

Mr. Jesse Geller, Chairman

Brookline Zoning Board of Appeals

Sept 10, 2014

Dear Mr. Geller,

At this week's meeting of the ZBA concerning the Hancock Village expansion, you made the excellent suggestion that the public might submit questions in advance. I would like to ask the following:

1. Who is the un-named negotiator for Brookline who asked that the apartment complex be expanded?

At the June 5, 2014 meeting, Attorney Levin stated that representatives of the Town had requested that units be moved from the S7 district to the M0.5 area; that is, the apartment tower would be made taller. I believe we have the right to know which individual (or committee) has been involved in this discussion.

2. Does Chestnut Hill Realty have approval from Mass Development to increase the height of the apartment?

The regulations concerning 40B projects specifically state that an increase in building height of greater than 10% must be approved (see attached 760 CMR 56, Reference 1). The proposed increase in height appears to be 25% (10 feet/40 feet according to the CHR method, although it could be argued that it is 10 feet/70 feet measured from Asheville Road; either calculation is greater than 10%).

It would appear to me that the reasonable starting point for negotiations with CHR would be the plan that was actually approved, and if CHR wants to negotiate the revised plan, they must first apply through the mechanism described below.

3. What is the height of the apartment building?

I previously noted that the plans submitted on July 11, 2014 were actually dated January 2012 (see below Reference 2). As of this writing, we do not have complete plans showing the elevation with respect to Asheville Road. There is no mention of air handling units, elevator shafts, or other structures.

According to Brookline zoning bylaws, (section 5.30) "Height shall be measured from the record grade of the street opposite the midpoint of the street frontage of the lot". It would appear appropriate to know this before further consideration of this matter.

Thank you in advance for addressing these questions.

Yours sincerely,



Anthony Abner

Reference 1. 760 CMR 56

(4) Substantial Changes to Project

(a) Substantial Changes. If an Applicant involved in an appeal to the Committee desires to change aspects of its proposal from its content at the time it made application to the Board, it shall notify the Committee in writing of such changes, and the presiding officer shall determine whether such changes are substantial. If the presiding officer finds that the changes are substantial, he or she shall remand the proposal to the Board for a public hearing to be held within 30 days and a decision to be issued within 40 days of termination of the hearing as provided in M.G.L. c. 40B, § 21. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in such hearing. If the presiding officer finds that the changes are not substantial and that the Applicant has good cause for not originally presenting such details to the Board, the changes shall be permitted if the proposal as so changed meets the requirements of M.G.L. c.40B, §§ 20 through 23 and 760 CMR 56.00.

(b) Commentary and Examples. The statute requires that an Applicant present its application first to a Board before appealing to the Committee. If on appeal to the Committee the Applicant wishes to make changes in its proposal from its content as originally presented to the Board, the Board should have an opportunity to review changes that are substantial. Following are some examples of what circumstances ordinarily will and will not constitute a substantial change of the kind described in 760 CMR 56.07(4)(a).

(c) The following matters generally will be substantial changes:

1. An increase of more than 10% in the height of the building(s);

Reference 2: Magnified view of plans submitted to ZBA July 11, 2014 (A.7 page 75)

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DATE	1/25/12		
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