



Chestnut Hill Realty

October 17, 2014

Brookline Board of Appeals
Town Hall
333 Washington Street
Brookline, MA 02445

Re: Residences at South Brookline (the "Development")

Dear Members of the Board:

We have reviewed the letter dated September 30, 2014 of the Neighborhood Conservation District Commission (the "Commission") with respect to the Development, and we offer the following thoughts.

First, the suggestion in the second paragraph of the letter that the Development "remains materially unchanged" from either the one originally presented to MassDevelopment or from the one presented originally submitted to the ZBA, is demonstrably untrue. The fact that the Commission is unwilling to acknowledge such changes as a reduction in bedrooms of over 25% (402 to 321), reduction of infill buildings in the S-7 from 12 to 9, increases of useable open space of over 3 acres; and preservation of approximately and additional 150 trees as being material changes, demonstrates the inherent bias of the Commission.

The Commission urges the ZBA, in reviewing the Development under c. 40B to "extend the review of the current proposal beyond the scope of the review normally available through the Town's 40A zoning power." In this regard, the Commission betrays its lack of basic understanding of the 40B process, in which the ZBA's powers are considerably more constrained than those it would have for a project being permitted under c. 40A. The Commission's request that the ZBA impose "community standards" on the Development is similarly completely at odds with the ZBA's jurisdiction under c. 40B. Under 40B the demonstrated need for low and moderate income housing generally trumps a community's desire to restrict such housing, absent compelling issues of "Local Concerns" -- a narrowly defined term which does not include the notion of "community standards".

The Commission's outrageous suggestion in the paragraph "Achieving the Intended Aim of 40B" that the Development be limited to 20% of its proposed density, and that all of these

617-323-8800

Executive Offices

Box 67377, Chestnut Hill, MA 02467-0004

FAX 617-323-8801

chestnuthillrealty.com

units be affordable, is a crystal clear signal that the Commission is not interested in any compromise. Its raison d'être, as it has always been, is to stop any further housing development on the Hancock Village site, using tools outside the Town's legitimate zoning powers. Even now, possible design changes to the Development are functionally precluded because they would expose the owner to the vague and arbitrary whims of the Commission under the NCD by-law. It can truthfully be said that it is the very existence of the Commission, the only one of its kind in the Town (and more significantly, to our knowledge, in the Commonwealth), is in large part, what led CHR to pursue 40B development.

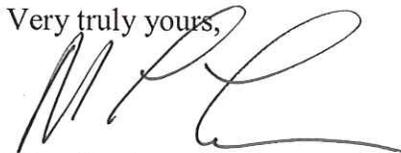
The Commission's proposed "conditions" hardly merit a response. In fact, perhaps recognizing the illegitimacy of its views under c. 40B, the Commission acknowledges that many of its suggestions "may prove unacceptable to the Housing Committee [sic]", but nevertheless urges the ZBA to adopt them. Needless to say, this would only expose the ZBA and the Town to needless, costly and ultimately fruitless litigation. We will briefly comment on the Commission's proposed "conditions" as follows:

- The S-7 district (referred to in the letter as the "Greenbelt"), an area that is zoned for residential development and taxed as such, is an appropriate area for the scale of development currently being proposed. There is nothing really historic about this area in any meaningful sense of that word. CHR is proud of the beautiful landscaped areas in the Hancock Village development, in large part because we created and sustain them.
- We have been diligently working on the height massing of the apartment building and expect to be able to address the ZBA's concerns on this matter. The suggestion of the Commission that the building be moved elsewhere on the Hancock Village site is not within the ZBA's purview.
- A condition imposed on precluding any further applications for development on the Hancock Village site is not within the scope of the current application, and hence the ZBA's purview.
- Potential review of the Project by the Massachusetts Historical Commission is not within the ZBA's jurisdiction.

Please be advised that the submission of this letter does not constitute an acknowledgement by CHR of the legality of the NDC By-Law or its application to the Hancock Village site as a whole, or a waiver of any of our rights with respect to these matters, all of which rights are expressly reserved.

Thank you for your consideration.

Very truly yours,



Marc Levin
Director of Development

