

**To: Zoning Board of Appeals**  
**From: Planning Department**  
**Date: January 5, 2015**  
**Case: The Residences of South Brookline c.40B –**

**Compilation of Comments on Draft Decision –  
 From testimony provided by Members of the Public and Boards and Commissions**

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CONDITION OR TOPIC AREA	PUBLIC / COMMISSION RECOMMENDATIONS
<b>Neighborhood Conservation District Commission – December 22, 2014</b>	
Condition 36 – Mass Historical Commission	A Project Notification Form shall be filed with the Massachusetts Historical Commission as required by applicable law and with MEPA, if so required.
<b>Scott Gladstone, Russett Road – December 17, 2014</b>	
Findings 1 and 10	<p>The fact that the ladder truck, needed to reach the top of the apartment building, takes 11 minutes should be concerning. Unlike in Sunderland where the problem could have been solved by spending money, there is no place to put a second ladder truck in close proximity to this site, which is why density, especially high up, should be curtailed.</p> <p>If not supporting a denial due to the inappropriateness of the issuance of the Eligibility Letter, at least this finding should be retained and it should be the basis for removing the entirety of the fourth floor of the apartment building with a corresponding reduction in parking; or, more appropriately, this finding would compel further conditioning that would bring the project more in line with the full analysis provided by MassDevelopment in their draft denial letter, which was not issued once CHR withdrew and resubmitted their application. In particular, the height and size of the apartment building should be reduced to more conform to the reasoning of the draft denial letter. With such additional reduction (including elimination of a floor, if</p>

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	not two to bring the building into conformity with the design of the other buildings on the 40A site) the parking should be reduced along with that.
Condition 2 – configuration of parking spaces	Parking space placement should be tied to a set of plans already presented
Condition 15 – number of bedrooms	Freeze the number of bedrooms at what was proposed (or fewer, to coincide with further conditioning)
Condition 21 – CHR shuttle service	Quantify increase of shuttle service
Condition 22 – VFW curb cut access	Indicate “diligently pursue” VFW access vs “take necessary steps”
Condition 41b – trash pick up	<u>1 - Infill</u> : Condition curbside trash pick-up <u>2 - Mid-rise</u> : Condition that building install “shoots to basement trash receptacles”
Condition 43 – dust control	Wheel washes on trucks to prevent spreading of dust and mud from construction site to public streets
Condition 52 – blasting	1 - Blasting consultant should include protection of trees and utility structure. Post bond to cover damages.  2 - Require inspection of foundations and walls in for two blocks or more with copy of report to homeowners. A bond should be posted to cover damages
<b>Elizabeth Schlosberg, Beverly Road – December 19, 2014</b>	
Condition 13 – building mechanicals	Nothing [mechanicals?] should be visible from abutters’ properties from street level views and from first- and second-story windows and

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	decks
Condition 17 – replacing existing trees in S7 that get damaged during construction	Save the trees that run along the property line area between the existing green space and Beverly Road backyards specifically the most mature, high, and full formed trees. If trees are removed or damaged during construction, equivalent replacements must be planted.
Condition 18 – light spillage onto abutters’ properties	Nothing [lighting? light spillage?] should be visible from abutters’ properties from street level views and from first- and second-story windows and decks
Condition 20 – re-design of Independence Drive	1 – Strongly opposed to reducing lanes from four to two on Independence Drive  2 - Add pedestrian-activated light not regular traffic at Gerry and Independence
Condition 21 – Transportation Access Plan / traffic study	Imperative that the community be involved in any discussions of traffic calming measures to review any proposed traffic, signal, road marking changes proposed by CHR or its contractors
Condition 22 – VFW access	Creating access to the site via VFW is absolutely imperative
Condition 24 – Post-Occupancy traffic study	Imperative that the community be involved in any discussions of traffic calming measures to review any proposed traffic, signal, road marking changes proposed by CHR or its contractors
Condition 30 – stormwater management design	Adjust conditions to ensure that water removal systems are correctly implemented to mitigate property damage

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Condition 41 – trash collection	<p>1 - It is inappropriate and hazardous to locate trash compactors or trash collection stations anywhere near abutting properties</p> <p>2 – Enforce cleaning of leaves and yardwork so that leaves are not left to accumulate in areas facing abutters.</p>
<b>Irene Scharf, Russett Road – December 19, 2014</b>	
Condition 18 - lighting	How will Applicant conform to the requirements in this condition? Suggest there be a predetermined fine paid to both the Town and the homeowner who demonstrates violation with the requirements of this condition.
Condition 19	Entrances/exits to the midrise should be from South Street to Asheville, Asheville to South Street by placing “No Turn” signs on both sides of Russett and Bonad at their Asheville intersections. This proposal would be less important if project were conditioned on applicant obtaining VFW access from/to site.
Appendix - blasting	\$5M minimum comprehensive liability insurance (blasting contractor) is insufficient. Just a few claims will likely exceed that dollar figure.
Plans – setbacks from parking lot to abutters’ property line	Once abutters are shown precise setbacks, what conditions will ensure that the Applicant adhere to those dimensions. How will this Board enforce these conditions?
<b>Judy Dorf, Beverly Road– December 17, 2014</b>	

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Overall comment	Allow 30 affordable housing units but scale down massive development [to alleviate fiscal impacts]
<b>C. Kelly Emmett, Bonad Road – December 18, 2014</b>	
Overall comment	Need a real traffic and safety study for this proposal
<b>Joyce Wong, South Brookline resident – December 22, 2014</b>	
Overall comment	There should be an escrow account for CHR to deal with real of building a new elementary school and potentially new high school [as a result of fiscal impact project proposes]
<b>Joyce Wong, South Brookline resident – January 2, 2015</b>	
Overall comment	The ZBA has the power to deny this project.
<b>Deborah Dong, Beverly Road – December 22, 2014</b>	
Transportation	<p>1 – Increase shuttle service with specific goals, such as:</p> <ul style="list-style-type: none"> <li>* schedule shuttle service to run in addition to rush hours periods,</li> <li>* add destinations like local supermarkets, Brookline High School, and Longwood Medical Area,</li> <li>* make shuttle available to all area residents not just residents of new development</li> </ul> <p>2 – Drastically reduce the number of parking spaces</p> <p>3 – Enforce the use of parking spaces so that they are used by residents of new development not existing Hancock Village residents. How will this be enforced? Require audits and sanctions</p>

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	[penalties] for violations.
<b>Regina Millette Frawley, Russett Road – December 22, 2014</b>	
Overall comment – affordable units	Common areas should be available to both residents of market-rate and affordable units  Interiors of the affordable units should be comparable to those of the market rate units
Overall comment – School buffer zone	Driveways should be designated as town streets so that census population can be accurately estimated and thereby would be require the new development to be included in the school buffer zone (which means that students living in the new development would be subject to busing as are children in other parts of South Brookline). Currently, Hancock Village property is not part of a school buffer zone.
<b>Jay Talerman, Esq., on behalf abutters – December 20, 2014</b>	
Findings – proposed	1 - The Board finds that the Applicant has not yet demonstrated that the Project is fundable by a subsidizing agency as required under 760 CMR 56.04(1)(b). This finding is based upon the Town’s continuing challenge to the Project Eligibility Letter (PEL) issued by MassDevelopment. A Superior Court Judge has determined that, notwithstanding DHCD Regulations, determinations as to the adequacy of PELs are permissible in the administrative process. The Board finds that the Town’s challenge to the PEL raises legitimate questions and, accordingly, the Board finds that the PEL does not and cannot satisfy the requirements

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	of 760 CMR 56.04(1)(b) unless and until the Applicant (and/or MassDevelopment) prevails in the existing litigation (and any appeals) with the Town.
Findings – proposed	2 - The Board finds that the Applicant possesses adequate title to the subject site. However, the Board finds that there are significant remaining questions regarding the sufficiency of the Applicant’s rights to construct the Project as shown on the Plans. These questions are based upon the effect of a certain 1946 Agreement by and between the Town and the Applicant’s predecessor in title. This Agreement, which is expressly binding upon the successors in title such as the Applicant, was a key component of rezoning of the subject property in the 1940s. Per the terms and restrictions contained in the 1946 Agreement, the proposed Project would not be possible. The enforceability of the 1946 Agreement is the subject of ongoing litigation by and between the Applicant and the Town. As a consequence, the Board finds that the Applicant cannot demonstrate adequate “control” of the site under 760 CMR 56.04(1)(c) unless and until the Applicant prevails in the existing litigation (and any appeals) with the Town. The Board finds that, in addition to issues arising under 760 CMR 56.04(1)(c), the 1946 Agreement, if enforceable, would create a practical barrier that would prevent the construction of the proposed Project.

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Conditions – proposed	1 – The Applicant may not commence construction hereunder and is not entitled to the issuance of any building permits unless and until the Applicant prevails, with finality, in the litigation filed by the Town wherein the adequacy of MassDevelopment’s PEL is challenged. Receipt of “final approval” under 760 CMR 56.04(7) is inadequate to satisfy the requirements of project eligibility under 760 CMR 56.04(1)(b).
Conditions – proposed	2 – The Applicant may not commence construction hereunder and is not entitled to the issuance of any building permits unless and until the Applicant prevails, with finality, in the litigation filed by the Town wherein the enforceability of the above-described 1946 Agreement will be determined. In the event that the 1946 Agreement is determined to be enforceable, the conditions of approval contained herein shall be null and void.
<b>William Pu and Stephen Chiumenti , abutters – December 22, 2014</b>	
Ongoing litigation	Issuance of a building permit should be contingent upon impending litigation being decided in the applicant’s favor.
Condition 22	1 - Project should be conditioned on the Applicant actually obtaining VFW access.  2 – What if Applicant does not obtain VFW access?
Overall comment	ZBA should not make any decisions until final plans are available

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Condition 9 –	1 – Lofts should be treated as bedrooms 2 – Fine should be imposed on landlord or renter if rooms other bedrooms are used as sleeping areas 3 – Specify a maximum number of unrelated individuals who may live in a unit
Condition 17 – landscaping	Should be worded so that final landscaping plans must conform to this Decision and to the plans reviewed by the ZBA.
Condition 18 – lighting	Specify ways this would be enforced and what the penalties would be for not meeting this condition
Condition 19d – Stop signs and lines on driveways connecting to Independence Drive	There should be no left turns from driveways allowed onto Independence at least during peak hours
Condition 21 – Transportation Access Plan (shuttle service)	How will the adequacy of the shuttle service be measured? How often will it be measured? What will the penalty be for providing inadequate shuttle service?
Condition 21 – Transportation Access Plan (separate fees for parking space and unit rental)	1 - How much will the parking fee be? How will levy be enforced? What is the penalty for failure to meet this condition?  2 - Fees for parking should be dedicated to other TAP goals like shuttle service
Traffic – Overall comment	Conditions should explicitly state that the Transportation Board will be involved in the issues affecting public ways
Condition 33 – Water quality samples	When and how often will these samples be taken? Will the results be public? Who will pay for mitigation?

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Stormwater – Overall comment	1 - ZBA should condition the development on a post-construction assessment of the effectiveness of the stormwater management plan. The assessment should compare current and post-construction conditions. The study should be paid for by funds from the developer and held in escrow, analogous to the post-construction traffic study. The study should be performed by an independent consultant hired by the town who has full access to the development now and after construction. The condition should include specifics of what would need to be done should the stormwater management plan not perform as proposed.
Stormwater – Overall comment	2 - A weakness of the stormwater management plan is that it requires regular maintenance for its proper function. This suggests that (a) there should be a plan in place to monitor maintenance to make sure it is adequate, and (b) there should be a plan in place to perform ongoing measurement of the stormwater management system, and specifics about penalties that would be levied should the system not perform as specified. This should continue in perpetuity.
Condition 37 – Portions of the Project that shall remain forever private	1 - <u>Stormwater system maintenance</u> : Town must play a role in monitoring and enforcing the system, after construction and in perpetuity  2 – <u>Trash</u> : Should be no excess trash accumulating around Dumpsters. Should be a

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	fine for repeated offenses.
Condition 36 – Mass Historical	<p>Propose a condition that states: No site work or construction may commence and no building permits may be issued unless and until the Applicant provides evidence of all necessary filings and approvals under the Massachusetts Environmental Policy Act (MEPA) and MHC requirements. These filings include a Project Notification Form with the MHC as required by applicable law and with MEPA if so required.</p> <p><b>Also:</b> Should include under Findings that the Hancock Village is eligible for listing on the National Register and is named as one of Massachusetts’ 10 most endangered historic resources by Preservation Massachusetts.</p>
<b>Stephen Chiumenti , Russett Road - December 22, 2014 – Oral testimony before ZBA</b>	
Referenced Groton case and the denial that was upheld	
<b>Neil Wishinsky – December 22, 2014 – Oral testimony before ZBA</b>	
Finding 8	No recognition that all Boards urged denial; insert this statement of fact in the Findings.
Finding 10	Do not remove #10
Condition 65	Sharpen language to ensure that parking is

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	limited to the tenants of the Project and not used by the tenants of existing Hancock Village rental.
<b>Abby Cox - December 22, 2014 – Oral testimony before ZBA</b>	
Condition 9 - Occupancy / bedrooms	Should be penalties for occupancy violations (to minimize impact on school population)
<b>Judi Leichtner – December 22, 2014</b>	
Pro Forma – overall comment	We will never know if this is the “least worst project” because there was no pro forma.
<b>Reuben Pollock, Russett Road – 12/22/2014</b>	
<b>Jasmine Lellock, Hancock Village tenant – 12/22/2014</b>	ZBA should deny project (overcrowding in schools, traffic and environmental issues, detracts from beauty of the place)
<b>Carolyn Shure, South Street – December 21, 2014</b>	<p>1 - I don’t understand how Applicant can be responsible for changes to public roads. Is this going to be like Chestnut Hill Square where developer is responsible for infrastructure changes with bond money raised by the State?</p> <p>2 - Project is unacceptable according to the law and then is made acceptable by Conditions.</p> <p>3 - Traffic conditions: The Town is turning South Brookline into a city.</p>
<b>Hugh Mattison, TMM5 – December 17, 2014</b>	
Condition 21 – Transportation Access Plan	<p>Could there be some sheltered parking for motorcycles/motorscooters? See industry standards; also Brookline Place agreement with Children’s Hospital.</p> <p>One car space can accommodate 4-5</p>

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	motorcycles/motorscooters.
<b>Anthony Abner, Russett Road – December 12, 2014</b>	
Construction Management Plan, Landscaping - overall comments	1 - Commercial vehicles shall be excluded from the entire length of Russett Road, per Town regulations Article VIII, Section 1. 2 – CHR shall provide adequate parking on site for contractors 3 – Tree planting will be of the size and variety seen in the PEL and subsequent illustrations. All plantings must be done with the oversight of the Town Arborist.
<b>Daniel Johnson, Russett Road – January 1, 2015</b>	
Condition 9 – bedrooms / occupancy	To complement the proposed mechanism used here, I would propose to also limit the number of occupants per unit type (e.g., X per 1 bedroom unit, Y per 2 bedroom unit) to have the true effect that you are intending. Only limiting the use of certain rooms still allows for exceeding capacity and overcrowding the development - e.g., a tenant could pack numerous people in a “bedroom”, satisfying the original condition but not satisfying the intent of it.
Conditions 26 and 27 – Thornton Road emergency access/egress	I would include in this language that the Opticon gate and access/egress at this point be allowed ONLY by Brookline Emergency vehicles (e.g. fire trucks). This condition would ensure that Hancock Village residents and more specifically, the Hancock Village maintenance vehicles not use this access point to get onto the neighborhood streets. When we first moved into our house in January of 2010, the

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	CHR maintenance trucks were in and out constantly through this entry point on Thornton and Grassmere before neighborhood complaints and it was blocked off. With all the kids on this street, this is an appropriate measure.
Conditions 22 and 23 – VFW access	I propose to condition the entire permit on the applicant gaining approval to curb cut and get access to the VFW Parkway. This would substantially resolve many of the neighborhood concerns about traffic and safety on Russett and Bonad roads, and I cannot think of any good reason why this wouldn’t and couldn’t be a condition to gain approval for this development. It seems like such a blindingly obvious and logical idea. The onus for this should be on the applicant, and would solve so many problems.
	What is the mechanism to audit problems and enforce these conditions in perpetuity?
Gayle Halfond, Russett Road - December 31, 2014	
Condition 18 – light spillage	<p>1 - Should condition that all cars to be parked in the 900 foot roadway behind Beverly Road face the existing Hancock Village apartments, not the abutters’ homes as is presently shown in the drawings.</p> <p>2 – Reconfigure the parking orientation on the Russett Road side so that car headlights do not directly face single family homes</p>
Condition 20(a) – Independence Drive safety	The nature of the traffic problem on Independence Drive is not speeding cars, but

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	too many cars. No amount of speed bumps or traffic signals will address this; it will, in fact, only compound the traffic congestion and dangers to school children, other pedestrians and cars. Adding hundreds of car trips daily to this area cannot be mitigated.
Overall comment – massing of mid-rise	During the hearings, several of you commented that the massing and density of this proposal were not only out of scale for the immediate neighborhood, but for the entire Town. There was also much discussion about "meaningfully" breaking up the large apartment building. I hope these concerns will be better reflected in the final report, representing a better balance of local needs.
<b>Robin Koocher, Beverly Road – December 31, 2014</b>	
Appendix – Blasting conditions	One of the conditions that should be enforced is that blasting not be allowed when children are walking to and from school. In addition should there be any blasting on the Beverly Road side, it should not happen during school hours because it would be disruptive to our student’s education.
Trash	Concerned about vermin being attracted to improperly stored trash.

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<b>Stephen Chiumenti, Russett Road – December 31, 2014</b>	
More information about Groton case	
<b>Virginia Bullock, Housing Planner – January 5, 2015</b>	
Affordable Housing Conditions	<p>Recommendations from Mike Jacobs, Housing Advisory Board:</p> <p>There should be something in the decision that requires that the affordable and market units be constructed on substantially the same schedule. I don't know how many units are in the smaller buildings but if there are at least five, you should require that they contain a roughly proportional share of Affordable Units. This should certainly apply to the large building.</p> <p>If the project is phased, there should be a requirement that 20% of the units in each phase shall consist of affordable units.</p> <p>You should specific the minimum number of affordable units and a breakdown by bedroom size.</p> <p>You should require that the Affordable Units be dispersed throughout the Project.</p> <p>What happens if the project is refinanced and MassDevelopment is no longer the Subsidizing Agency. Is it possible for the Town to assume a monitoring role after that?</p> <p>Condition 20 (a)--very broad. Is there anything more specific that can be added?</p>