEL 4	UNIT 401		1 BED	660	HALL   STAIRS	815
	UNIT 402		1 BED	500		
	UNIT 403		1 BED	600		
	UNIT 404	X	2 BED	1,060		
	UNIT 405		2 BED	1,055		
	UNIT 406	X	1+ BED	1,100		
	UNIT 407		1+ BED	1,100		
	UNIT 408		1 BED	670		
LEVEL 5	UNIT 501	X	1 BED	835	HALL   STAIRS	775
	UNIT 502		3 BED	1,150		
	UNIT 503		1 BED	950		
	UNIT 504		3 BED	1,365		
	UNIT 505		2 BED	1,290		
	UNIT 506		1+ BED	920		
LEVEL 6	UNIT 601		1 BED	625	HALL   STAIRS	765
	UNIT 602		2 BED	940		
	UNIT 603	X	1 BED	725		
	UNIT 604		2 BED	1,040		
	UNIT 605		2 BED	1,100		
	UNIT 606		1 BED	740		
TOTAL RESIDENTIAL AND COMMERCIAL				35,465		5,385

**TOTAL RESIDENTIAL 32,815**

**TOTAL COMMERCIAL 2,650**

**TOTAL BUILDING GSF 40,850**

**TOTAL PARKING SPACES 29**

**TOTAL AFFORDABLE UNITS 9 UNITS**

UNIT BREAKDOWN:		AVERAGE SIZE	AFFORDABLE
STUDIO	2	525	0
1 BED	13	703	3
1 + BED	7	1,065	2
2 BED	10	1,055	3
3 BED	4	1,154	1
<b>TOTAL</b>	<b>36</b>	<b>911</b>	<b>9</b>

**PARKING/UNIT RATIO 0.8**





HARVARD STREET





**LANDSCAPE PLAN**

SCALE: 3/8" = 1'-0"

CLIMBING  
FLOWERING  
VINE TYP.

SHRUB TYP.

CONC. PAVEMENT  
± 400 SF AREA

PERENNIALS  
TYPICAL

SMALL  
FLOWERING  
TREE

FLOWERING  
SHRUB TYP.

TWO 6-FT  
SEATING BENCHES

±21' X 4'  
ARBOR FEATURE

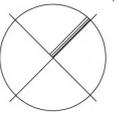
FLOWERING  
SHRUB TYP.

CLIMBING  
FLOWERING  
VINE TYP.

TURF  
±320 SF

STONE

CONC. WALK



**parkarchitecture.com**

Boston Massachusetts & Burlington Vermont  
Tel: 617-905-0467 - Boston Tel: 802-654-4456 - Vermont

**LANDSCAPE PLAN**

420 HARVARD ST.  
BROOKLINE MA

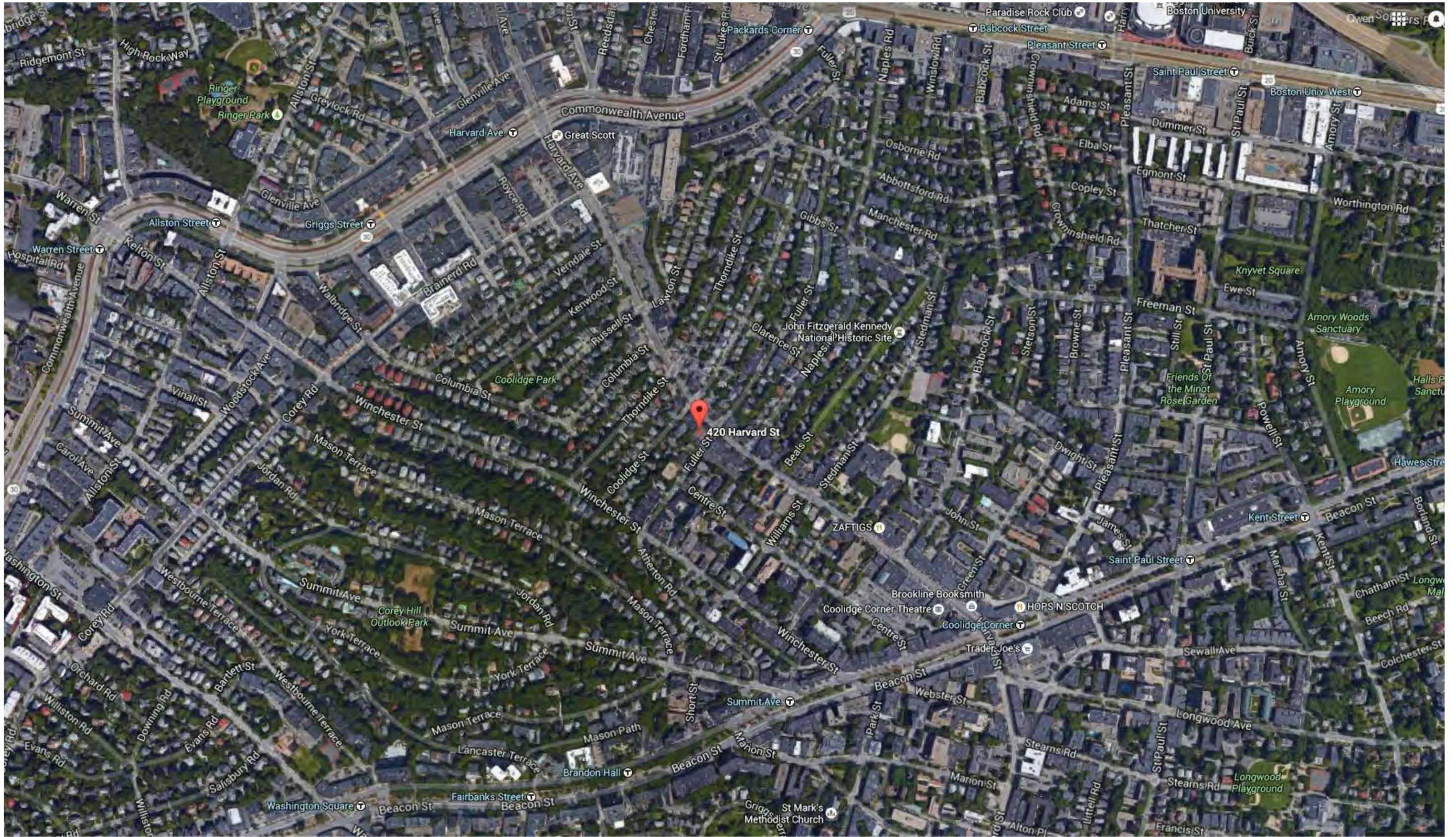
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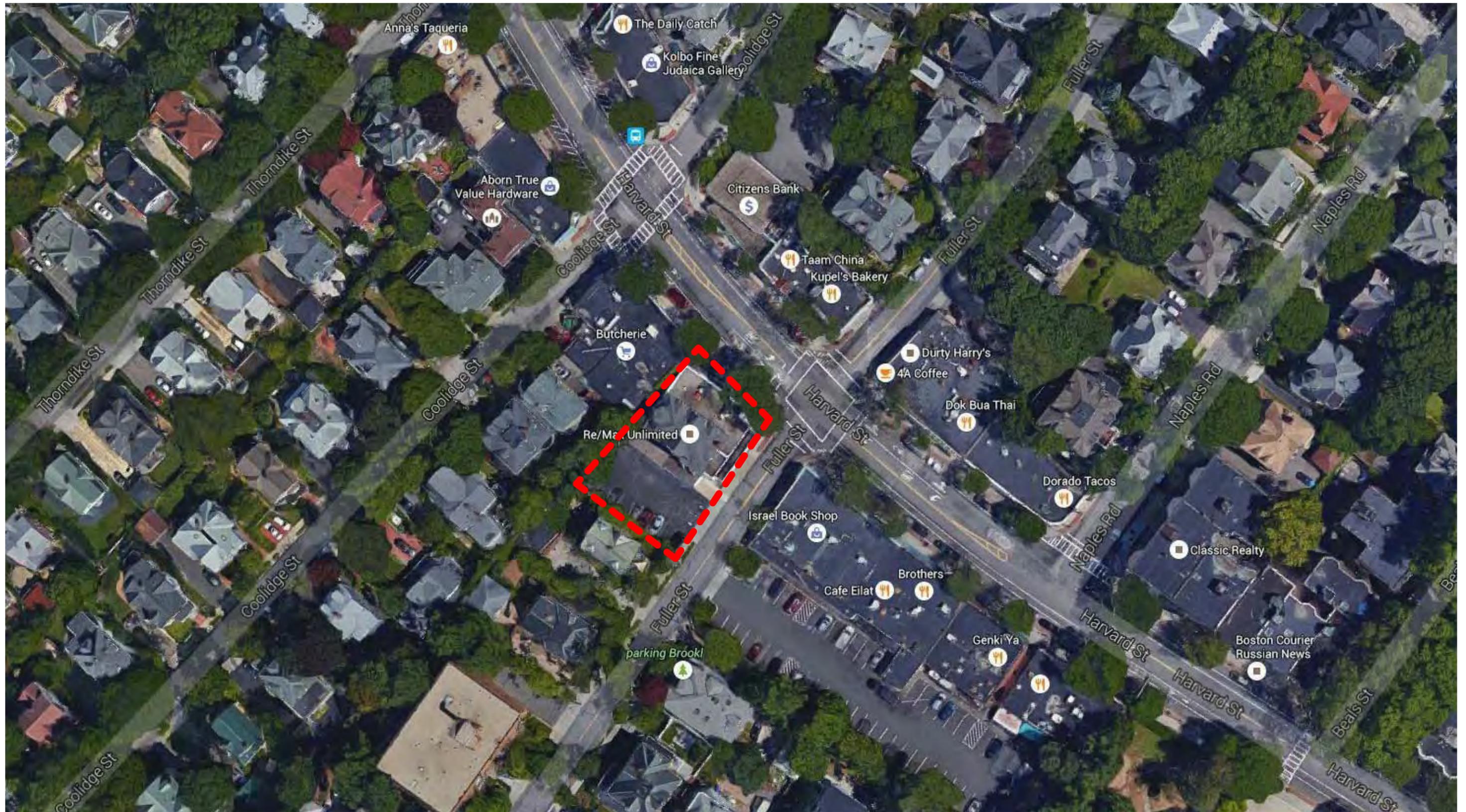
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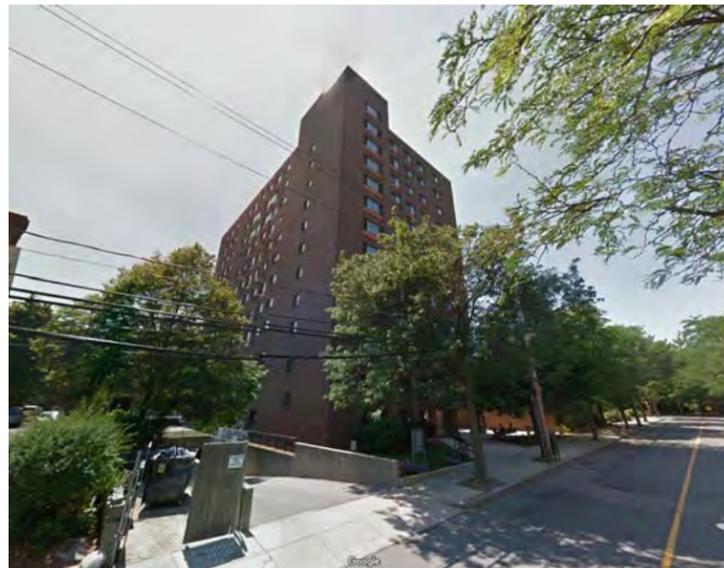
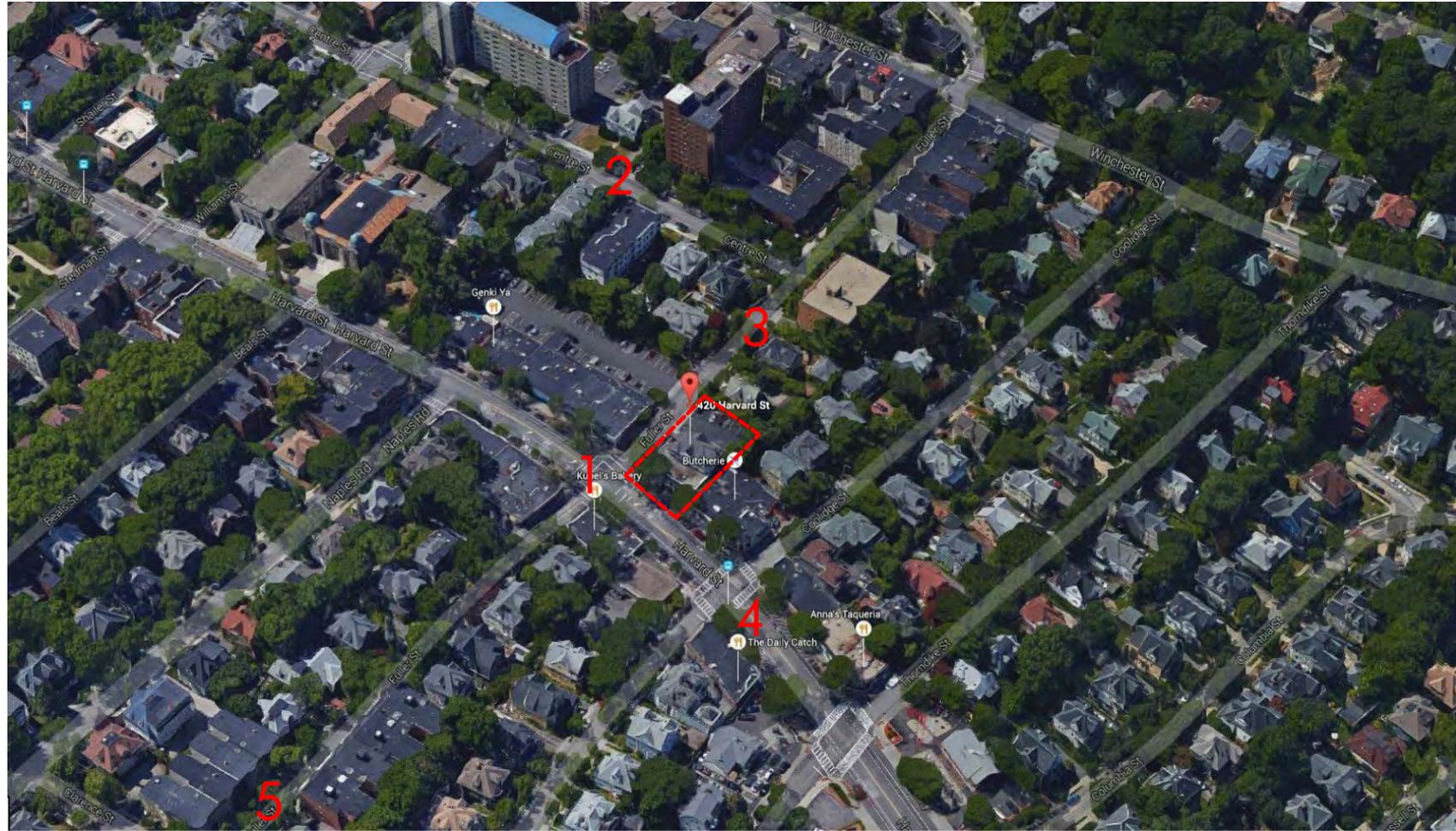
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**SECTION 14**

AERIAL PHOTOS & LOCUS MAP







**SECTION 15**  
SHADOW STUDY

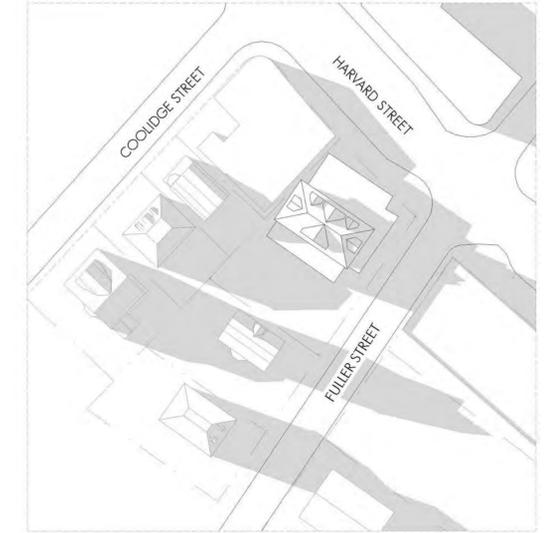
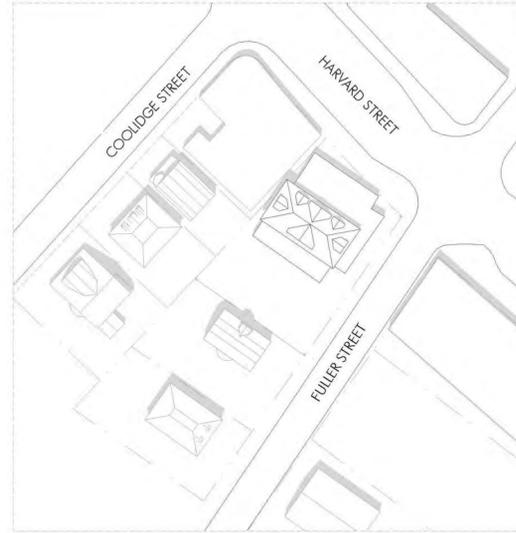
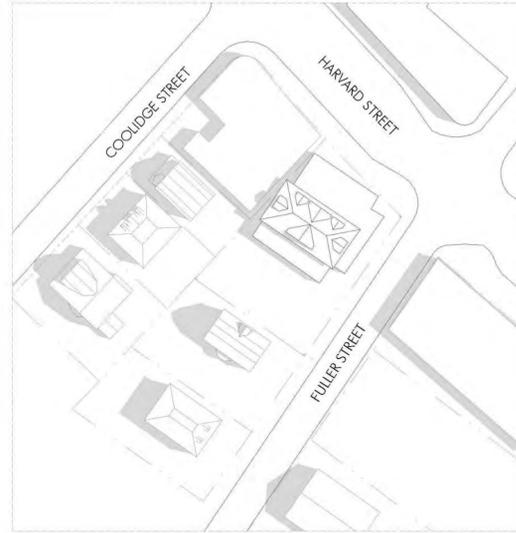
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12:00 PM

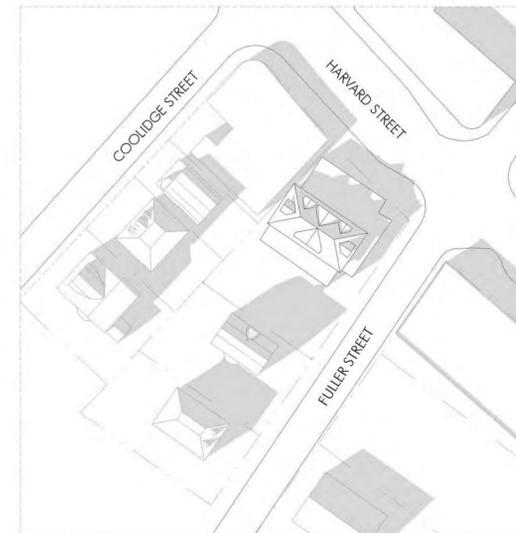
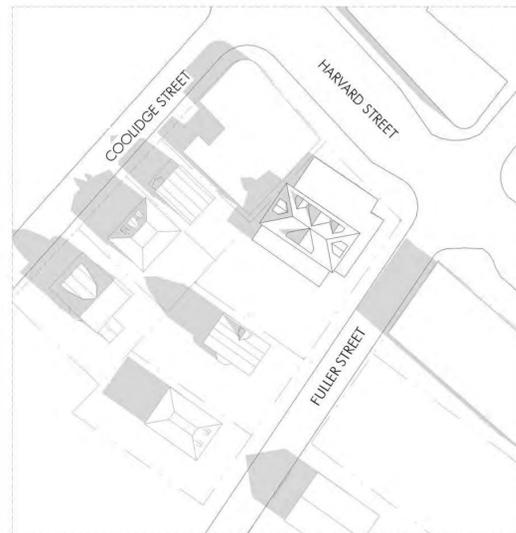
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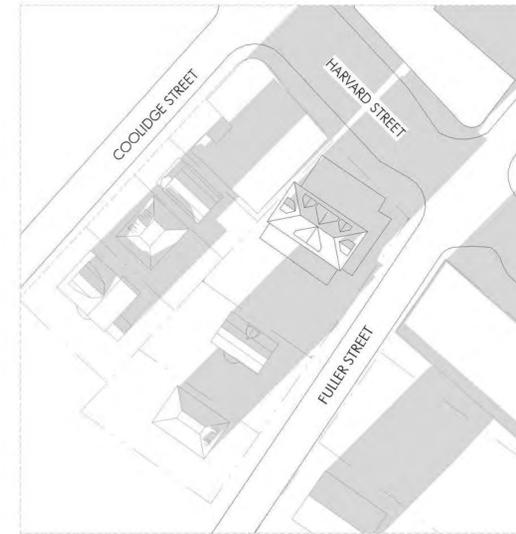
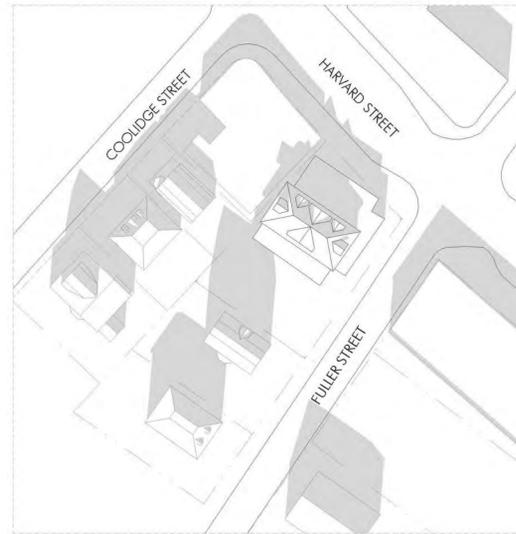
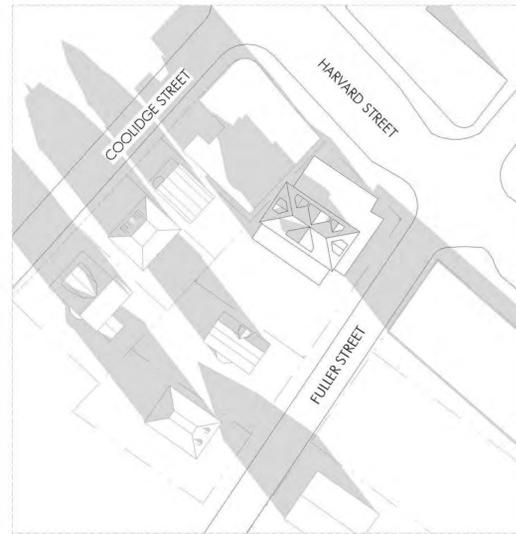
SUMMER SOLSTICE  
JUNE 21ST



FALL/SPRING EQUINOX  
SEPTEMBER 22ND/MARCH 20TH



WINTER SOLSTICE  
DECEMBER 21ST



EXISTING



EMBARC  
ARCHITECTURE+DESIGN

EXISTING SHADOW STUDY  
420 HARVARD ST  
BROOKLINE, MA  
MARCH 9, 2016 | Author

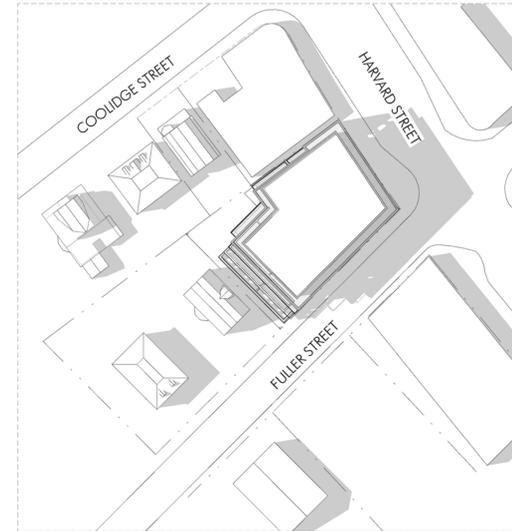
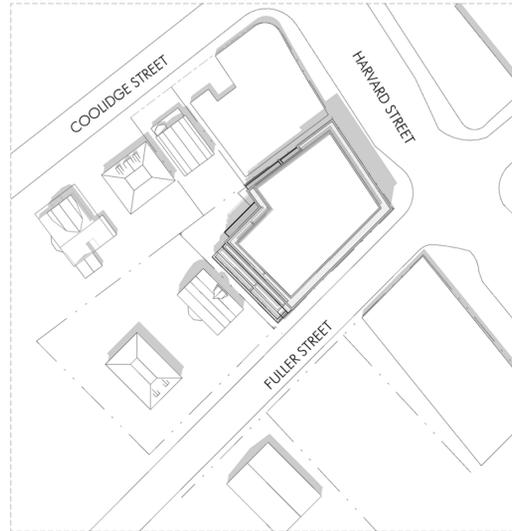
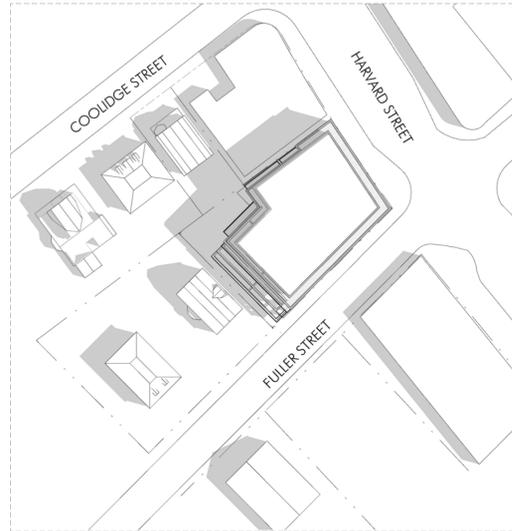
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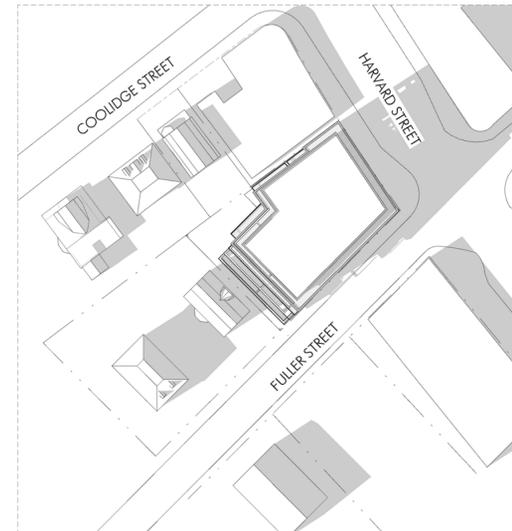
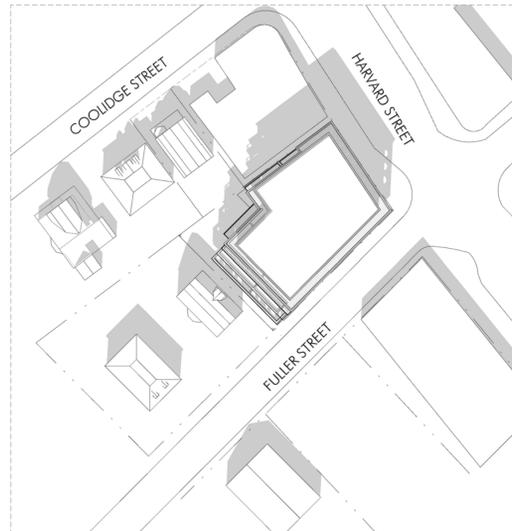
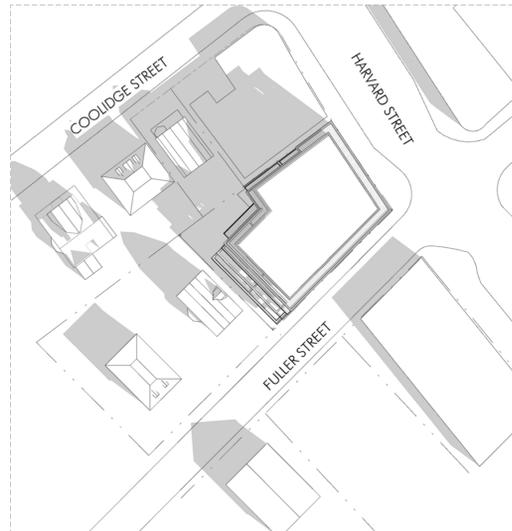
3:00 PM

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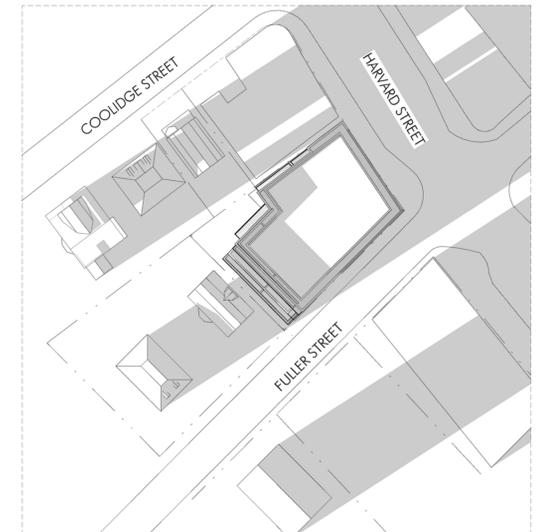
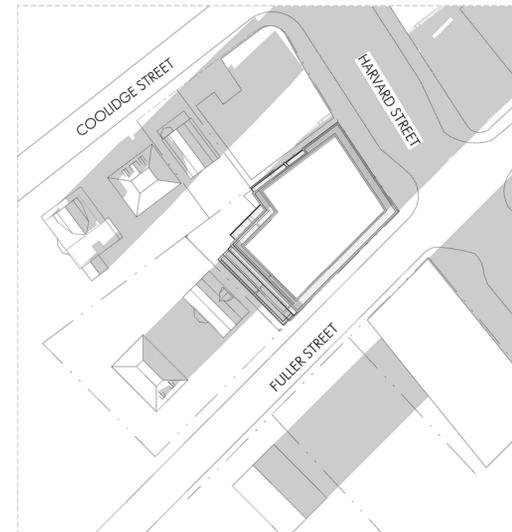
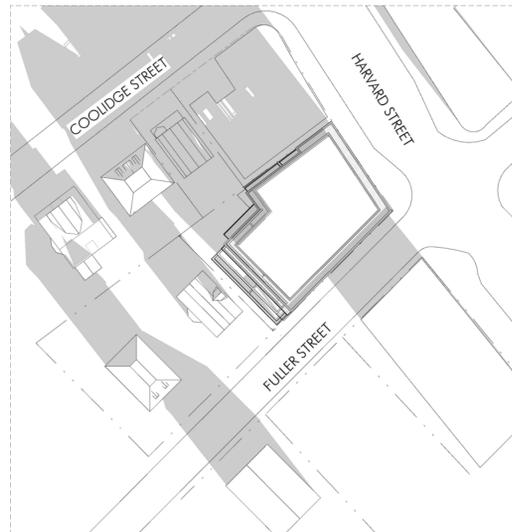
SUMMER SOLSTICE  
JUNE 21ST



FALL/SPRING EQUINOX  
SEPTEMBER 22ND/MARCH 20TH



WINTER SOLSTICE  
DECEMBER 21ST



STEPPED  
OPTION



**SECTION 16**

**STORMWATER MANAGEMENT SUMMARY**



Professional Civil Engineering • Professional Land Surveying • Land Planning

150 Longwater Drive, Suite 101  
Norwell, MA 02061  
Tel: 781-792-3900  
Fax: 781-792-0333  
www.mckeng.com

May 25, 2016

Mr. Victor L.H. Sheen  
Oakgrove Residential  
420 Harvard Street  
Brookline, MA 02446

**Re: 420 Harvard Street  
Brookline, MA  
Proposed Comprehensive Permit Development  
Preliminary Drainage Summary**

Dear Sir:

As requested, McKenzie Engineering Group, Inc. (MEG) has prepared the following summary to address the existing and proposed drainage system for 420 Harvard Street in Brookline, Massachusetts.

The project proponent, Oakgrove Residential, Inc. proposes to redevelop an approximate 10,851 s.f. parcel of land located at 420 Harvard Street in Brookline, Massachusetts. The proposed development will consist of the construction of a 6 story, 36 unit multi-family residential building with approximately 2,650 s.f. of retail space available on the first floor level.

The site has frontage on Harvard Street to the north and on Fuller Street to the east and is shown on the Brookline Assessor's Map 15, Block 77 as Lots 11 and 12. The site is otherwise surrounded by developed residential property to the south and developed residential and commercial property to the west. The parcel is comprises approximately 10,851 s.f. and contains no wetland resources and is currently fully developed and occupied by an existing building and bituminous concrete pavement parking area. Runoff from the parking area drains to an existing catch basin at the northeast corner of the pavement and is then directed via a piped connection into a drain manhole in Fuller Street. Other than the catch basin, there are no measures in place to treat or attenuate the parking lot and roof runoff from the site. Research on Web Soil Survey indicates that the site is classified as Urban Land and does not further categorize the soil in terms of permeability or presence of groundwater.

Prior to development of engineered site plans, MEG will observe test pits on-site to evaluate the permeability of the soil and to establish seasonal high groundwater elevation. The resultant data will be utilized in the design of a subsurface infiltration system beneath the

proposed open space/landscaped area to which all roof runoff will be directed. The subsurface infiltration system will be designed to treat and attenuate runoff, with an overflow to connect to the aforementioned existing catch basin. The catch basin will be converted to a drain manhole. Parking areas will be contained within the building and will drain to oil/sediment traps prior to discharge into the municipal sewer system, as required. The site will be designed to comply with the Stormwater Management Regulations to the extent practicable as required under Standards 6 and 7 for a redevelopment project.

We trust that this letter addresses your current needs. Please contact the undersigned if you should have questions or require additional information.

Very Truly Yours,

MCKENZIE ENGINEERING GROUP, INC.



Bradley C. McKenzie, P.E.  
President