

MEMORANDUM OF AGREEMENT

by and between

**The Town of Brookline**  
and  
**Stephen Chiumentì, William Pu and William M. Varrell, III**  
and  
**Chestnut Hill Realty**

WHEREAS, The Town of Brookline (“Town”), acting by and through its Board of Selectmen, is a municipal corporation with a vested interest in the development and redevelopment of land within the Town of Brookline, including the real property in Brookline known as Hancock Village (“Hancock Village”); and

WHEREAS, Stephen Chiumentì, William Pu, and William M. Varrell, III are abutters of Hancock Village in Brookline (the “Abutters”); and

WHEREAS, Edward Zuker and Chestnut Hill Realty are the owners of Hancock Village (“CHR”); and

WHEREAS, CHR, the Town and the Abutters (hereinafter, the Parties”) are parties to an appeal of a permitted Chapter 40B development project at Hancock Village (Town of Brookline, et al v. MassDevelopment, et al, Land Court No. 15 MISC 000072) and are participating in ongoing Zoning Board of Appeals proceedings pertaining to Puddingstone at Chestnut Hill, LLC’s application for a Chapter 40B Comprehensive Permit for a development at Hancock Village known as the “Puddingstone 40B Project”, and they are interested in reaching a satisfactory compromise of the appeal and the Puddingstone 40B Project; and

WHEREAS, the Parties agree that it would be beneficial to each of them and to the public to reach a mutually agreeable, comprehensive and final plan for the development of Hancock Village in Brookline and are therefore entering into this Memorandum of Agreement (“MOA” or “Agreement”); and

WHEREAS, in developing such plan CHR has incorporated certain design guidelines into the Revised Plan, including:

- a. Alternative construction forms to help mitigate impacts such as loss of open space and view sheds from abutting properties;
- b. Active open space/play areas where feasible;
- c. More generous buffers to abutting residential neighborhoods, including landscaping and passive open space; and

- d. The preservation of natural resources, including rock outcrops, mature trees and other significant features, wherever practical;

NOW THEREFORE, the Parties hereby agree as follows:

1. In consideration of the mutual covenants set forth in this Agreement, CHR has revised its plans to complete the build-out of Hancock Village in accordance with the **Conceptual Site Plan** that is attached hereto and is incorporated herein by reference as Exhibit "A" (the "Revised Plan"). The Revised Plan is deemed to be the parties' mutual approval of the development concept set forth in such Plan, which the parties acknowledge and agree is subject to and conditioned on Town Meeting approval of any amendments to existing Town By-laws that may be required in order to implement the Revised Plan in accordance with the terms of this Agreement. The parties further agree that the Revised Plan may be modified from time to time by mutual agreement of the Parties.
2. CHR expressly acknowledges and agrees that the Revised Plan is intended to complete the build out of Hancock Village in Brookline, and that upon implementation of the Revised Plan, a deed restriction in form reasonably acceptable to the Town and CHR shall be executed and duly recorded upon CHR's receipt of all Certificates of Occupancy from the Town's Building Commissioner for the final building in the Revised Plan. The sole purpose of the deed restriction will be to prohibit CHR from seeking to override the provisions of the Brookline Zoning By-laws with regard to the development of Hancock Village by means of a comprehensive permit issued under M.G.L. c. 40B or by another state program which allows such an override of the applicable zoning.
3. In accordance with the Revised Plan, CHR shall construct a total of 382 new units in the Brookline portion of Hancock Village (14 of which will replace 14 existing units in Brookline and 8 of which will replace 8 existing units in Boston that are to be demolished under the Revised Plan). Accordingly, the net increase in dwelling units shall not exceed a total of 360 units. The total number of bedrooms in these units shall not exceed 524 bedrooms (plus 22 additional bedrooms to replace those in the 14 existing units in Brookline that are to be demolished under the Revised Plan).
4. The unit mix in the Revised Plan shall be comprised of 1-bedroom units, 2-bedroom units, 1-bedroom units with lofts, 1-bedroom units with dens, and 2-bedroom units with dens. A total of 20 one-bedroom units with lofts and 24 two-bedroom units with dens will be constructed (unless DHCD requires larger units to allow the units to count on the Town's Subsidized Housing Inventory or "SHI"). Should DHCD require such larger units, the unit mix shall be adjusted in order to maximize the number of units that are eligible for inclusion in the Town's SHI as set forth in Paragraph 5 below. Under no circumstances shall the maximum number of units or bedrooms set forth in paragraph 3, above, be increased. CHR further agrees that all dens in these units shall be open to the adjoining rooms, that neither the lofts nor the dens in these units shall be considered legal bedrooms as specified in the state building code, and that the leases or occupancy agreements pertaining to these units shall expressly prohibit the use of such lofts or dens as bedrooms to the extent permitted by law. Nothing in this Agreement shall restrict CHR from converting any additional two bedroom units to one bedroom units with dens.

5. The **Unit Summary** that is attached hereto and incorporated herein by reference as Exhibit “B” includes details of the anticipated breakdown of proposed buildings and unit type that are included in the Revised Plan. Consistent with the Town’s Inclusionary Zoning By-law, at least fifteen percent (15%) of the 360 net new units constructed as set forth in paragraph 3 above shall be subject to the affordability guidelines set forth in the Town’s Inclusionary Zoning By-law. Further, but not in addition to said 15%, twenty five percent (25%) of the units in the so-called “Asheville Building” and a sufficient number of units in the so-called “Gerry Building” shall comply with state affordable housing guidelines so that 144 units (i.e. all of the units in the Gerry and Asheville buildings) are deemed eligible by DHCD for inclusion in the Town’s Subsidized Housing Inventory (“SHI”). To further explain the foregoing it is anticipated that (i) the Gerry Building will consist of 24 units, 6 of which shall be affordable to households earning no more than 80% of the applicable area median income (“AMI”) and 18 of which shall be affordable to households earning no more than 100% of the AMI; (ii) the Asheville Building will consist of 120 units, 30 of which shall be affordable to households earning no more than 80% of the applicable area median income (“AMI”) and the balance shall be market rate units; and (iii) the Sherman Building shall consist of 238 market units. The Town and CHR agree to enter into a Regulatory Agreement under DHCD’s LIP Program with respect to the Gerry and Asheville Units in a form reasonably acceptable to them, and to seek DHCD approval for adding all 144 units in such buildings to the Subsidized Housing Inventory (“SHI”) as so-called “Local Action Units”. Subject to the receipt of all necessary permits and approvals from the Town (which may include necessary revisions to the Revised Plan), CHR agrees that it shall comply with any requirements imposed by DHCD under the LIP Program to allow the addition of these 144 units to be added to the Town’s SHI. In accordance with the preceding sentence, should DHCD require adjustments to the Revised Plan in order to place 144 units on the SHI, the parties agree that they shall pursue alternative affordable housing models and/or modify the Revised Plan and this Agreement in good faith so that such number can be achieved, without increasing the number of units or bedrooms contemplated under this Agreement. No building permit for the construction of the so-called “Sherman” Building shall be issued until DHCD has placed 144 units on the Town’s SHI provided that the Town has, in a timely manner (i) taken all necessary steps (including, without limitation, endorsement of an application for approval of Local Action Units and execution of the aforesaid Regulatory Agreement) with respect to such units and, (ii) has agreed to such modifications to the Revised Plan and issued the necessary approvals therefor as may be required by DHCD consistent with this paragraph 5.
6. The Revised Plan shall include, but not be limited to the following:
- a) There shall be no residential buildings in the “S-7” district.
  - b) There shall be no non-emergency vehicular access/egress to/from Hancock Village and Russett Road.
  - c) The so-called “Asheville Building” footprint and location has been refined as shown on Exhibit A to maximize green space/buffer usable by the residents and to minimize visual impacts on the neighborhood. The Revised Plan contemplates

that the height of the “Asheville Building” shall not exceed 4 stories over a two level garage, with a windowless loft above, and shall be stepped down to three stories at the end of the building closest to Russett Road, and the roofline of the three story portion of the Building closest to the abutters will not exceed the approximate ridgeline of the surrounding townhomes.

- d) The so-called Puddingstone or “Sherman Building” has been refined as shown on Exhibit A to preserve puddingstone outcroppings where feasible, and to open up the views to the corner of the building at the curve in Sherman Road. The height of the “Sherman Building shall not exceed 6 stories over two levels of garage parking, at least partially below grade.
  - e) The “bridge” is removed from the proposed “Gateway Building” and the access to the Sherman Building from Independence Drive shall be open to the sky and designed as an amenity, functionally and visually, as shown on Exhibit A. The height of the “Gateway Building” shall not exceed three (3) stories.
7. The parties agree that many of the conditions included in the original Board of Appeals Decision “Chapter 40B Comprehensive Permit Application, The Residences of South Brookline – The Residences of South Brookline, LLC, Brookline Massachusetts, Board of Appeals Case No. 2013-0094”, executed and filed with the Town Clerk on February 20, 2015 (the “ROSB 40B Decision”), remain relevant. CHR agrees to comply with the following conditions of the ROSB 40B Decision, which conditions shall be included in the Revised Plan to the extent they remain applicable:
- a. Condition 15 regarding setbacks of structures and visibility of air conditioning condensers and mechanical equipment;
  - b. Condition 20 regarding site lighting;
  - c. Condition 21 (a) – (f) regarding traffic and vehicular and pedestrian circulation;
  - d. Condition 22 concerning improvements to Independence Drive, acknowledging that the particular improvements might change as a result of the Revised Plan;
  - e. Condition 23 requiring a Transportation Access Plan (“TAP”);
  - f. Condition 26 requiring a Traffic Study;
  - g. Condition 27 concerning unimpeded fire access to the Asheville Building;
  - h. Condition 29 regarding installation of a gate at Grassmere Road, if deemed necessary for emergency access/egress by the Fire Chief;
  - i. Condition 31 requiring NFPA code sprinkler systems, direct fire alarms, and in large building(s) a fire standpipe system;

- j. Condition 32 requiring a storm water management report and plans detailing the function and maintenance of elements included in the Revised Project;
- k. Condition 35 regarding water quality sampling and mitigation if necessary;
- l. Condition 36 regarding certification of adequate water flow and pressure;
- m. Condition 37 requiring a mosquito control plan and reporting;
- n. Condition 44 concerning compliance with local, state and federal laws, and limiting hours of construction operations to 7:00 am to 5:00 pm Monday through Saturday and excluding holidays, or other mutually agreed upon hours.
- o. Condition 45 regarding a Construction Manage Plan including truck routes, phasing, tree protection, limits of work, material and vehicle storage, sanitation, dust control, security, earthwork, excavation and truck trips;
- p. Condition 47 regarding duration of an appropriate construction period for each phase of the Revised Plan;
- q. Condition 48 requiring erosion and sedimentation control plans;
- r. Condition 53 and 54 concerning drilling and blasting review, approval and controls, including funds to cover fees of a reviewing geotechnical consultant;
- s. Condition 55 regarding compliance with the Town Public Works Department's Site Plan Review Checklist and Building Department's Certificate of Occupancy Process, including construction control;
- t. Condition 65 regarding deposit of sufficient funds to cover the cost of Building Department and/or Division of Engineering and Transportation inspections;
- u. Condition 66 requiring utilities to be underground;
- v. Condition 67 requiring CHR to pay for necessary police and fire details necessitated by the Revised Project during construction;
- w. Condition 69 requiring submission of a plan and schedule for rubbish and recycling compliant with Town bylaws and sufficient to service the Hancock Village community; and
- x. To the extent not otherwise indicated herein, reasonable conditions related to review and installation of roadway improvements, construction control, storm water management, public safety and mitigation plans for the Revised Plan, including, but not limited to, CHR's payment for the design and installation of a traffic signal at the intersection of Sherman Road and Independence Drive.

8. Upon execution of this MOA, as requested by the Land Court the Parties shall jointly submit an Agreement for Judgment of Conditional Dismissal. Such Dismissal shall include a provision, as directed by the Court, to allow for restoration of the Land Court case to the trial calendar in the event that the Town Meeting action contemplated herein is not approved; provided, however, that this Agreement shall continue in force and effect as provided in Paragraph 13 herein. The parties further agree that, if necessary, a copy of this Agreement may be presented to the Court in support of the Parties' Motion to Vacate the Dismissal. CHR shall extend the ZBA hearings on the Puddingstone 40B Project until July 2017 upon execution of this MOA.
9. As soon as practical after the effective date of this Agreement, CHR and the Town shall work collaboratively to: (i) complete warrant articles proposing a zoning overlay for Hancock Village (the "Zoning Overlay") and modifications to the Town's NCD By-law (the "NCD Amendments") that would allow for the development described herein and in the Revised Plan; and (ii) to develop further mutually agreed upon minor refinements to the Revised Plan. The Zoning Overlay shall permit the development of the Revised Project in accordance with this Agreement on an as-of-right basis, subject only to Design Advisory Team review ("DAT") which shall be completed within 60 days of submission, subject to extensions as may be mutually agreed by the Town and CHR. As part of DAT review relevant Town boards and departments shall have the opportunity to provide input for minor modifications and/or refinements to the Revised Plan; provided, however, that DAT Review shall solely be for the purpose of (i) ensuring the material consistency of the submitted plans with the Revised Plan; and (ii) approval of architectural finishes to the building including materials, windows, balconies and the like (but not building or parking locations, or building size, height and massing); and (iii) general review of landscaping plans. As part of DAT review, CHR will explore alternate locations for the recycling center that are mutually acceptable. The NCD Amendments shall provide that no NCD review shall be required for the construction of the Revised Project, and shall contain such other limitations on the application of the NCD to Hancock Village as shall be mutually acceptable to the Town and CHR. CHR and the Town shall target the completion of such warrant articles by March 2017 for placement on the Warrant for the May 2017 Annual Town Meeting. The Town agrees that it will support the affirmative action by Town Meeting of warrant articles that support the intent of this paragraph and the individual Plaintiffs agree that they will not oppose affirmative Town Meeting action. It is expressly understood and agreed that by entering into this Agreement, CHR is not waiving its right to challenge the validity of the NCD By-law as it applied to Hancock Village. Accordingly, if either (i) the Town and CHR are unable to agree on the terms of the Zoning Overlay or the NCD Amendments by the deadline for submission of the warrant articles, or (ii) both the Zoning Overlay and the NCD Amendments are not duly adopted in the May, 2017 Town Meeting, CHR reserves all of its rights to challenge the validity of the NCD in any court of competent jurisdiction and to seek all available remedies with respect thereto.
10. The following Community Impact mitigation elements and exaction payments shall be performed or paid by CHR, subject to the terms of this Paragraph. There shall be no further mitigation, linkage or exaction payments required by the Town in connection with the approval, construction and occupancy of the Revised Plan. All of the mitigation

measures set forth in this Paragraph 10 shall be subject to the receipt of all necessary permits, approvals and third party consents.

- a) A playground shall be constructed by CHR at the location shown on Exhibit A, which shall be consistent with a design plan developed in cooperation with the Town. Following construction of the playground, the playground shall be deeded to the Town for public playground use. CHR shall maintain the playground in a manner that is consistent with Town standards.
  - b) [Intentionally Omitted]
  - c) Consistent with Paragraph 7(x) herein, CHR shall design and install a traffic signal at the intersection of Sherman and Thornton Roads and Independence Drive. After such traffic signal is operative and the “complete street” improvements required by the RSB 40B Decision are installed and the 120 unit Asheville Building receives a certificate of occupancy, CHR shall shut off Asheville Road at the entrance/exit.
  - d) CHR shall deed a portion of the S-7 district to the Town as shown on Exhibit A for use as a public park and CHR shall continue to maintain those areas. CHR and the Town agree to work cooperatively on the details of such conveyance, which shall occur at a time that is mutually agreeable to the Town and CHR and is determined at the time of the submission of the Warrant Articles, but no later than thirty days after the date all final Certificates of Occupancy for the final buildings in the Revised Plan are issued. Without limiting the generality of the foregoing, CHR acknowledges that it is the intent of the Town that the areas to be so conveyed to the Town may qualify as so-called “Article 97” land.
  - e) In addition to the conveyance to the Town of the land under clause (d) above which is zoned and assessed for up to 28 single family residential lots, CHR shall gift to the Town one million dollars (\$1,000,000.00). The gift payment shall be made to the Town upon the issuance of all final Certificates of Occupancy for the final buildings in the Revised Plan. The gift payment shall be placed in a fund pursuant to G.L. c. 44, s. 53A, the proceeds of which will be used to fund improvements to the Brookline community in the vicinity of the development constructed under the Revised Plan.
11. In consideration of the undertakings of CHR contained herein, to the maximum extent permitted by law, the undersigned agree not to oppose implementation of the Revised Plan, subject to the terms of this Agreement.
  12. The Town agrees not to pursue the designation of Hancock Village to be listed or eligible for listing on the Federal or State Register of Historic Places for so long as this MOA is in effect. If at any time Hancock Village becomes listed on the Federal or State Register of Historic Places, the Town agrees to take such reasonable steps and cooperate so as to permit CHR to construct the Revised Plan without undue delay. Upon the issuance of building permits for the buildings constructed under the Revised Plan, CHR and the Town shall jointly consider pursuing the Town’s application for such listing.


13. This MOA shall continue in full force and effect until the latest to occur of the following: (i) CHR obtains building permits for the buildings identified in the Revised Plan without appeal, (ii) the recording of the deed restriction required under paragraph 2 of this Agreement, or (iii) the completion and/or payment of the mitigation measures described in Paragraph 10 herein. Upon receipt of building permits for the final building in the Revised Plan, CHR shall relinquish the RSB Comprehensive Permit, and shall withdraw the application for a Comprehensive Permit for the Puddingstone 40B Project.
14. Notwithstanding anything herein to the contrary, the Parties agree that this MOA shall terminate and be of no further force and effect should Town Meeting fail to approve the Warrant Articles referred to in Paragraph 9 of this Agreement by June 30, 2017. Should the foregoing occur, this MOA shall terminate and be of no further force and effect without the requirement of any action or further documentation by or from any party and without the waiver of any rights or remedies of any Party and the Plaintiffs may, at their option, move to vacate the dismissal as provided in Paragraph 8 herein. Should Town Meeting approve the Warrant Articles by such date, then none of the Plaintiffs shall petition the Court for restoring the Land Court case to the trial calendar.
15. Any amendment to this MOA shall occur only pursuant to a written amendment that is duly executed by the Parties affected by such amendment.
16. Each of CHR and the Town represents and warrants that it has the full right, power and authority to enter into this MOA, to perform each of the covenants to be performed hereunder and to execute and deliver all documents required under this MOA. This MOA may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. Signatures to this MOA transmitted by electronic means shall be valid and effective to bind the party so signing. Each of the parties hereto shall execute and deliver such documents as the other party shall reasonably request in order to consummate and make effective the matters specified herein; provided, however, the execution and delivery of such documents shall not result in any additional liability or cost to the executing party.

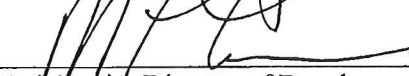
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AGREED to on this \_\_\_\_ day of November 2016 by the Parties:

**CHESTNUT HILL REALTY**

  
\_\_\_\_\_  
Edward Zuker, Owner

  
\_\_\_\_\_  
Mark Levitt, Director of Development

**TOWN OF BROOKLINE**

\_\_\_\_\_  
Mel Kleckner, Town Administrator

\_\_\_\_\_  
Neil Wishinsky, Chairman  
Board of Selectmen

**NAMED ABUTTERS**

\_\_\_\_\_  
Stephen Chiumenti.

\_\_\_\_\_  
William Pu

\_\_\_\_\_  
William M. Varrell, III

AGREED to on this 17 day of November 2016 by the Parties:

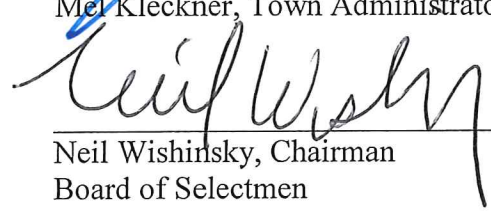
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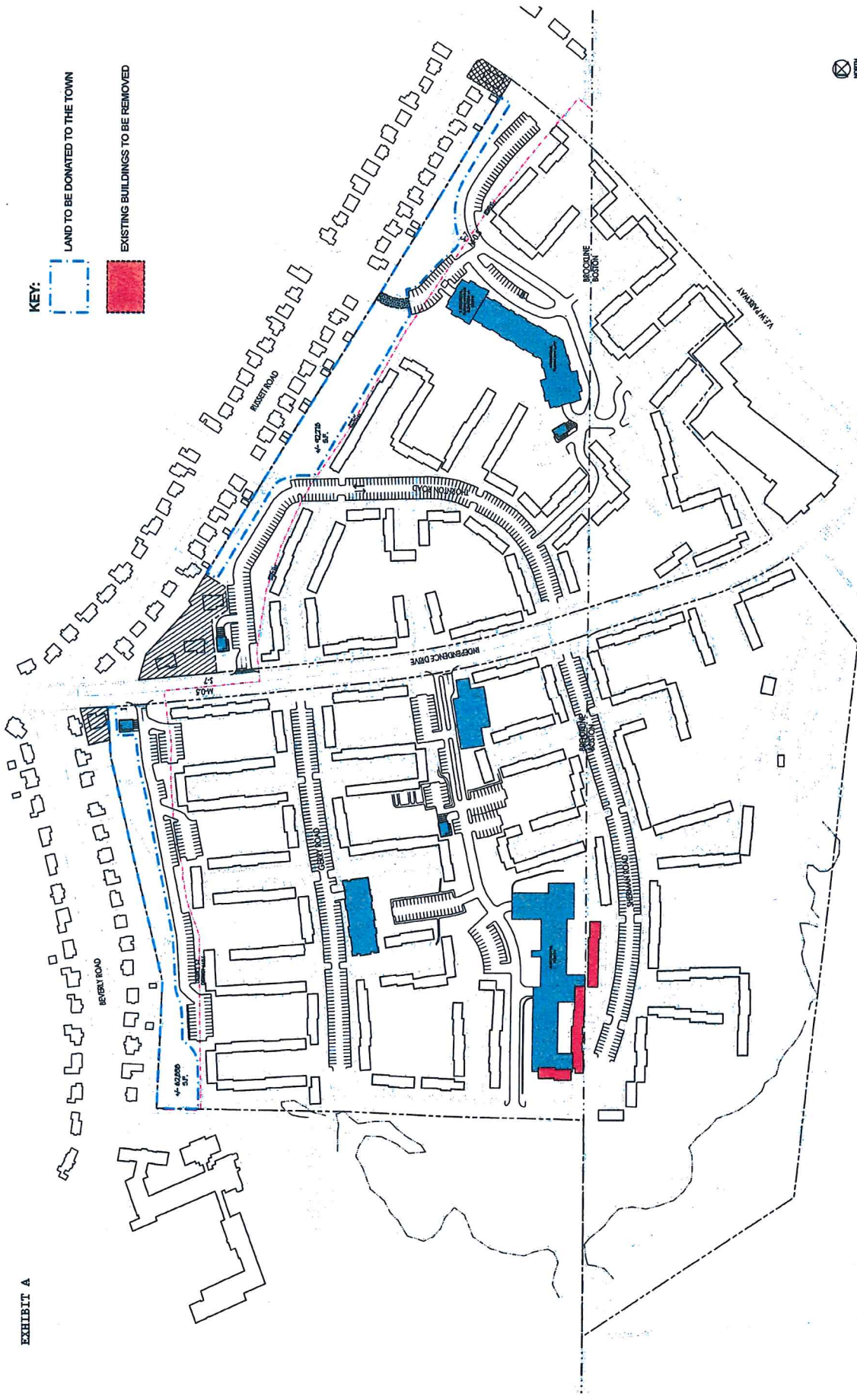
  
\_\_\_\_\_  
William M. Varrell, III

EXHIBIT A

KEY:

- LAND TO BE DONATED TO THE TOWN
- EXISTING BUILDINGS TO BE REMOVED



Graphic scale and north arrow.

0 20 40 60 80 100  
Feet

NORTH

EDWARDS PLANNING AND  
LANDSCAPE ARCHITECTURE  
INCORPORATED

## Exhibit B - Hancock Village Master Plan - Unit Details

	<b>Total Units</b>	1-BR	1-BR loft	##### 1-BR Den	2-BR	2-BR Den	3-BR	<b>Total Bedrooms</b>
Asheville Building	120	70	20	0	30	0	0	150
Gerry Garage	24	16	0	0	8	0	0	32
Sherman Building	238	80	0	32	102	24	0	364
<b>Total</b>	<b>382</b>	<b>166</b>	<b>20</b>	<b>32</b>	<b>140</b>	<b>24</b>	<b>0</b>	<b>546</b>
Demolished Units Brookline	-14	-7	0	0	-6	0	-1	-22
<b>Total Net Units</b>	<b>368</b>	<b>159</b>	<b>20</b>	<b>32</b>	<b>134</b>	<b>24</b>	<b>-1</b>	<b>524</b>