Brookline Zoning Board of Appeals Hearing
420 Harvard Street Comprehensive Permit Application
420 Harvard Associates, LLC
June 27, 2016 at 7:00 p.m.
Brookline Town Hall
333 Washington Street, 6th Floor
Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky
APPEARANCES

Board Members:
Jesse Geller, Chairman
Lark Palermo
Kate Poverman
Johanna Schneider

Town Staff:
Alison Steinfeld, Planning Director
Maria Morelli, Senior Planner

40B Consultant:
Judi Barrett, Director of Municipal Services
RKG Associates, Inc.

Applicant:
Victor Sheen, 420 Harvard Associates, LLC
Dartagnan Brown, Principal, EMBARC Studio, LLC
Geoff Engler, Vice President, SEB
Bradley McKenzie, McKenzie Engineering Group, Inc.
Scott Thornton, Vanasse & Associates, Inc.
MR. GELLER: Good evening, everyone. We are opening a hearing in the case of 420 Harvard Street. This is an application for a comprehensive permit. My name is Jesse Geller. To my immediate left is Johanna Schneider, to Ms. Schneider's left is Lark Palermo, and to my right is Kate Poverman.

The process of these hearings will be broken into a number of hearings over the course of 180 days. We will hear from our consultant shortly who will confirm 180 days is the statutory limitation in time starting with tonight.

This hearing will be dedicated to opening the matter. We will hear from the planning director. We will also hear from our consultant just to go over the rough outline of dos and don'ts on 40B projects, which are quite different than 40A projects. We will then hear the applicant's presentation, and I see that they've got it ready to go. And we will also hear about the status of the application. And we will schedule a site visit so that we can actually go to the site, walk around it, and then we will continue this hearing to another date at which time we will continue.
In terms of dates beyond, typically the process is as follows: We have tonight's hearing, we will have a site visit, at the next hearing we will start to take testimony.

Typically we would take testimony from town boards and departments, and testimony may be offered in two formats. One is: Anyone is invited to offer their comments in written fashion. You can even send us pictures if you like that too. But written fashion sent to the planning director, and it will then be distributed to the board. And I can't stress enough, it is particularly helpful if we do receive those kinds of comments in advance in written fashion. It allows us to really take a look at it and consider what you're offering. There will also be an opportunity for testimony at these hearings.

These hearings are being tape recorded for a record. We also have a transcription record that is going -- that is being taken. And the entire record of these hearings will be available online. What's the site?

MS. MORELLI: Online at brooklinema.gov.

MR. GELLER: There you go. So there will be the applicant's presentation, plan, as well as the
The public will be given an opportunity to offer their testimony, so you will have an opportunity to speak. I don't know whether it will be at the next hearing or the hearing following that. We kind of have to play it by ear where we are in terms of process, but there will be that opportunity.

We will also have a hearing in which we will have peer reviewers in, and typically they would review things like parking and traffic, they would review urban design, and then I think the board will discuss whether there are other issues that are relevant to the board.

The next scheduled hearing in this matter will be July 25th, same time, 7:00 p.m., roughly.

Alison, you ready? I'd like to call on --

MS. STEINFELD: Perhaps Judi first with an overview of 40B?

MR. GELLER: Sure. So I'd like to call on Judi Barret to give us a broad overview of the 40B process.

MS. BARRETT: Mr. Chairman, we have a technology issue that's going to delay this a bit, so why don't we -- you may want to just go ahead and
1 proceed and I can do this in a few minutes.
2
3 MR. GELLER: Okay, sure. See, I was right the
4 first time.
5
6 MS. STEINFELD: Thank you, Mr. Chairman.
7 Alison Steinfeld, planning director.
8
9 As our consultant -- our 40B consultant will
10 explain to you, this is a very difficult process, but a
11 process that is governed by very strict deadlines. The
12 good news is that the Planning Department is here to
13 help you to the best that we can.
14
15 At a minimum, we will provide staff support to
16 you in order to help coordinate the process, arrange
17 for technical analyses by municipal staff and peer
18 reviewers, ensure that this is a transparent process,
19 provide for timely public input, respond to your
20 questions and requests for additional information, and
21 we will serve as a conduit for information between you
22 and the public.
23
24 And the Planning Department, as you indicated,
25 Mr. Chairman, will be placing all of this information
26 online and we encourage everyone who is interested in
27 this project to continually follow us online. I'd
28 certainly encourage you to keep in touch with the
29 Planning Department. Again, we're here to help and to
provide information and to relay it to the Zoning Board of Appeals.

As the chairman also indicated, tonight is for administrative details. There will be plenty of opportunity for public input, and public testimony will begin next -- the next public hearing. We do have to keep on schedule, so testimony will definitely be heard next week -- next hearing.

So this hearing is scheduled to close on December 27th. We'll discuss with the applicant to confirm that, but that is 180 days from tonight with some latitude given the weekends and the holidays.

So in order to keep to that schedule, we ask that you, the board, undertake certain -- make certain decisions tonight. One is to agree that both urban design and a traffic peer review are warranted and to request the applicant to agree to that and to fund those peer reviews.

We will do stormwater in-house. I've already confirmed with the civil engineer, town engineer, that they are quite capable for performing those responsibilities for this project.

Again, I'd also suggest that you schedule a site visit as soon as possible. It's within your
purview to request the applicant to stake out the
property, to identify any trees that may be razed or
taken down. And again, to continue the hearing to
July 25th.

I will tell you that this public hearing opens
tonight. It will not close for probably 180 days. We
do not continually notice this hearing, so at the end
of each public hearing, the chair will continue it. So
while the abutters will not get notice, again, either
attend every public hearing or follow us online to know
when the next hearing is scheduled.

So thank you. Hopefully we're able to access
the PowerPoint now.

MR. GELLER: Thank you. In the interim, let's
have a brief discussion about some of the issues that
Ms. Steinfeld has raised regarding peer review.
So it has been offered that urban design and traffic
are particularly relevant in this case. Comments?
Thoughts?

MS. SCHNEIDER: I agree with that.

MS. POVERMAN: Yes, I agree and I have a
procedural question. I made some notes while going
through the proposal about particular issues I was
interested in having answered. So how do we make sure
that the peer reviewer addresses those in his or her peer review?

MS. BARRETT: I would strongly recommend if you individually have some questions, that it should go to the peer review. They should all be compiled, and they should be given to the peer reviewer and say, the board is going to be interested in having these items addressed and the peer review consultant will want to accommodate those questions. So it just administratively needs to be communicated.

MS. POVERMAN: So as a practical matter, would I forward them to Ms. Steinfeld and then she would then circulate them or whatever's appropriate to get my comments --

MS. BARRETT: Yes.

MS. POVERMAN: Okay. Fantastic.

MR. GELLER: Thank you.

MS. POVERMAN: And just to confirm my understanding, the urban design review includes an architectural review; is that correct?

MR. GELLER: Alison?

MS. STEINFELD: Yes.

MS. POVERMAN: Oh, sorry. Last thing. And since the parking method is really new and fascinating,
would it also be possible to get an interpretation of -- I mean, I found some documents about the economics of this system, but I don't know if we'd be able to get any other guidance about the economics of it, if it would come from a peer review.

MS. BARRETT: Economics in what sense?

MS. POVERMAN: Well, the -- for example -- well, I don't want to get into it too much. I think the system can be great, but there also seemed to be some great savings over on surface and then relative savings whether it's on ground, above ground, below ground. And I think, as those may be areas that a design review committee wants to explore, is that ever anything that we would look at, or that --

MS. BARRETT: The economic -- the financial impacts of those different options? Is that what you're asking?

MS. POVERMAN: Yeah, yeah.

MS. BARRETT: If it gets to the point that the board needs a financial review, that's probably when it would come up, but certainly a good architect review is going to kind of know those numbers, and they can give you a reality check.

MR. GELLER: That conversation is premature.
MS. POVERMAN: In terms of peer reviews, just want to make sure --

MS. BARRETT: I would say compile all your questions and give them to Alison because the consultants will want to know when they come to see you what the questions are.

MS. POVERMAN: Great.

MR. GELLER: Thank you. So just to, I think, sort of bring the conversation full circle, I think those are the two relevant topics in which we would seek peer review.

So I want to turn to the applicant now. Who's here on behalf of --

MS. BARRETT: Do you want to do this, or do you want --

MR. GELLER: I just want to finish this piece. Will the applicant pay for engagement of peer review, these two topics?

MR. ENGLER: Yes.

MR. GELLER: Yes. Okay, thank you.

And while I have the applicant, site visit dates?

MR. SHEEN: We're available any time.

MR. GELLER: Any time. That's too easy.
(Discussion amongst the board.)

MR. GELLER: 8:30 --

MR. SHEEN: The 13th or the 6th?

MR. GELLER: 6th.

MR. SHEEN: On the 6th. So this -- next Wednesday on the 6th at 8:30.

MR. GELLER: Yeah. And we would ask that you stake where the improvements will be. Do you understand?

MR. SHEEN: Sure.

MR. GELLER: I want to mention that the site visit -- the public is welcome to join us on the site visit and is encouraged to join us on the site visit. But I do want to note one thing. It is not an opportunity for us to take testimony. It's an opportunity for the members of the ZBA to see the site, walk the site. We may -- and I'm sure we will -- have lots of questions for the applicant and the technical advisors for the applicant, but that's the limitation of the site visit. But as I say, you are more than welcome to attend the site visit. Thank you.

Judi?

MS. BARRETT: Thank you. For those who don't know, my name is Judi Barrett. I'm with RKG
Associates. I do a lot of work with boards of appeal in Massachusetts that are dealing with comprehensive permit applications, although I have to say I think you have them in record number here, so I feel your pain.

But I want to kind of lay out for folks just kind of what the procedural requirements are of this process so everybody understands and really, you know, can have a bit of sympathy for your board about some of the constraints under which they will be operating, mainly in terms of time and all also jurisdiction.

So I'll just start out by telling you, if you have questions -- more questions about Chapter 40B than I can get into this evening or even as this process goes on, there are several online resources you can always consult: Citizens Housing and Planning Association, CHAPA; the Mass. Department of Housing and Community Development, DHCD, which is actually the administrative agency for Chapter 40B; MassHousing, which is the most well known and largest of the subsidizing agencies that has authority to issue project eligibility letters, which I'll talk a little bit more about later; and MassHousing Partnership which funds the program that provides consultants like me to help boards of appeal like yours. All of these
agencies have information online if you're interested in pursuing more just factoid information about Chapter 40B.

And as your board knows because they have -- the Planning Department knows and has applied and successfully received, MassHousing Partnership provides grants to help boards of appeal with this process. That's where the funding is coming from for me to be here, and so part of my job is to kind of help the board go through this initial process and just kind of looking at the application that's come in and thinking about, you know, is the application complete and understanding what the submission requirements and procedures will be.

MHP provides technical assistance, as I said. I don't need to repeat that slide.

So Chapter 40B goes back to 1969. It was actually signed into law in November of that year. And the law has a fundamental presumption that in a community where less than 10 percent of the housing stock is affordable to people who are low or moderate income, there's a presumption of need that tends to drive this entire process. So one of the findings that the Board of Appeals ultimately has to make is are we
at or below 10 percent of our housing stock being low
or moderate income. But that's really the sort of
focus of the statute.

There are two other thresholds that operate in
Chapter 40B as well. One is if your community has less
than 1.5 percent of their total land area that is
available for residential or commercial or industrial
use occupied by low or moderate income housing, then
you also have not met the statutory threshold.

Then there's this sort of temporary one, which
is if you have a number of projects or a very large
project starting all at once in a given year, then you
would have sort of the temporary ability to perhaps
dery other comprehensive permits while that amount of
land, that .3 percent or .301 percent of your land area
is under construction or initiates construction.

But the one that people talk about the most is
this 10 percent, which is, I think, you know, what's
being focused on here. I just want you to know there
are actually three thresholds in the law.

There are also -- so those are ways that, you
know, if you're under that, the presumption is that
there's an unmet need for affordable housing and the
board has to kind of balance other issues against that
There are some other requirements that the state has created, and by "the state," I mean DHCD. These are not in the statute. They are regulatory creatures going back about 20 years now. I can't believe I've been in this field long enough to remember this. But going back about 20 years, DHCD started to roll out some ways for communities to get some temporary, perhaps, relief from having to do a lot of comprehensive permit activity. And so if you meet one of these requirements, then you get what's called "safe harbor," which is really the equivalent of being at 10 percent, at least for a little while.

One is: Does your community have a housing production plan? And, actually, Brookline is working on one right now. I happen to be on the consulting team doing that. If your community has a housing production plan, if it's been approved by DHCD, if the Board of Appeals issues permits for a certain number of units within a given year, then they would have the ability to temporarily deny comprehensive permits for a year, possibly even two years. The two-year threshold is difficult to get to.

But another is if you -- even without a
housing plan, if you've just approved a whole lot of
units -- and in your town it would be somewhere in the
order of, I think, 550. You have the number, I'm sure,
effectively --

MS. STEINFELD: 524.

MS. BARRETT: What is it?

MS. STEINFELD: 524.

MS. BARRETT: 524. If the Board of Appeals,
just in a given calendar year, approved 524 new units
for the subsidized housing inventory and you still were
under 10 percent and someone else came in for a
comprehensive permit, the board could say, well, we
don't have to approve you right now because we've just
created 524 new units.

Another buffer from -- a big impact from
Chapter 40B is this threshold called "review of large
projects," which is -- there's a limit on how large a
project can be coming into a community with approval
from the subsidizing agency. And that's also very
large. It's based on the size of your year-round
housing base. And because Brookline is large by
comparison to many communities in Massachusetts, it's a
high number to hit. But review of large-scale projects
is something that the subsidizing agencies look at if
your project is more than 300 units. Or, actually, I
think here the ultimate cap is 524, isn't it?

MS. STEINFELD: Yes.

MS. BARRETT: So a project that's 525 units
would probably have difficulty getting through the
project eligibility process.

And then finally, there's this other thing
called "related application," which is an applicant
comes to a town board with a proposal, the proposal
gets turned down, and the applicant says, I'm going to
go to the Board of Appeals and get a comprehensive
permit. That called a related application.

In a case like that, the Board of Appeals
would be able to deny a project like that if it
happened within a year. So if someone gets denied by
some other board and runs in to the Board of Appeals
six months later, the Board of Appeals could say,
there's a related application problem here. Everybody
needs to go cool off and come back and see us later.
So that's a one-year reprieve.

All of these are really around temporary
stays, is what this is, temporary stays or temporary
opportunities for a Board of Appeals to kind of slow
down the amount of comprehensive permit activity that's
happening in a given community.

There are certain things an applicant must do in order to even be here at this point. There are three kind of fundamental thresholds that have to be met.

One is: What type of applicant do we have? An applicant that is a public agency, such as a housing authority; a nonprofit organization; or a limited dividend organization, which is essentially a for-profit developer that agrees to limit its total profit from Chapter 40B developments. Applicants must be one of those three entities.

Evidence of site control: Does the applicant own the property? Does the applicant have it under a purchase and sale agreement?

And then the third is: Does the applicant have what's called a project eligibility letter or PEL? If I start using a lot of acronyms, please wave at me and stop me. I sometimes get carried away. But if the applicant has a PEL from the subsidizing agency, if an applicant meets all three of those requirements, then the applicant is entitled to submit a comprehensive permit application.

Now, in addition to meeting those threshold
requirements, there are certain things the applicant is
supposed to submit to the board, and some of these get
a little bit confusing.

One is that there needs to be a preliminary
plan. And so a preliminary plan is not the
construction drawings that one sees sometimes for, say,
a site plan approval application with the Planning
Board. Preliminary plans are really -- it's a
preliminary plan. It's enough to demonstrate that the
project, as proposed, is feasible but not to the level
of detail that one -- that an applicant is going to
provide later to the Building Department when they're
ready to construct.

They have to demonstrate to the Board of
Appeals, well, what are the existing conditions on the
site and where is the property located? I mean, just
basic things like a locus map. You know, and the plans
have to kind of show what are the existing conditions
on the site.

There have to be preliminary scaled
architectural drawings showing kind of what the
buildings are, tabulation of the proposed buildings by
type, size, and coverage. If the project involves a
subdivision, there has to be a preliminary subdivision
plan, a preliminary utilities plan, and a list of
requested waivers.

And the waivers are simply this:
Chapter 40B -- again, the interest of the statute is
the production of low or moderate income housing. So
the statute assumes that if your local regulations are
not a barrier to housing development, then you don't
need Chapter 40B. And if there are barriers in your
local regulations, then the applicant has an obligation
to say to the Board of Appeals, these are the things in
your local rules that stand in the way of my being able
to build this development, and I need you to waive
these requirements.

And at a later point in this process, you will
see a discussion by the board of the waivers requested
by the applicant. The board has to then make a
determination, do we need to grant all of these? Is
this even a complete list? It's not uncommon for
applicants to actually not know the local regulations
all that well and perhaps miss some waivers that they
should request.

These dates up here all have a meaning: 7,
14, 30, 15, 15, 30, 180, 40, 20. 30 is in red for a
reason. 30 is this -- I'm going to go over these a
little bit more carefully on the next slide. But the critical thing that the board must do -- must do is open the public hearing within 30 days of receiving the comprehensive permit application. Even if the application is incomplete, you open the public hearing in 30 days.

And the reason for that is that you do not want to have a development of any type, comprehensive permit or otherwise, approved on what's called a "constructive approval basis," which is they didn't do their job on time, so the applicant get a yes by default. And you just never want that to happen. So 30 days -- you must open the hearing within 30 days. And, you know, to the extent the application is incomplete or whatever, you deal with it at that point. But you must open the hearing within 30 days.

We have put this in red in this training presentation because we've had a couple of communities in the last few years that simply didn't understand the difference between a comprehensive permit, which requires that you open the hearing in 30 days, and a special permit, which gives the board 65 days to open the hearing. So trying to help everybody understand, we want to protect the town's interest, and the only
way to do that is to make sure you open the hearing on time.

Within seven days of receiving an application, we distribute it to the town staff and boards and commissions, anybody that typically comments on development applications, the development review team. Just get the application out to get it moving in the review process. And we move quickly because there is this ultimate limit on the time frame for considering a comprehensive permit, and that time frame is this 180-day rule that the chair referred to earlier. You advertise the public hearing within 14 days, and then you open the hearing within 30 days of receiving that application.

If the board thinks that it has justification to turn down an application because the town meets one of those safe harbor things that I mentioned earlier, you have an approved housing production plan and the board has -- or whatever board, Planning Board, Board of Appeals, anybody collectively, has issued enough approvals that the town has created 524 new low- or moderate-income units in the last 12 months and the Board of Appeals says, well, I think we can turn this one down, if you think that that's the case, then you
have to notify the applicant within 15 days of tonight, opening the hearing.

And the applicant, of course, can appeal, and the appeal goes to the Department of Housing and Community Development. They have 30 days to decide whether the board's determination is valid. And so then their decision on that sort of stands. It becomes appealable later, but not at this point.

And, of course, while all that's going on, the 180 days is on hold, meaning it kind of freezes. So once it all picks up again, then the 180-day count continues.

But if the board thinks it has a valid basis to turn down the application for one of those criteria I mentioned earlier, maybe you think you're really at 10 percent, you have 15 days to tell the applicant.

So once you have proceeded now, it's 180 days from the opening of the hearing, you have to close it. And that may seem like a long time, but it actually is a rather compressed time frame to get the kinds of reviews done that need to be done for these projects.

So the board is directed by regulation to close the hearing at 180 days. Of course, you know, the reality is if you get to 180 days or 170 days and
the process is almost done, you know, a reasonable
applicant will say, well, I'll give you a couple of
weeks extension. But you don't go into this process
relying on that. It's just not the way you do it.

Once a board closes the hearing, they have 40
days to render the decision and file it with the town
clerk. And after that happens, then there's a 20-day
appeal period for a comprehensive permit like there is
any other sort of zoning approval. So that string of
dates that I put up over here, this is kind of what
they mean.

Boards of Appeal need to understand the site.
And so as the chair just did a few minutes ago, one of
the things you do early in the process is schedule a
site visit so the board can kind of see the site,
understand the neighborhood, and kind of picture how
this project is going to sit on the land in relation to
what's around it. And really to understand who are the
abutters. Not who personally, but where are the
abutting properties that are most likely to be affected
by the development, so you can account for that if
you're thinking about how you're going to work with the
applicant to get a better project for the neighborhood
and the town.
The board is entitled to hire peer review consultants. What that means is that the applicant, in submitting their application for the board, may have engineering plans, they have architectural plans, they have a traffic study. And so the board is entitled to hire consultants who are qualified to review what the applicant has provided. That's what we call "peer review consultants." The applicant is responsible for paying for those reviews.

Those reviews are supposed to help the board evaluate the application. So you're not doing new studies of interest to you and you're not hiring your own consultants to redesign this person's project. You're hiring people to help you review the application. And I think that is just something that's going to be very important for people to understand all the way through this. They've filed an application. The board's job is to review that application, so the peer review consultants help to conduct that review.

And, of course, everything that's done throughout, whether it's the peer review records, the applicant's response, everything becomes part of the record for the project.

We like to advise boards, because of that
1 180-day rule and how fast this process can tend to
2 move, to try to focus on sort of what I would call
3 "real project issues" as early in the process as
4 possible. It's a good idea to get the peer review
5 consultants lined up because you need them right away,
6 but perhaps not to spend a whole lot of time on peer
7 review until you've probably at least gotten kind of
8 what your core issues are on the table and the
9 applicant knows what they are.
10 You can always ask the applicant for
11 additional information. Don't hesitate to ask for
12 graphics to help to clarify height, massing, setbacks,
13 or overall relationships to neighbors. The board
14 certainly is entitled to understand how this project is
15 going to sit on the land and sit next to people when
16 it's built. And it's really an issue both for people
17 who are going to live in the neighborhood, but also the
18 folks who are going to live in the development to
19 really understand that this is going to be a quality
20 project.
21 It is possible to negotiate with the
22 developers. I'm here to tell you it can be done. Many
23 boards do use a process called "work sessions" to work
24 with developers parallel to the public hearing process.
When we do that, the discussions are generally advisory. Of course the board always retains control over this process. You know, any of us could participate in meetings with the developer, you know, in another type of forum, but we don't make the decisions. The board does.

And, of course, if there's a work session that involves a quorum of the board, then it must comply with the open meeting law. I always advise my boards of appeal to check with your town counsel on work sessions because I do this work in many, many towns and I have learned the hard way that every town counsel has a slightly different opinion about the applicability of the open meeting law to work sessions.

And I'm a planner, I'm not an attorney, so I'm not going to offer a legal opinion. I'm simply going to tell you that work sessions do happen, and they are usually very productive, but they're not always handled the same way from town to town. And they could be helpful, especially when you realize how tight that 180-day timeline is. If you need some extra time to sort of talk through technical issues -- not policy issues, just technical issues -- that sometimes those work sessions could be very helpful.
Ultimately, the board's job is to sort of balance regional housing need with local concerns. And it's important for people to understand what the local concerns are that are within the board's purview. Sometimes people have concerns about these applications that may be perfectly valid concerns but they're beyond the scope of a Chapter 40B process, so they're beyond the scope of the board's authority.

What the board can look at are valid public health or public safety impacts, environmental impacts, design, open space, planning.

And what that means is if you have a community that has a recent master plan and the master plan has a really robust section on housing and it's actively being implemented and the developer comes along with a proposed project that is really antithetical to the framework of that master plan, the board might be able to deny an application based on that. But unless you really meet a pretty high standard for planning generally, neither the Housing Appeals Committee nor the courts have been all that eager to use planning as a basis to turn down a Chapter 40B development.

But these sort of fiscal, operational, visual impacts of the project are the things that the board
really has to focus on. Other things -- other local
conscerns is really a -- it's a catch-all.

The issue is: Is this going to create a
public health issue? Is it going to create a public
safety issue? Is there a design impact of this that is
not -- that the applicant cannot mitigate with changes
to the project? Is there sufficient open space either
on the site or within the immediate neighborhood to
meet the needs of the new population? Those are the
issues that the board can focus on, and that really
drives the decisions that you need to make around who
are the peer review consultants that you need.

The board can and must really have
deliberations about what to do with these projects and
to be sort of logical and orderly about it. Review the
waivers the applicant has requested.

In my experience, the best way to handle this
is to at least discuss draft conditions -- if the board
is going to approve the project -- to discuss draft
conditions of approval before you close the public
hearing so that the board and the applicant and the
public and everybody kind of knows what those
conditions will be so there's an opportunity to have a
corversation about them. Because once you close the
hearing, the board can't take more testimony. So the
more you do while the public hearing process is still
in play, the better off everybody is. But ultimately
the board is the one that has to deliberate and decide
what to do.

The board has three choices: Approve the
application as submitted -- I've never seen that
done -- they can approve the application with
conditions, or they can deny. Those are the three
options that are provided in the statute.

Denial is a hard one to sustain if your
community is less than 10 percent of your year-round
housing stock being affordable because if you deny and
you're under 10 percent, the sole issue in front of the
Housing Appeals Committee, which is the administrative
agency that hears appeals filed by developers -- the
sole issue that really is in play is did you have
enough -- enough big valid concerns locally to -- that
would outweigh the regional need for affordable
housing?

It's a very difficult standard to meet. And
for that reason, boards generally try, if they can, to
find a way to approve it with conditions, even if those
conditions are not -- even if the developer doesn't
like them.

If the developer appeals an approval with conditions, then the matter before the Housing Appeals Committee is: Do those conditions make the project uneconomic? So you don't lose control of the whole project. It's just that the conditions are the matter that's in play. When you deny, then the whole 10 percent question is in play and it's just much harder to sustain. So I'm just telling you what my experience is.

The conditions really -- you know, you don't want them to make the project uneconomic. You hope that they don't. And they need to be consistent with local needs, so they have to address the matters that I mentioned earlier. And, you know, you can't just sort of reduce the number of units because you don't like the density. There has to be an impact-based reason for changing the shape and the size and the scale of the project.

If the applicant isn't happy with the board's decision, the applicant can go to the Housing Appeals Committee. If the other parties are not happy with the board's decision, then the appeal goes to superior court or land court.
And this question about, you know, what is the scope of authority? You know, it's -- I just -- there was a case involving the Town of Amesbury a few years ago. And I don't want to belabor this too much. We can get into it more as this project goes on if we need to.

But the issue in that case was, well, what does the Board of Appeals get to control versus the subsidizing agency. And there are matters that really belong to the subsidizing agency that the board really just -- years ago the boards would try to condition and you just don't anymore. Things like where are the affordable units going to be located or who's going to be the monitoring agency for the project or who's going to handle the lottery? Those items are all handled by the subsidizing agency.

And so, you know, the board can impose conditions like we would like some of the units -- perhaps 70 percent of the units to be available on a preferential basis to Brookline residents. But even that is subject to approval by subsidizing agency. It doesn't happen automatically.

Once this process is over, however it turns out, if the applicant is actually going to go forward,
it doesn't end here. They still have to go back to the subsidizing agency -- in this case, I think it's MassHousing Partnership -- for what's called "final approval." There are final engineering and architectural plans that still have to be developed prior to getting the building permit.

And if the applicant, in the course of preparing those more detailed plans, discovers that they should have asked the board for something they didn't think of the first time around, they have to come back to the board and say, oops, we goofed. We need to request a modification of our permit.

If it's a small matter, the Board of Appeals can determine, oh, it's an insubstantial change and they can grant it administratively. If it's a substantive change, the board can say, time out. You know, we should have -- this is a bigger issue than a di minimis matter and so we're going to have to open the public hearing again and we'll all be back here eventually.

There are also other requirements that the applicant has to deal with. There's a regulatory agreement between the applicant and the subsidizing agency, there's a monitoring agreement that sort of
governs how the deed restriction is going to be monitored over time.

Understand that the issue here, of course, is that when you create affordable housing, you'd kind of like it to last as affordable for a while. So the regulatory agreement kind of determines how the affordability is going to be preserved over time as units turn over, either on a homeownership or on a rental basis. How are we going to know that public benefit of those affordable units continue to go to low- or moderate-income people? So all of that is laid out in this agreement which is recorded with the Registry of Deeds.

There is a lottery process to ensure fair housing. There is an affirmative marketing plan. That's another thing that boards of appeal in the distant past used to sort of try to regulate. The Amesbury case said, no, no, no. That's really the subsidizing agency's call.

The applicant has to figure out exactly how the units are going to be priced and how they're going to be made available to eligible people.

If they don't do anything, if they just sort of don't activate this permit, they get the permit and
they go on a vacation and they stay away for three years, that permit will eventually lapse. Of course, the applicant can always come back prior to three years and request an extension, but there is a three-year sort of window within which to activate a comprehensive permit.

The permit can be transferred. The subsidizing agency actually has the approval authority for transfers, but the applicant does have to notify the board who the transfer would be to.

And while the project is under construction there, of course, are inspections required. If those inspections exceed the capacity of your town departments, then it's really up to the applicant to provide, again, funding -- during this process, to provide funding to the town departments to make sure there's adequate inspectional capacity.

And so that is pretty much the overview. I know most of the board members, I think, have heard this at this point, but, you know, if you have any questions, I can certainly answer them.

MR. GELLER: Questions?

(No audible response.)

MR. GELLER: No. Thank you, Judi.
MS. BARRETT: No problem.

MR. GELLER: Who's here to speak on behalf of the applicant? I'd ask if you do speak, start by giving us your name and your business address, please.

MR. ENGLER: Thank you, Mr. Chairman. For the record, my name is Geoff Engler from the firm of SEB. Our address is 165 Chestnut Hill Avenue in Brighton, Massachusetts. I'm here tonight representing 420 Harvard Associates, and I'll keep my comments brief.

The Zoning Board, unlike many towns in the Commonwealth, has a fair amount of experience with Chapter 40B applications, and you're in good hands with Judi. Maria and Alison are pros and are assets to this process. I don't say that trying to ingratiate myself to the board or the town, because it's true and I think it's important for the neighbors to know that.

And that because the town has gone and is going through other Chapter 40B applications, I think that's to the benefit of the process. You have peer review consultants lined up, which I think is far ahead of where most boards are on the first night, so we look forward to engaging in that process. I think projects and developments are improved through the peer review
process, through that exchange of information and ideas and looking at things from a different perspective, so we look forward to that process.

And the timeline tonight was hammered home very clearly, but it's important to recognize, mostly for members of the audience, that we're not here expecting to get a building permit next month. I mean, this is an iterative process that goes through changes. 180 days goes quickly, but by the same token, six months is a decent amount of time.

And while this might seem like -- to many here tonight like this project is gigantic, it's humongous, it's so detailed, in the scope of a 40B application and development, this isn't a particularly complicated project.

I know there's a lot of things that people are interested in talking about, but I'll speak personally for a second. A lot of the projects we're involved with have significant environmental issues, wetlands issues, all sorts of other kind of characteristics that take hearings to go through. Just the nature of North Brookline, it's a different animal.

There's certainly a lot to talk about relative to this development, but I feel very confident that
with all the professionals involved and the experience of the people that are sitting here this evening, that we absolutely should be able to get through all the details within 180 days to the satisfaction of both the board and the neighborhood.

Now, that doesn't mean we're going to agree on everything, of course, but certainly it benefits everybody to find as much agreement and common ground as we could on as many issues as we can. And I can say that now not just as a 40B consultant, but also as a 40B developer as well.

So with that said, I think tonight is important. I know probably everybody in the room, or close to it, is familiar with the application, but we're hoping tonight to touch upon really the highlights, the parts of the application that most people are going to be most interested in with an understanding that at future hearings we're going to get into more of the -- how big is the detention basin and how big is the turning radii and where does the traffic go?

So I don't want -- and everything is not going to be addressed or solved this evening, but hopefully people can come away at the end of this evening with at
least a good understanding of the application. And then we'll certainly defer to the town and collaboratively in terms of, you know, what types of questions, what needs more information, and we will endeavor to provide as much.

So with that said, I'll turn it over to my client, Victor Sheen, who will talk about his experience as the applicant. And Dartagnan will talk about what most people are interested in, which is the design, the site plan, and the building itself. And we look forward to engaging in this progress over the next 180 days with the board.

And I feel like, albeit maybe not the same affection, but when I walk through the door, at least Mr. Chairman will be like, "Norm," because he sees me so much recently. But I look forward to it. The board, in all honesty, is in good hands because there is a lot -- there's a good skill set. So I'll turn it over to Victor.

MR. GELLER: Thank you.

MR. SHEEN: Good evening. My name is Victor Sheen. I represent the applicant, 420 Harvard Associates, LLC. I thank the board for the opportunity for us to make a presentation tonight. I want to jump
As the lead developer on this job, we've put together a very seasoned development team, including SEB. With Bob and Geoff being on the team, we feel like we're in good hands in terms of this 40B process. We've been working with the architect on this job for a number of years now, so we understand the design, location, and the value good design brings to a project. And we recognize that both as a developer and also as property owners as well.

In terms of the civil engineering, we have McKenzie Engineering, who's also -- Brad is here tonight to answer some questions. We also have our traffic engineer here to answer any questions. Our landscape architect, Paul Simon, has done a lot of projects in Boston and the surrounding communities. He, unfortunately, is not here tonight, but we would make him available as we go through the next iteration of the presentation process.

On the legal representation, we engaged Eckert Seamans, which is a Boston law firm, to represent us on any contractual issues.

In terms of this -- the project evolution, we started the process, actually, towards the summer of
last year. The project was -- the property itself was put on the market. We won the public bid and subsequently acquired the project around November of last year.

Prior to the acquisition of the project, we had set up a meeting with the planning staff just to engage in some preliminary dialogue in terms of the program and the suitability of both commercial and residential on Harvard Street. And we really wanted to put forward an open dialogue rather than developing a project in a vacuum without any input from the planning staff.

There was a subsequent meeting that was held in early November. Specifically, we brought up the possibility of doing it as a 40B project, and at the meeting the planning staff brought in, you know, the town's 40B staff as well as other community development staff to understand what we're trying to propose. At the meeting -- we really didn't have a concrete plan at that time, so everything was conceptual in nature.

We had, then, a follow-up meeting with the planning staff before the end of the year. Again, we presented a few schemes in terms of facades and
elevations and trying to understand where the town staff is -- you know, preferences are in terms of if it's more modern or contemporary or somewhere in between.

And with that, we initiated the subsidizing agency process that Judi laid out earlier. In the beginning of the year, we elected to go with MHP, MassHousing Partnership, as our subsidizing agency for the PEL, and we started that process and reached out to the neighbors prior to our application to MHP.

And subsequently, once the town was notified, the initial presentations to selectmen took place in early March with a site visit with MHP staff and some of the members of the planning staff as well as the neighbors on the 17th.

We subsequently got the PEL approval, and here we are before the board today.

So I think, you know, I'm going to turn it over to my architect, Dartagnan Brown. But I want to reiterate that as an applicant we look forward to an open dialogue with the town. We understand this is a very technical process, and we're willing to listen but in a very -- what we hope to be in a very organized fashion to be productive on both sides. And hopefully
we'll come out of this process 180 days from now with our heads held high and be proud of what we have accomplished together. So with that, Dartagnan.

MR. GELLER: Thank you.

MR. BROWN: Good evening. Dartagnan Brown, architect at EMBARC studio.

Mr. Chairman, members of the board, thank you for your time tonight. I will walk you through kind of our concept design for the site.

So as you all well know, this is our site in question at the intersection of Harvard and Fuller Street. I think you guys are pretty familiar with Centre Street and all of the stuff that is going around in this neighborhood. So we are proposing, in our project, to take down the existing mixed use that's got RE/MAX agents on the first floor and then residential units above. So our site is outlined here in red.

Just a quick overview of where we're located in the greater context. The site is, we think, very nicely situated between several modes of transportation -- this will tie a little bit later into our parking -- a nice proximity to several parks around the area, the Green Line down here, and, again, just the 66 bus route that goes down Harvard Street.
Zooming into our site, currently, as mentioned, between the site and the parking lot, it does cover a significant area of the site, so from a landscaping design, we are looking to kind of help beautify that and make it more desirable.

We are looking to -- which I'll get to in the elevations -- maintain the ingress onto the site that's off of Fuller Street. And by way of context, this is standing on the corner of Harvard Street and Fuller, this is the parking lot I mentioned on the rear of the current site. This was an old funeral home that was converted, again, into the RE/MAX real estate agent space and residential units above. It's approximately, I think, about 43 or so feet in height. And currently the front of the building really just kind of creates a modal along Harvard Street.

Local context: This is further up on Centre Street; here, this is further down on Fuller Street; this at the intersection; and then this is looking at kind of what the context is.

Just zooming in on our building as we stand today, again, the building really runs from edge to edge. And this is a taller band of, again, the old funeral home, and in terms of the massing and height,
how it ties next door to the butchery.

This is coming down along Fuller Street just
to note where the entry is to the existing parking lot.
That plays into our design, which I'll get into in a
moment.

So kind of a conceptual image here. What
we've done is try to work -- overall, it's a six-story
building. The goal is to take the ground floor and
bring a more active retail -- have that tie into the
ground floor of the butchery and its vocabulary, kind
of the layering of the building, as you will. We're
having, you know, a very nice predominate base. On the
side of Fuller Street is the entry to the residential
building, and further down is the entry to the parking,
which I'll show you in the plans.

The idea with the overall architecture is --
you know, as Victor mentioned earlier, we looked at
several kind of aesthetics and we've decided that I
think more of a -- we like to say a traditional
handsome building. Not a very modern building, but one
that maybe plays off of the proportion of windows to
maybe a large format stone panel. Something that's a
little bit more classic Brookline is kind of our
overall objective with this.
So by way of orientation just for the project, again, Harvard Street and Fuller. The goal is to take the whole front along Harvard Street and turn that into a retail spot between this, around 1950 and then we have a secondary spot around 700 square feet for about 2600 square feet of retail on the ground floor.

Coming up the side of Fuller, the idea is to create a residential lobby so pedestrians can walk in, go up to the elevator, up the unit. And then, as I mentioned earlier, the existing curb cuts.

What our thought is, for several reasons, is to kind of reuse the location of the existing curb cut to keep it furthest away from the intersection of Harvard Street and Fuller. And by using that, we pull into the site and we're -- what we've designed right now on the left side of the site is six surface spots. This gives us both a combination of visitor and handicapped accessible spots.

And then on the right side, we're working with a company that's called Klaus Parking Systems. They do a lot of these automated systems that I'd be happy to get a little bit more into -- I can give you a demonstration at the next hearing.

But the idea is that it's a fully automated
system. It's not a semiautomated system, so you don't need to take out any car to put another car in. It does have what's called a "transfer space," so when you come off of here, you can queue up, get into the system with the use of a fob or, like, a transponder. You get into your car, you get out, the gate shuts, and it moves around and does its thing. So nobody is in the machine while it's being operated. It all happens within the building. It looks like a garage door -- a series of garage doors that you enter, car goes in.

So working in combination with kind of the height of the retail store and a basement dig-out, which would be roughly in this location, we get -- within ten spaces, we get about 23 spots in that system, so we're provided a total of 29 parking spaces.

Just to be very clear and clarify, this heavy dashed line here is what we'll mark out on the site for the site visit. That is the building above. I'll show you kind of an iterate process at this early stage that we've gone through to kind of push that back in both directions, but just to be clear that the building does go back here. The idea is that this is all open air. And I'll show you in a moment, but this area that is currently all surface parking we're looking at to be a
very nice landscaped kind of courtyard.

I'll walk you through the building. We do have a combination of units. I'll just give you a breakdown. So, again, total is 36 residential units. We are proposing 9 of them to be affordable as part of the 40B process. 2 of them are studios. So there's a combination of about 13 one-bedroom units; 7 one-plus-bedroom units, so it's a bedroom plus a den; there's 10 two-bedroom units; and 4 three-bedroom units.

The range of units -- the studios are on -- there are only two of them. They're 520 square feet. But the rest of the units range from 700 square feet to about 1,150 square feet. So quite a nice mix. You can see a lot of them -- even the one-bedroom units here that we're calling the one-plus, they're over 1,000 square feet. So the idea is coming in with nicely sized units for the neighborhood.

Moving up through the building -- so what you can start to see here on the side working -- again, as we mentioned, we had, with 44 Fuller, an understanding of what the main concerns are here with their building, and a lot of it is maintaining the sunlight. So what we've done is stepped every level up, stepped the
building back five feet, and I'll show you that in a moment.

But here, just working through the building, again, a mixture of units. And then you can see here between the fourth and the top floor plan how the building was stepped back as each level goes up.

Key things to note here, and I'll show you in the 3D diagram, is that in addition to kind of working with 44 Fuller here and setting this back to maintain kind of the natural sunlight into this side of the property here, on the rear with Coolidge Street we are -- we have also pulled this building back, so the back of our building aligns with the back of the butchery site.

As mentioned, the landscape architect isn't here tonight, but this is kind of our preliminary thoughts on what to do with the space that we're creating. It will be about 720 square feet. The idea is to provide a turf area and kind of a stone walkway, nice perennial plantings, a trellised area with some bench seating. The goal really is -- because we understand that this is quite a sensitive corner to all abutting properties, but we would like to put something there that is much more appealing than we have today.
So, again, just to kind of recap, along Harvard Street, this is the extension of the retail that exists next door, the butchery, and kind of ties up further the residential entry here. Each of the units, we are providing a little inset balcony so there's an open space for the units.

And to -- as I mentioned, kind of the breakout of the units, just big picture, again, a mix of units there. So they are quite healthy in size. And then just very quickly is the distribution of the affordables are evenly spread throughout the project.

So part of this project evolution, as we mentioned earlier, working with both MHP and the neighborhood at this early stage was really understanding the sensitivity around 44 Fuller here on the front side. So our very first proposal, we were literally close to 70 feet, 69.10, and our building all the way up was five feet off the property line.

What we've done is lowered the building six feet in height. We're now at 63.10. And each level that goes up, we've pulled back five feet so that the top floor is, in essence, basically 20 feet back from what we had earlier.

On the rear, you can see here, Scheme A was
the very first scheme. Again, the sensitivity around 44 Fuller and in back of these homes here, what we've done, kind of through a step process, is -- our first iteration was stepping back to a 5, 10, 15, 20, and then also on the side closest to the butchery, stepping that back. Then, from that, we actually pulled the bottom in and went straight up.

And what we're proposing -- or our current proposal right now is to maintain the stepping back here but take this whole volume of building and slide it back to the back of the butchery. And part of that, which I'll show you in a moment, ties to some initial shadow studies we've done to understand where the difference is between the current building and our building and what those sensitive areas are and trying to work to bring really the most light back into this area.

With that, I'll be back in a minute, but I'll turn you over to Brad to kind of walk through the engineering.

MR. MCKENZIE: Thanks, Dartagnan.

For the record, Bradley McKenzie, McKenzie Engineering Group, registered professional, civil engineer. Office is in Norwell.
Not a great deal of civil engineering has been performed to date. As Judi had mentioned, the requirement to file with the board at this juncture is -- for civil engineering plans are preliminary plans, which don't provide, obviously, a construction-level detail of information.

So the plan that we prepared is a site feasibility plan. And the utility connections that we're proposing at this point are all on Fuller Street here: water, sewer, other underground utilities. We understand that a great deal of review and coordination with the Brookline DPW and Engineering Department still has to take place to determine the final location and nature of those connections. Additional coordination has to be done with the architecture team, the mechanical engineer to determine the size of those utilities as well.

The site, in its present condition, is comprised of two lots of: the building on the front lot, Lot 1, and on Lot 2 is the parking lot that provides service -- accommodates parking for the buildings on Lot 1. And there's -- all of the stormwater runoff for this part of the site is captured by a catch basin over here by Fuller Street with a
direct connection to the storm drainage system on Fuller Street.

What we're proposing at this stage is a subsurface infiltration system within the park area, the open space area, and the southwestern portion of the property. Its intention is to encourage the infiltration of soil -- of stormwater into the underlying soil, the overflow connection, back out to Fuller Street.

We will have to -- in preparing final design plans for the stormwater system, we'll have to conduct a few test pits to determine the permeability of the soil, the water table, to make sure that the system functions as intended, and I'm sure that will occur in the coming months. But, again the construction level of civil engineering plans you won't see until the filing of the building application.

Dartagnan?

MR. BROWN: In the next slide we have -- it's in a preliminary stage, but our traffic consultant, Scott, will relay it for you.

MR. THORNTON: Good evening, members of the board, Mr. Chairman. My name is Scott Thornton. I'm with Vanasse & Associates. I'm a registered...
professional engineer.

And I just want to go over the status of the traffic assessment that we've done to date. As Judi mentioned and Brad echoed, we're at a preliminary stage with the traffic. We've really looked at the identification of the existing uses on-site and compared that to the proposed uses. We've also looked at safety in terms of visibility for the driveway. As been mentioned, the driveway is being retained in its existing site.

The existing occupied building has three apartment units and about 6,200 square feet of commercial space. The proposed use is 36 apartment units and one office of about 2,700 square feet.

And the main issue related to traffic is the demand increase. So this slide shows what would be expected from the site both in its current land use and the proposed land use. So there's -- so going from the current to the proposed, there's an increase in the residential use and a decrease in the office use.

The time period that you see up there: the weekday daily, the weekday morning peak hour, and the weekday evening peak hour are the typical uses that are going to -- or typical time periods that are going to
be reviewed in any traffic assessments. Those are the
time periods of peak generation of the land uses as
well as the heaviest activity on the adjacent side
streets.

And looking at the morning peak hour and the
evening peak hours, you can see that there's an
increase of about five trips for the morning peak hour
and about six trips during the evening peak hour, and
that's equivalent to a vehicle every 12 to -- every 10
to 12 minutes during those peak hours.

It's not something that's likely to be noticed
when you get further out from the intersection -- from
the site. In fact, it may not -- if you were to do a
capacity analysis of the intersection of Harvard Street
and Fuller Street, you may not even notice any effect
from that traffic.

We did look at the operations of the Harvard
Street and Fuller Street intersection. All the
equipment seems to be operating properly. There's
pedestrian push buttons and signal heads, there's --
it's a signalized intersection, so it operates on about
120-second cycle. So it seems to be -- seems to be a
fair amount of capacity there, and certainly enough to
accommodate the increases that we're talking about
As has been mentioned previously, there's the 66 bus that stops at the Harvard Street and Coolidge Avenue section a block or two to the north of the site, there's also the 57 bus that operates further to the south, and the Green Line, the B and the C trains go by within a half mile from the site.

So I think, you know, we're certainly willing to work with your peer consultant on the review of this traffic assessment, and if they have any additional comments or requests for further review, we'd be happy to work with them.

MR. BROWN: So lastly, just getting to the shadow study that we ran. The building outlined here is the existing building, as mentioned, currently most of the impact. So we ran it for the different solstice and equinox, summer, fall, spring, and winter at 9:00 a.m., 12:00 noon, 3:00 p.m., and 6:00 p.m.

Most of the impact is -- as one can imagine, is in the wintertime throughout the different solstices just with the angle of the sun. And down here, I think if you looked at the winter solstice on the bottom line, a lot of the current impact is off to the Coolidge Street side, a pretty minimal impact along
Harvard Street and onto the Fuller side.

The next slide just shows our building currently as designed. Again, all of this is modeled to relative heights that we took in the neighborhood. In the summer solstice, very minimal impact, again with the south side being here. You can see, I think, for us, the most impact in the evening time in the winter solstice was across the street to Coolidge here and across Harvard Street there. There is some impact here -- or notable impact here on the building next to the back of the butchery. And working on part of that stepping, which I talked about earlier, we've really tried to minimize the impact onto 44 Fuller.

And I think, with that, we conclude our presentation. Thank you.

MR. GELLER: Okay. Thank you.

Questions?

MS. SCHNEIDER: I have sort of a hodgepodge of questions, and I guess we should decide -- you know, maybe they're just matters of clarification from the project team that they can answer right now to the extent that I missed details within the presentation or there are inconsistencies.

Some of these, I think, are requests for
additional information at subsequent hearings, but I figured I'd throw it all out now so that if the applicant wants to work on getting these materials, to the extent that they don't already exist, it might help speed things along.

So I think the first thing I wanted to ask -- I was looking at the materials that were provided in the application. It looked like there was a one-bedroom unit with only 500 square feet on the fourth floor. Was I reading that correctly? That's very small for a one-bedroom unit. And, again, we may just have outdated materials.

MR. BROWN: There is a one-bedroom, 500 square feet. Again, the reason, I think, we're able to get a nice one-bedroom there is because of the extensive window exposure.

MS. SCHNEIDER: But that's smaller than any of the studio apartments that are currently proposed; is that right?

MR. BROWN: That is correct, because of the exposure that we have.

MS. SCHNEIDER: Okay.

MR. BROWN: But we can certainly lay out the unit and see how that works.
MS. SCHNEIDER: Okay. The next question I had -- obviously, based on the proximity on Harvard and Fuller, it looks like this is clearly the largest and most massive building that we can see on what you're showing. I'm wondering if you can provide us with any sort of either an aerial or other plans that show relative sizes and heights of other buildings in the immediate vicinity. And I don't mean things that are a half mile away, ten blocks away. I mean things that are close by so that we have a frame of reference about what we're talking about in terms of height and massing.

MR. BROWN: Yeah. So I think to answer that in -- more earnestly, I think we need to go and just do a more in-depth survey.

MS. SCHNEIDER: Okay.

MR. BROWN: But we can certainly do that.

MS. POVERMAN: That would be on a three-dimensional basis or -- I mean, it would not be in that form.

MR. BROWN: No. I think we'd do an actual diagram that measured out the heights, gave you the heights of stories. I think we could even look at cutting a couple street sections just to draw out --
MS. SCHNEIDER: That's exactly what I had in mind. Thank you.

The next question I have has to do with the retail use. It's still retail use on the ground floor, correct, or is it proposed office?

MR. GELLER: For both spaces, or is it office and retail?

MR. BROWN: So what we are proposing is actually two spaces. In the front in blue is about 1,950 square feet of retail, undecided. And then the rear we talked about -- about 700 square feet. One potentially -- we talked with our clients that may actually come there on-site, their office for their practice. So we kept it on the rear. And then the idea is for the front retail tenant to have full exposure along Harvard Street.

MS. SCHNEIDER: So I have two questions relating to that. One of them is, I mean, I think, as anybody who goes through Coolidge Corner on a regular basis knows, there are a lot of empty store fronts in Coolidge Corner right now. In part, my understanding is that, you know, rents are very high.

I'm wondering if you have done any sort of feasibility studies to determine that retail is, in
fact, a feasible use for the ground-floor space here.

You know, do you have a letter of intent for a
perspective tenant? What are you envisioning as a
productive use so that we're not permitting an
evergious, you know, street-front retail space here that
actually can't be tenanted.

MR. SHEEN: I can speak briefly about that.

We actually have a letter of intent for the next -- for
a 20-year long-term lease.

MS. SCHNEIDER: And can you tell us who the
tenant is or what type of tenant it is?

MR. SHEEN: It will be a combination of, you
know, cafes with maybe some -- there was some
discussion of RE/MAX returning to the site and also
potentially getting maybe a flower shop.

MS. SCHNEIDER: So is it a single user, or is
it multiple spaces?

MR. SHEEN: It will be broken up into multiple
spaces as the plan progresses.

MS. SCHNEIDER: Okay. So related to that, I
may have missed this, and I apologize. When the
traffic consultant was talking about the traffic
counts, I thought that they were based exclusively -- I
thought what he said was they were based on office use
and residential use. I did not hear any mention of retail uses being one of the land use codes that was considered. Maybe you can clarify if that was the case.

MR. SHEEN: Well, the letter of intent we have -- we've received to date, it is, for the large part, would be the RE/MAX office returning to the site, yes.

MS. SCHNEIDER: Okay. Have any studies been done on the traffic standpoint -- and maybe your traffic consultant can answer this -- considering that there may be some retail uses as well. You mentioned a flower shop, a cafe. I just wasn't sure if that was factored into the traffic counts that have been done to date.

MR. THORNTON: Retail use has not been factored in.

MS. SCHNEIDER: Okay. Another question I had has to do with the open spaces, that little turf lawn that you're creating. Is that envisioned to be publicly accessible open space, or is that going to be exclusively for the private use of building residents?

MR. SHEEN: Private use.

MS. SCHNEIDER: And then finally -- at least
for now until something else pops into my mind -- going back to the design, it appeared to me that towards the rear of this -- maybe it's the side or the rear. I'm not sure what you're using. But further down Fuller where there are the six surface parking spaces, that seems to be sort of an open parking area with some -- you know, a deck that the building then goes up from. Is that right?

MR. BROWN: Correct.

MS. SCHNEIDER: What was the -- was that the product of working with neighbors or others to come up with that concept? I personally, just architecturally, all due respect, not a fan of that kind of open decking look, and I just wondered if that was incorporated into the project as a request of the neighbors or something like that.

MR. BROWN: So in regards to this area here, what we -- I think currently we have it as an open-air parking deck. And part of it is to address the need for accessible spots for a handicap plan. This -- you know, through the process it doesn't need to be fully open by any means. I think it's just our starting point with the footprint to --

MR. SHEEN: Let me speak a little to that.
Actually, in our initial submission to MHP as part of the PEL application, the spaces abutting 44 Fuller were actually mechanical parking spaces as well. So during the site visit with MHP and some of our neighbors, it was suggested to us that we reduce the mechanical use of those spaces to essentially return it back to the current configuration, which is really surface parking abutting that property. Currently there's actually an eight-foot fence that is on the neighbor's property separating our project to 44 Fuller.

MS. SCHNEIDER: What is your -- I'm sorry. I didn't mean to interrupt. What is your thought in terms of screening or buffering of those surface spaces in the adjacent property line?

MR. SHEEN: There is no -- the project, as proposed today, is no different than the current existing condition at that --

MR. BROWN: In terms of the open parking to the fence, I think, to answer, maybe, your question, the architectural aesthetic of that is something we can certainly look at between either enclosing it, putting a screening of sorts. That's something we'd differently love to have feedback on.

MS. SCHNEIDER: Yeah. I think that's
something that we should flag for a discussion down the road. I don't know if that's a landscape architect issue or a you issue. But I am particularly concerned that there are surface parking spaces that are very close to the property line, and I think you're missing an opportunity to provide some value screening and buffering along that property line.

MR. BROWN: Certainly happy to look at that.

MR. GELLER: Anybody else?

MS. POVERMAN: I have a little bit of a hodgepodge as well.

So the outdoor space that you're talking about, are those intended mainly for residents or for visitors or for whom?

MR. BROWN: The landscape area on the --

MS. POVERMAN: The parking spaces you were just talking about with Ms. Schneider.

MR. BROWN: So I think this would be intended for the residents of the building and visitors that --

MS. POVERMAN: The parking spaces.

MR. BROWN: Oh, parking. I thought you said "landscape."

MS. POVERMAN: Okay. Sorry.

MR. BROWN: So the idea is that the -- again,
it's not all concreted out, but the idea is that the
residential would use the stacker system because of the
frequency of need of that, and that these would be used
for visitors, accessible van, maybe drop off. So these
are more influx. I don't think, at this stage, we
thought of deeding these to the residential units. I
think this is more for quick in-and-out visits relative
to the parking system.

MS. POVERMAN: Okay. But I think we got a
letter saying that currently six of those spaces are
used by the RE/MAX people.

MR. BROWN: Oh, currently.

MS. POVERMAN: Well, no. So the six are
currently used, RE/MAX goes back in, then it's not
going to really allow any space for --

MR. BROWN: Victor just mentioned that RE/MAX
will probably get back into the parking system on the
right side.

MS. POVERMAN: Okay. So I've been doing some
studying of this parking system, which seems to be the
new wave of putting parking into small spaces, which is
great. But as I educate myself, I guess there are
various types. What type of system is this?

MR. BROWN: So this is called the -- so it's
Klaus Parking and it's TrendVario. I think it's the
4300 series, so it's a fully automated series. I will
certainly bring a video clip next time of how it works,
but it's basically a fully mechanized system that has
all the bells and whistles. In terms of usability,
you're not moving one car to take another car out.
It's almost, essentially, three layers of 10 spots, but
because of the transfer cases and the overruns, we
could get 23 spaces out of it.

So there's -- so I think if you look at --
here in the gray shaded area, these are never really
parked. What happens is -- and they may end up a
little bit further in, working with the consultant in
terms of loading. But the idea is you pull in, you get
out of the car, and the gate shuts. And the -- it's
almost like a little matrix, that the car will move
forward, up, down. So when the next person comes to
call their car, it shuffles everything around and it
takes it up, brings it up.

MS. POVERMAN: So is there one bay so one
person gets their car at a time and another person --

MR. BROWN: No. It's actually five bays. So
there's five -- basically five doors that are here. So
I think you're -- we're still trying to iron out all
the details, but there is flexibility on where you come
in and out of the bay.

MS. POVERMAN: Okay. So it's sort of
something down the line that --

MR. BROWN: Yeah. And we have engaged with
the parking consultant to kind of -- the parking system
consultant to work through all those details.

MS. POVERMAN: Is it Klaus with a K or a C?

MR. BROWN: K-L-A-U-S.

MS. POVERMAN: What sort of rents are you
anticipating for the apartments? What sort of range?

MR. SHEEN: The affordable rents will be
established at approximately 80 percent of the area
median income.

MS. POVERMAN: How about the market rates?

MR. SHEEN: That is determined when we rent it
out.

MS. POVERMAN: But you must have some idea
now, because otherwise you couldn't determine whether
or not the project is feasible.

MR. SHEEN: Well, I -- you know, we're still
flushing it out at this point.

MS. BARRETT: Maybe you can just provide what
your working assumptions are as of today.
MR. SHEEN: Sure. I mean, the working assumption is -- for one-bedrooms, maybe, roughly, I would say, on average maybe between $2.50 to $3.00 a square foot.

MS. POVERMAN: Do the math.

MR. SHEEN: 2,900.

MS. BARRETT: I mean, people just want to know what someone is going to pay out of pocket for their market rate. So I know you care about square foot, but I think --

MR. SHEEN: Sure. So, for example -- let me go back to the unit mix, if we will.

MS. POVERMAN: I mean, because the ranges -- we've been doing a few 40Bs, and the ranges of rents are quite oppressive from area to area so --

MR. SHEEN: It really is -- it is a range. So, for example, for the studios at $3.00 -- we'll do a round number -- $3.00 a square foot at 500 square feet, it'll be $1,500.

MS. POVERMAN: And so it would be a different square footage for a three bedroom?

MR. SHEEN: Potentially. But approximately, on average, $3.00 a square foot.

MS. POVERMAN: Have you submitted pro formas
MR. SHEEN: We submitted preliminary pro formas to MHP as part of the review process.

MS. POVERMAN: Could we have those as well?

MR. ENGLER: It was already submitted to the town.

MS. STEINFELD: It's part of the application.

MS. MORELLI: It's in the application.

MS. POVERMAN: Okay. Yeah, I didn't see it. What is the current setback of the RE/MAX building that's on each edge of Fuller and Harvard Street, just for comparative purposes, what sort of waivers you're looking for.

MR. BROWN: So our -- you can see right here, this is the RE/MAX building that comes out here and then our building is squaring up with the edge of the site. So right now it does skew to the edge of Harvard Street, but it does come out to this corner here, and then there's a set of steps that goes up to the stoop here. Our building is coming to the edge of the steps, so it's about, I think, four feet further from the edge of this -- on this side of Fuller.

MS. POVERMAN: So except for the steps --

MR. BROWN: Yeah. You can see kind of faintly
here there are the steps coming up, that's the proposed edge of our building there.

   MS. POVERMAN: Okay. So it's basically the same except for the line where the steps are?

   MR. BROWN: Right. So here it's at an angle. It looks like it sticks out a little bit further on this corner. So ours is parallel to the edge of Harvard Street, and then here, take the edge of the steps, so there's four feet further than this plane here backed out but straight up.

   MS. POVERMAN: Okay. Will we be getting sort of a superimposition picture? Sometimes we get that.

   MR. BROWN: Sure.

   MS. POVERMAN: And also the shadow study. Does the -- I can't remember what it is. The Planning Department usually likes to see -- Maria, maybe you can tell me in terms of --

   MS. MORELLI: Yes. So one of the things we've requested as additional material that's not part of what's required of the complete application is an animation that shows the shadow studies over a 24-hour period.

   MS. POVERMAN: And any pictures that could be bigger? Because my eyes are just not good enough to
really show what's going on in those little cells.

MR. BROWN: Sure.

MS. POVERMAN: Oh, so what materials are you thinking of using in the building?

MR. BROWN: We know what we don't want, and that is, like, you know, double hung vinyl siding or clapboard siding. We're staying away from that.

The idea is a combination of casement style and awning style windows. Most likely, we would like to do kind of a large format stone veneer panel on the upper portions of the building, which is, if you look at the rendering, kind of the midtoned colors here. And then, you know, we -- I think we could do either a darker version of that at the base or it could go into more of a brick. But that's all, in our minds, open for discussion.

But we are looking at a high-end finish. We're trying to do a -- you know, more standard, I guess. But the idea is definitely large format panels, brick, casement windows, just as the general direction.

MS. POVERMAN: Just a couple more.

MR. BROWN: Sure.

MS. POVERMAN: I think some of the issues I have with the traffic analysis -- I think that your
study shows there's actually going to be more traffic
than is initially projected in this presentation, but I
think that's better brought up in a peer review
situation, so I don't think it makes sense to have you
answer my questions on things I don't understand here.

I think it is larger, as Ms. Schneider said, in terms of the other buildings around.

MR. GELLER: I'm not sure that's what Ms. Schneider said. I think she asked to see --

MR. BROWN: She asked to see an understanding of the context --

MS. POVERMAN: Yes. That would be very helpful in terms of understanding it in terms of the other buildings around. Let me put it that way. Because -- you know, in context with the commercial on Harvard as well as the residential on Fuller. That would be great.

MR. BROWN: We'll provide that.

MR. SHEEN: Yeah. We certainly didn't think a 20-story building would be appropriate.

MS. POVERMAN: Thank you. That's all I have.

MR. GELLER: The building alignment along Harvard Street, does it run -- is it the same distance from the street as the butchery building?
MR. BROWN: Yes.

MR. GELLER: So you -- so just as you've done in the back, you've done that similar concept in the front?

MR. BROWN: Correct. And we can provide better documentation.

MR. GELLER: That would be helpful.

The mechanicals on the building, when I look at this picture, I obviously don't see any mechanicals. Are there mechanical housings that are higher than this?

MR. BROWN: The idea is the mechanical housing is -- would go along the roof and in a screened enclosure most likely in the center of the building in terms of visibility and noise.

MR. GELLER: Above this height?

MR. BROWN: Correct. Screened in so that the --

MS. SCHNEIDER: So you're not -- so in this picture, we're not seeing the penthouse, which would be on top of that upper-most point there.

MR. BROWN: So that is the penthouse floor.

MS. SCHNEIDER: I mean the mechanical penthouse.
MR. BROWN: But it's actually just a -- it's a matrix -- a grid matrix that the units are placed on, and then they're -- we have done both ways where you either put in kind of a screening fence around it, and that's more for the acoustical reasons. But the idea is that they're all inset -- inbound from a site perspective.

We can certainly look at -- our goal is to -- we understand concerns around noise and humming of machines, and as efficient as these machines as getting, the further we can put them away, we find the better.

MR. GELLER: It's also the visual.

MR. BROWN: Right.

MR. GELLER: So we'd like to know what it looks like.

MR. BROWN: Sure. And we will provide that.

MS. POVERMAN. What's the story with trash collection and storage to the extent -- before it gets picked up.

MR. BROWN: So the idea for trash, we -- so, again, it's very much a work in process. But the idea is at the back where we have the orange area, we do right now actually probably have an excessive
circulation through here, so the idea is maybe between here and somewhere in this back that we create a trash room. We'd also like to look at bike storage.

We're trying to figure out the extent of the parking system and what that means to the basement level, because there is a basement under the existing building right now. So the idea with the elevator being there, we could go down to a basement level if we want to get into increased bike storage and such. But there is actually -- you know, we may not even need the full 700 for a little office here, but there is room to curve out for, like, a trash room so that it could be rolled out and picked up.

MS. SCHNEIDER: And so you would envision town trash trucks coming to pick up curbside?

MR. SHEEN: No. It would be privately managed and picked up.

MR. GELLER: From the driveway?

MR. SHEEN: From the driveway but within the building.

MR. GELLER: And you mentioned a number of potential retail tenants, some of whom may include food. And with food, whether it's a restaurant or a cafe, the issue is daily pickup and storage for trash.
And it's got to be sealed storage.

MR. BROWN: Correct.

MR. GELLER: So obviously in the context of your determining whether you're going to have a trash room or where the storage is going to be within the leased space, they've got to have an access to where your trucks are going. Have you started to think though those issues?

MR. BROWN: I think we understand what those issues are. Again, with not knowing who the exact user will be for all of it, we can certainly plan -- we do a lot of urban projects as an architectural firm. We do understand the nuances. We do a lot of restaurant design, so that is something we can definitely factor in depending -- as things evolve.

MR. GELLER: One question that I think Kate may have asked -- and it may have been answered, but I didn't catch it -- was in your determination of parking spaces, have you calculated any parking spaces for the commercial space?

MR. BROWN: So the commercial space -- right now we have 2,000 square feet, and we're saying about 6 -- potentially six spots for those commercials. So out of the twenty-nine, six could go there, again,
depending on what the final use is for that.

MS. POVERMAN: I think one of the issues that was raised in my mind is that if the current RE/MAX people -- who I believe were using six, but that's based on something I saw in an email, as best I recall. If they take up spaces in the mechanical room, that leaves, you know, what, eighteen spaces or so for the --

MR. GELLER: Let's hold off on the discussion about --

MS. POVERMAN: Right. But it's just something to take into consideration, because it's a percentage of how many parking spaces are available for living units, so to that extent, it's relevant.

MR. GELLER: Right, yes. And that's a fair point. And, in fact, what I would suggest to you is that you really need to go back and -- within the submittal you have a chart for waivers, and I would suggest that your request on waivers is incorrect just in terms of -- because you're just referring to residential units.

MR. BROWN: We'll look at it.

MR. GELLER: Other questions?

MS. PALERMO: Yes, I actually have a couple of
questions now.

You said that the redesign height of this new building is, I believe, 63 feet, 10 inches?

MR. BROWN: Correct.

MS. PALERMO: Is that to the top of the mechanical systems or just to the roof?

MR. BROWN: Top of the roof structure.

MS. PALERMO: Top of the roof structure, so you're not including the mechanical?

MR. BROWN: Correct. The building code definition is to the roof structure.

MS. PALERMO: To the roof assuming we don't -- well, the building code has you building something much shorter.

MR. BROWN: Right. But the definition of the height of the building is -- regardless of the zoning is to the roof structure.

MS. PALERMO: And you -- I assume your -- all residential units start on the second floor?

MR. BROWN: Correct.

MS. PALERMO: So are you planning to construct any to be accessible within the units?

MR. BROWN: They have to. So by having the elevator, that gets you --
MS. PALERMO: Up there.

MR. BROWN: -- up there. And then within that, there's a mix between what is called "Group 1" and "Group 2." So 5 percent have to be Group 2, which is fully accessible, so full wheelchair turning in bathrooms, kitchens are modified to a lower height.

And then the other 95 percent is what's called "adaptable." So if somebody came in and had to modify, there is the ability to modify it.

But that -- so by having the elevator, that gets you the access for a wheelchair up into the building. Grading off of the site, that's all factored in to get a wheelchair into the lobby, follow the paths of travel to the elevator, up, and then into the unit -- will have to be -- will be designed to that.

MS. PALERMO: And are you anticipating including within certain units -- within the right for certain units the right to use a parking space, or are you charging separately for the parking spaces?

MR. SHEEN: I think at this point we were -- the parking will be additional to the rent at this point.

MS. PALERMO: And the --

MR. BROWN: First come, first served.
MS. POVERMAN: That's what the plan says.

MS. PALERMO: Okay. That's all I have.

MR. GELLER: Thank you.

Anything else?

(No audible response.)

Okay. No other questions; correct?

(No audible response.)

No. Okay. So that's a nice break point. I'd like to mention Enid Starr -- who most of you probably don't remember -- would be very proud because it's under 9:00.

MS. STEINFELD: We're not done yet, though.

MS. MORELLI: I'd want to just talk about application completeness.

MR. GELLER: Yes. I'd like to call on Maria Morelli to speak to the application.

MS. MORELLI: Good evening and thank you.

So the regulations -- the state regulations stipulate the elements that comprise a complete application. And I've reviewed the application against the state regs as well as the local regs, and they pretty much mirror each other. Our local regs have additional requirements such as showing compliance for stormwater management.
You have a letter dated June 23rd that I sent you that lists all of the outstanding information, and I've asked for that before the second hearing of July 11th, and I understand the applicant has agreed to that.

I also wanted to point out that as a result of testimony that departments, boards, and commissions might provide, there might be additional materials that are not considered requirements for the application but additional materials that would help us understand what is being proposed. And that would come out of subsequent testimony, so that could be to come.

MR. GELLER: Thank you. You don't want to talk more slowly, do you?

Okay. So, Alison, can you remind me. The next -- the next hearing is scheduled July 25, 2016, at 7:00 p.m. But in terms of -- it will be here; correct?

MS. STEINFELD: Yes.

MR. GELLER: It will be in the same room. And at that time, are we going to hear from town boards and departments?

MS. STEINFELD: And the public. It will be a night focused on testimony.

MR. GELLER: So July 25th, 7:00 p.m., we will
hear town boards and departments. We expect to have a fair number of submittals from town boards and departments in written fashion. We will have an opportunity to hear from the public at that time.

In the interim, on July the 6th at 8:30 a.m. there will be a site visit at the property. Again, we would ask that it be marked.

Okay. I want to thank everyone, and we are continued until the 25th.

(Proceedings adjourned at 8:49 p.m.)
I, Kristen C. Krakofsky, court reporter and notary public in and for the Commonwealth of Massachusetts, certify:

That the foregoing proceedings were taken before me at the time and place herein set forth and that the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any of the parties, nor am I financially interested in the action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 8th day of July, 2016.

______________________________
Kristen Krakofsky, Notary Public

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