

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO. 22-2403 G

MARY BETH SWEENEY)

Plaintiff,)

v.)

CITY OF BOSTON BOARD OF APPEAL,)
CHRISTINE ARAUJO, SHERRY DONG)
MARK ERLICH, MARK FORTUNE)
JEANNE PINADO, ERIC ROBINSON,)
and JOSEPH RUGGIERO,)
as Members of the City of Boston)
Board of Appeal, and)
MICHAEL DOHERTY,)

Defendants.)

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2022 OCT 20 A 10: 17
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

COMPLAINT

1. Plaintiff Mary Beth Sweeney ("Ms. Sweeney" or "Plaintiff") brings this action pursuant to Section 11 of the Boston Zoning Enabling Act, Chapter 665 of the Acts of 1956, as amended (the "Enabling Act") to appeal the decision entered with the Inspection Services Department ("ISD") on September 30, 2022 (the "Decision"),^{1/} of the City of Boston Board of Appeals (the "Board"). The Decision purports to approve an application for zoning relief submitted by Michael Doherty (the "Proponent") in connection with the proposed redevelopment of the premises located at 40-42 Cross Street, Ward 3, Boston, Massachusetts (the "Premises"). The zoning relief granted by the Board would allow the Proponent to construct a five (5) story, one-

^{1/} A true and accurate copy of the Decision is attached hereto at Exhibit A.

hundred and thirty-four (134) room hotel (the “Proposed Project”) that did not follow the proper community process and runs afoul of multiple provisions of the Boston Zoning Code (the “Code”).

2. The Decision stems from an improper process that concluded with the Board granting numerous variances and conditional use permits without making any of the necessary findings required by the Code. During a hearing held via Zoon on August 23, 2022 (the “Hearing”), the Board did not consider whether the Proposed Project met *any* of the requirements to grant a variance or conditional use permit, instead focusing on concerns such as the availability of parking and ease of access from a designated drop-off area to the entrance of the proposed hotel. Further, the Decision simply stated “the Board of Appeal finds that all of the following conditions are met” and recited the standards for granting variances and conditional use permits enumerated in the Code verbatim, without actually making *any* of the required findings, in direct violation of the law and past reprimand from this court.²¹ The Board seems to believe that the more provisions of the Code a project violates, the less attention it must pay to each individual violation.

3. Against this backdrop, Plaintiff brings this action to challenge the Board’s Decision and alleges that, among other things, the Board failed to make the requisite findings to support the zoning relief needed for the Proposed Project; the Proposed Project does not meet the legal standards for the relief sought by the Proponent; this Decision is arbitrary, capricious, and inconsistent with law; and the Proposed Project would cause harm that is specific to Plaintiff and not to the public generally.

²¹ See *Van Buren v. S. Boston New Hous., LLC*, No. 87590, 02-5467-A, 2005 Mass. Super. LEXIS 29, at *17-18 (Mass. Super. Ct. Feb. 4, 2005) (Sikora, J.) (“The multiple warnings of the courts through more than 75 years have not substantially affected the quality of factfinding by the Board of Appeal of Boston. This case typifies a tradition of illusory findings wrapped in the general boilerplate of its Enabling Act and Code . . . Decisions of this caliber proceed continuously into the Suffolk Superior Court. The decisions display no deliberation upon the legal merits of a variance application. They show no sign of any contribution from a legal mind. As long as they continue, the tradition of competent judicial review will invalidate them under the governing legal standards.”).

4. For the reasons set forth herein the Decision exceeds the authority of the Board and should be annulled.

PARTIES

5. Plaintiff Mary Beth Sweeney is the owner of the residential property at 26 Stillman Street, Apt. 2-4, Boston, MA (the "Sweeney Property").

6. Defendant City of Boston Board of Appeal is a municipal board of the City of Boston, with a usual place of business at Boston City Hall, One City Square, Room 801, Boston, Massachusetts 02201 and the Board of Appeal maintains an office located at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118. The Board rendered the Decision allowing the Proposed Project.

7. Defendant Christine Araujo is named in her capacity as chairperson and member of the Board, and in that capacity has her usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118.

8. Defendant Sherry Dong is named in her capacity as a member of the Board, and in that capacity has her usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118.

9. Defendant Mark Erlich is named in his capacity as a member of the Board, and in that capacity has his usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118.

10. Defendant Mark Fortune is named in his capacity as a member of the Board, and in that capacity has his usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118.

11. Defendant Joseph Ruggiero is named in his capacity as a member of the Board, and in that capacity has his usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118.

12. Defendant Eric Robinson is named in his capacity as a member of the Board, and in that capacity has his usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118.

13. Defendant Jeanne Pinado is named in her capacity as a member of the Board, and in that capacity has her usual place of business at 1010 Massachusetts Avenue, 5th Floor, Boston, Massachusetts 02118.

14. Defendant Michael Doherty is listed as the Proponent of the Proposed Project.^{3/} Michael Doherty is an architect working for The Architecture Team, the architect for the Proposed Project.^{4/}

JURISDICTION

15. This Court has jurisdiction over this zoning appeal pursuant to Section 11 of the Boston Zoning Enabling Act, Chapter 665 of the Acts of 1956, as amended.

THE ENABLING ACT

16. Section 9 of the Enabling act provides the Board's authority to grant variances from zoning regulations only if certain, narrowly defined requirements are met. Article 7 of the Boston Zoning Code governs variance requirements. The Board must articulate specific findings for each variance requirement in its decision.

^{3/} William Caulder, manager of Cross Street Ventures LLC, the proponent of the Proposed Project during the Boston Redevelopment Authority Article 80 Review Process, introduced himself during the Hearing as the proponent of the Proposed Project. Michael Doherty did not speak, but was present, at the Hearing.

^{4/} To avoid confusion, The Architecture Team is the name of the architecture firm for the Proposed Project.

17. Section 10 of the Enabling Act provides the Board’s authority to award conditional use permits. Article 6 of the Boston Zoning Code governs conditional use permits and that the Board may grant a conditional use permit only if it makes a finding that each of the specific conditions for a conditional use permit have been met.

THE BOSTON ZONING CODE

18. The Proposed Project is located within the Hanover Community Commercial zoning subdistrict (“Hanover CC”) of the North End Neighborhood District. The Hanover CC is a Community Commercial Neighborhood Business Subdistrict. *See* Code Section 54-11. Article 54 of the Code establishes zoning restrictions for the North End Neighborhood District that apply to the Proposed Project.

19. Pursuant to Section 54-13, the dimensional regulations applicable in Neighborhood Business Subdistricts in the North End Neighborhood District are set forth in Table D of Article 54:

TABLE D - North End Neighborhood District Dimensional Regulations Neighborhood Business Subdistricts



EXPAND

	Neighborhood Shopping Subdistricts	Community Commercial Subdistricts
Maximum Floor Area Ratio	3.0	3.0
Maximum Building Height ⁽¹⁾	55	55
Minimum Lot Size	none	none
Minimum Lot Area Per Dwelling Unit	none	none
Minimum Usable Open Space (Square Feet per Dwelling Unit) ⁽²⁾	50	50
Minimum Lot Width	none	none
Minimum Lot Frontage	none	none
Minimum Front Yard ⁽³⁾	none ⁽⁴⁾	none ⁽⁴⁾
Minimum Side Yard ⁽⁵⁾	none	none
Minimum Rear Yard ⁽⁶⁾	20	12

20. If a proposed project in a Neighborhood Business Subdistrict in the North End Neighborhood District does not comply with the regulations set forth in Table D of Article 54, it requires a variance.

21. Table D of Article 54 notes that Section 54-18 sets forth additional building height and roof structure restrictions.

22. Pursuant to Section 54-18, if the height of a proposed project will exceed the “height of any building existing [on that premises] as of June 24, 1985” it requires Board approval. The Board must “consider whether such roof structure has the potential for significantly restricting light and/or air flow to adjacent structures and/or significantly restricting views from roofs, windows, doors, or balconies.”

23. Pursuant to Section 54-12, the use regulations applicable in Neighborhood Business Subdistricts in the North End Neighborhood District are set forth in Table B of Article 54.

24. If a use in Table B of Article 54 is identified as “C” (conditional), it requires a conditional use permit.

25. If a use in Table B of Article 54 is identified as “F” (forbidden), it requires a variance.

26. Pursuant to Table B of Article 54, hotels and first floor restaurants are conditional uses in a Community Commercial Subdistrict in the North End Neighborhood District.

27. Pursuant to Table B of Article 54, first floor restaurants exceeding twenty-five hundred (2,500) square feet and restaurants located on or above the second story are forbidden uses in a Community Commercial Subdistrict in the North End Neighborhood District.

28. The Proposed Project is located within a Groundwater Conservation Overlay District which requires that the Proposed Project comply with Article 32 of the Code in addition to the standards for a conditional use permit in Section 6-3.

29. Pursuant to Section 32-6, a proposed project in a Groundwater Conservation Overlay District must comply with the following requirements: “(a) a provision that any Proposed Project promote infiltration of rainwater into the ground by capturing within a suitably-designed system a volume of rainfall on the lot equivalent to no less than 1.0 inches across the area of the lot occupied by structures or otherwise impervious surface” and “(b) provision that any Proposed Project result in no negative impact on groundwater levels within the lot in question or adjacent lots, subject to the terms of any (i) dewatering permit or (ii) cooperation agreement entered into by the Proponent and the Boston Redevelopment Authority, to the extent that such agreement provides for groundwater production during construction.”

30. The Proposed Project is located in a Flood Hazard District. Pursuant to Section 25-6, a proposed project in a Flood Hazard District can receive a variance from the provisions of Article 25 if the Board, in addition to the standards for a variance in Section 7-3, finds that the proposed use or structure “(a) will not derogate from the purpose of [Article 25], (b) will comply with the provisions of the underlying subdistrict or subdistricts, (c) will not overload any public water, drainage or sewer system to such an extent that the proposed use or any developed use in the area or in any other area will be unduly subjected to hazards affecting health, safety or the general welfare, and (d) will not be located within a floodway unless it is demonstrated to the satisfaction of the Board of Appeal that there will be no increase in flood levels during the base flood discharge.”

31. Pursuant to Section 25-6, when considering a petition for a variance from the provisions of Article 25, the Board “shall consider all technical evaluations, standards in other sections of the article and: (a) the danger that materials may be swept onto other lands to the injury of others; (b) the danger to life and property due to flooding; (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner; (d) the importance of the services provided by the proposed facility to the community; (e) the necessity to the facility of a waterfront location, where applicable; (f) the availability of alternative locations for the proposed use which are not subject to flood damage; (g) the compatibility of the proposed use with existing and anticipated development; (h) the relationship of the proposed use to the comprehensive plan and flood plain management program of the area; (i) the safety of access to the property in times of flood or ordinary and emergency vehicles; (j) the expected heights, velocity, duration, rate of rise, and sediment transport of flood waters and the effects of wave action, if applicable, expected at the site; and (k) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.”

32. Pursuant to Section 7-3 of the Code, the Board can only approve a variance if it finds that: (a) there are special circumstances or conditions, fully described in the findings, applying to land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure; (b) that for reasons of practical difficulty and demonstrable and substantial hardship fully described

in the findings, the granting of the variance is necessary for the reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose; (c) that the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and (d) that, if the variance is for a Development Impact Project, as defined in Section 80B-7, except if such variance is for a deviation from said requirements.”

33. When making the required findings to grant a variance, the Board shall take into account: “(1) the number of persons residing or working upon such land or in such structure; (2) the character and use of adjoining lots in the neighborhood; and (3) traffic conditions in the neighborhood.” *See Code Section 7-3.*

34. Pursuant to Section 6-3 of the Code, the Board can only approve a conditional use permit if it finds that: (a) the site that is an “appropriate location” for such use; (b) that the intended use “will not adversely affect the neighborhood;” (c) that there will be no “serious hazard to vehicles or pedestrians from the use;” (d) that “no nuisance will be created by the use;” (e) that “adequate and appropriate facilities” will be provided for that use; and (f) that, where applicable, the applicant has complied with the “Development Impact Project Exaction requirements” of Section 80B-7.

THE FACTS

35. The Premises located at 40-42 Cross Street^{5/} and currently improved by three one-story structures and a surface level parking lot.

^{5/} The Premises is made up of eleven parcels: 0302460000, 0302460001, 0302459000, 0302458000, 0302461000, 0302462000, 0302463001, 0302464000, 030246001, and 030246002; as well as a private way that benefits Parcels 030246000, 0302464000, 0302464001, 0302464002, and 0302459000. The parcels and private way compromising the Premises were purchased by Cross Street Ventures, in or around the spring of 2022.

36. The Premises currently houses one vacant building, a woodworking shop, and a real estate sales agent office.

37. The Proposed Project^{6/} will demolish the three one-story structures and surface level parking lot and construct a one-hundred and thirty-four (134) room hotel with two ground floor restaurants totaling approximately four-thousand eight-hundred and sixty-four (4,864) square feet and a seasonal rooftop dining area of approximately six-thousand five-hundred and two (6,502) square feet.

38. The Proposed Project requires relief from the following provisions of the Code: (1) a conditional use permit for hotel use; (2) a variance for ground floor restaurant use in excess of twenty-five-hundred (2,500) square feet; (3) a variance for restaurant use above the first floor; (4) a dimensional variance for Floor Area Ratio; (5) a dimensional variance for building height; (6) a dimensional variance for rear yard setback; (7) a height variance and conditional use permit for the roof deck; (8) a variance for Flood Hazard Districts; (9) a conditional use permit for Ground Water Conservation Overlay Districts; (10) approval pursuant to the requirements of the Greenway Overlay District; and (11) approval pursuant to the requirements of the Freedom Trail Neighborhood Design Overlay.

The ISD Refusal Letter

39. On March 11, 2022, William Caulder, Manager of Cross Street Ventures LLC (“Cross Street”), submitted a building permit application on behalf of Cross Street to ISD. A letter accompanying the application acknowledged the application would be rejected because the Proposed Project would require zoning relief.^{7/}

^{6/} A true and accurate copy of the plans for the Proposed Project submitted to the Board on June 30, 2022, are attached hereto at Exhibit B.

^{7/} A true and accurate copy of the letter accompanying the March 11, 2022, letter is attached hereto at Exhibit C.

40. On May 20, 2022, ISD issued a Zoning Code Refusal, stating that the application requires relief from the Board of Appeals because it would be in violation of the Boston Zoning Code.^{8/} The Zoning Code Refusal cited the following violations:

Violation	Violation Description	Violation Comments
Art. 25 Sec. 5	Flood Hazard Districts	
Art.32 Sec. 32-4	Groundwater Conservation Overlay District, Applicability	
Art. 54 Section 12 * **	Use: Forbidden	Restaurant use on ground floor (exceeding 2,500 sqft)
Art. 54 Section 12 * **	Use: Forbidden	Restaurant use on penthouse/ roof floor
Art. 54 Section 12 **	Use: Conditional	Hotel
Article 49A Section 3	GWOD Applicability	
Article 54 Section 13	Dimensional Regulations	Max. floor area allowed: 3 Proposed: 5.21
Article 54 Section 13	Dimensional Regulations	Max. building height allowed: 1 story (15') as per section 54. 18 Proposed: 5+ Penthouse (65')
Article 54 Section 13	Dimensional Regulations	Min. rear yard: 20' Proposed: 0'
Article 54 Section 15	Establishment of Freedom Trail Neighborhood Design Overlay	
Article 54, Section 18	Roof Structure Restrictions	- Access to roof deck is not through a hatch or bulkhead. - Roof deck's handrail is not set back 1 foot for each foot of the height of the structure. - Roof structure area exceeds 10% of total's roof area, hence they shall be included while measuring the building height. - The height of any existing building (currently, three, 1-story/ 15' buildings) shall determine the allowed building height on that lot after the buildings are demolished.

^{8/} A true and accurate copy of the Zoning Code Refusal is attached hereto at Exhibit D.

Notes		Parking spaces and loading areas to be determined by art. 80 LPR.
-------	--	---

41. Following the Zoning Code Refusal, the Proponent appealed the ISD’s refusal to the Board (the “Proponent’s Appeal”).^{9/}

Lack of Community Process

42. Prior to the Hearing, resident groups expressed concern that the Proposed Project had not undergone a proper community process.

43. The Proponent did not present the final version of the Proposed Project to either of the two neighborhood associations in the North End; the North End/Waterfront Residents’ Association (“NEWRA”) or the North End Waterfront Neighborhood Council (“NEWNC”). The North End/Waterfront Residents’ Association wrote in a letter to the Board^{10/} that it was extremely concerned that the Proposed Project had been placed on the agenda for a hearing on August 23, 2022, when there had been no “public abutters’ meetings or any appearances by the Developer before either NEWRA or the North End Waterfront Neighborhood Council” to consider the final proposal for the Proposed Project, and the version of the Proposed Project going to the Board “did not undergo any public review at all.”

44. The NEWNC noted in a letter to the Board^{11/} that although it allowed the Proponent time to present at two separate meetings, it “made it clear to them that although [the NEWNC was] happy to allow them to present informally, they would need to come before [the NEWNC] for a council vote once the application to [the Board] was pending” but the Proponent made no effort to present the final plans of the Proposed Project to the NEWNC and obtain a vote of the NEWNC.

^{9/} A true and accurate copy of the Proponent’s appeal to the Board is attached hereto at Exhibit E.

^{10/} A true and accurate copy of the NEWRA letter is attached hereto at Exhibit F.

^{11/} A true and accurate copy of the NEWNC letter is attached hereto at Exhibit G.

45. Because of this, the Proposed Project that the Board considered did not undergo a proper community process which would allow the neighborhood associations to voice their opposition or support.

The Hearing

46. On August 23, 2022, the Board held the Hearing on the Proponent's Appeal.

47. Seven members of the Board were virtually present: Christine Araujo, Mark Fortune, Mark Erlich, Joseph Ruggiero, Eric Robinson, Sherry Dong, and Jeanne Pinado.

48. The Hearing lasted approximately twenty-nine (29) minutes; a video recording of the Hearing is available at https://www.cityofboston.gov/cable/video_library.asp?id=51081.^{12/} The video recording of the Hearing is expressly incorporated herein by reference.

49. At the outset of the Hearing, Chairwoman Araujo stated that the Board was "running out of time" and the Board would only hear from five abutters in opposition to the Proposed Project and five abutters in support of the Proposed Project. This limitation silenced many of the abutters in opposition to the Proposed Project, and gave the false appearance that there were an equal number of abutters in support and in opposition.

50. There were not, in fact, an equal number of abutters in support and in opposition to the Proposed Project. In addition to both the NEWRA, NEWNC, and the neighborhood organization Friends of Cuttillo Park, the Board received approximately one-hundred and fort-four (144) letters in opposition to the Proposed Project, all of which were signed and/or submitted in August 2022.

51. The Proponent claimed in a submission to the Board it had three-hundred and eighty-five (385) letters in support of the Proposed Project. Of the "letters" submitted in advance

^{12/} The hearing for the Proposed Project begins at 3:01:20.

of the Hearing, approximately three-hundred and sixty (360) were form letters dated March 2021 or earlier and not even addressed to the Board, but to the Senior Project Manager of the Boston Planning and Development Agency. The Proponent submitted letters dated as early as June 2021, over one year before the Hearing.

52. During the public comments, Chairwoman Araujo cut off nearly every abutter in support of the Project during their remarks. After she cut off one abutter, she noted “we are just so far behind schedule.”

53. During the public comments of abutters in opposition to the Proposed Project, persons in support of the Proposed Project were left unmuted and could be heard speaking over the abutters in opposition.

54. After public comments from abutters, the Board allowed the attorney for the Proponent an opportunity to rebut the comments of abutters in opposition to the Proposed Project. The attorney for the Proponent claimed that opposition to the Proposed Project was limited to “one stack of units in 26 Stillman” and that those residents “already have their windows blocked[.]”

55. The claim that opposition was limited to residents of 26 Stillman Street is demonstrably false, as approximately one-hundred (100) of the letters in opposition to the Proposed Project were not from residents of 26 Stillman Street.

56. Additionally, residents of 26 Stillman Street do not currently have their windows blocked as claimed by the attorney for the Proponent. During the Hearing, the Board did not analyze whether any of the Code violations cited by ISD met the requirements for granting a variance or a conditional use permit.

57. Chairwoman Araujo asked the attorney speaking on behalf of the Proposed Project the height of the structures located on the Premises on June 24, 1985, and the height of the

Proposed Project. There was no discussion of whether the Proposed Project met any of the requirements for a height variance.^{13/}

58. The Board did not ask, and the Proponent did not present any evidence on, whether allowing the Proposed Project to exceed the height of the structures existing on the Premises on June 24, 1985, has the potential to significantly restrict light and/or air flow to adjacent structures^{14/} and/or significantly restrict views from roofs, windows, doors, or balconies as required by Section 54-18.

59. The Board did not ask, and the Proponent did not present any evidence on, the roof deck access or handrail setback.

60. The Board did not ask, and the Proponent did not present any evidence on, the Floor Area Ratio and whether the Proposed Project met any of the requirements for a Floor Area Ratio variance.

61. The Board did not ask, and the Proponent did not present any evidence on, the Rear Yard size and whether the Proposed Project met any of the requirements for a minimum Rear Yard size variance.

62. The Board did not ask, and the Proponent did not present any evidence on, the restaurant use on the roof of the Proposed Project and whether the Proposed Project met any of the requirements for a variance to allow a restaurant use on or above the second floor.

63. The Board did not ask, and the Proponent did not present any evidence on, the size of the first floor restaurants and whether the Proposed Project met any of the requirements for a

^{13/} The Board did not allow the Proponent to speak on its contention that the Proposed Project did not require a height variance. Instead, the Board granted the height variance without making any of the necessary findings.

^{14/} Eric Robinson commented on the potential shadows the Proposed Project could cast over Cutillo Park, but not on adjacent structures as required by Section 54-18.

variance to allow a restaurant use exceeding twenty-five-hundred (2,500) square feet on the first floor.

64. Mark Erlich asked the Proponent why a hotel use would be appropriate for the site. The Board did not ask, and the Proponent did not present any evidence on, the remaining requirements for a conditional use permit for a hotel.

65. At the end of the Hearing, Joseph Ruggiero moved to grant the requested relief with BPDA design review, stating that the “uses are appropriate” and “the height is reasonable.” Mr. Ruggiero stated that “it is acceptable to have a restaurant on the ground floor.” He also stated a restaurant on the rooftop was “common in the surrounding areas,” particularly around North Station.^{15/}

66. The explanation that the height is “reasonable” and rooftop restaurants are “common in the surrounding areas” falls drastically short of the findings required to grant a variance.

67. No other members of the Board commented on whether any of the needed variances or conditional use permits met any of the requirements for granting a variance or a conditional use permit.

68. The motion passed with all members of the Board, with the exception of Chairwoman Araujo, voting in favor.

The Board's Decision

69. The Board filed and entered its Decision with ISD on September 30, 2022.

70. The Decision states that it considered the Proponent's appeal from all violations for which it was cited; which required the Proponent to seek (1) a conditional use permit for hotel use;

^{15/} North Station is located in the North Station Economic Development Area and governed by Article 39 of the Code.

(2) a variance for ground floor restaurant use in excess of twenty-five-hundred (2,500) square feet; (3) a variance for restaurant use above the first floor; (4) a dimensional variance for Floor Area Ratio; (5) a dimensional variance for building height; (6) a dimensional variance for rear yard setback; (7) a height variance and conditional use permit for the roof deck; (8) a variance for Flood Hazard Districts; (9) a conditional use permit for Ground Water Conservation Overlay Districts; (10) approval pursuant to the requirements of the Greenway Overlay District; and (11) approval pursuant to the requirements of the Freedom Trail Neighborhood Design Overlay.

71. The Decision completely fails to make any of the findings required for the needed variances.

72. The Decision states: "With respect to the requested use and dimensional variances, the Board of Appeals find that all of the following conditions are met . . ." and goes on to recite the required findings to grant a variance listed in Section 7-3 of the Code almost verbatim. The only change is the plural "variances" rather than the singular "variance" found in the Code.

73. The Board made no findings of fact for any of the needed variances.

74. The Decision completely fails to make any of the findings required for the needed conditional use permits.

75. The Decision states: "With respect to the requested conditional use permits, the Board finds that all of the conditions for granting the requested relief in accordance with Article 6, Section 6-3 of the Code are met, as follows . . ." and goes on to recite the required finding to grant a conditional use permit listed in Section 6-3 of the Code almost verbatim.

76. The Board made no findings of fact for any of the needed conditional use permits.

77. The Decision also recites the standards for approval in a Groundwater Conservation Overlay District and Flood Hazard District verbatim.

78. The Board made no findings of fact for the standards for approval in a Groundwater Conservation Overlay District or Flood Hazard District.

The Decision is Not Sufficient to Grant the Required Variances for the Proposed Project

79. The Board's Decision to grant variances for the Proposed Project is arbitrary and capricious and not based on substantial evidence and exceeds its authority.

80. The Board did not make any of the required findings necessary to grant any of the variances the Proposed Project requires pursuant to Section 7-3 of the Code.

81. Instead, the Board recited the requirements for granting a variance from Section 7-3 of the Code almost verbatim, rendering the Decision void on its face.

82. The Decision does not list any "special circumstances or conditions . . . applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the lot, or exceptional topographical conditions thereof) which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this code would deprive the appellant of the reasonable use of such land or structure."

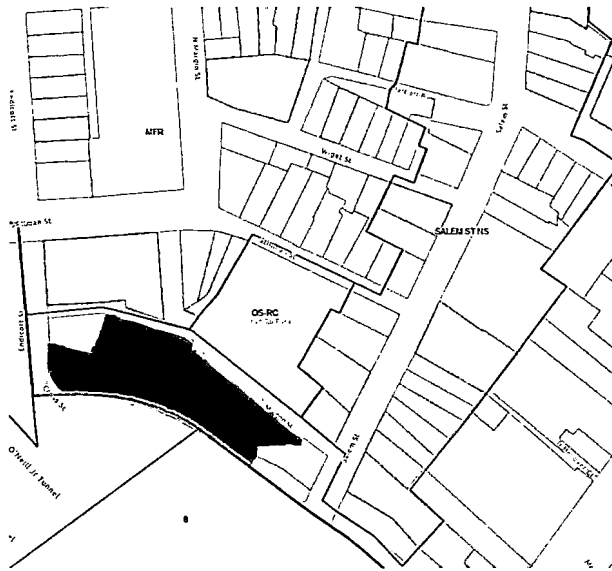
83. The Decision states that the Proponent presented that the Premises is "uniquely narrow and highly constrained by abutting properties, MassDOT and Boston Water and Sewer Commission ("BWSC") infrastructure, Morton Street, and Cross Street Plaza[.]"

84. The Board did not make any findings of its own that the Premises is uniquely narrow.

85. The Board did not find that the MassDOT and Boston Water and Sewer Commission infrastructure was unique to the Premises and not the neighborhood generally.

86. The Board does not make any findings that because of the purported “narrowness” of the Premises and MassDOT and BWSC infrastructure, the application of the provisions of the code would deprive the Proponent of the reasonable use of the Premises.

87. Nor could the Board have made these findings. Narrow lots are not peculiar to the Premises, but common to the neighborhood generally, as shown below:^{16/}



88. Additionally, Cross Street Ventures purchased the eleven parcels that make up the Premises for the purpose of constructing the Proposed Project. Cross Street Ventures willingly chose the selected parcels, and necessarily the shape of the Premises; and it is well-established that self-imposed hardships are not a basis for granting a variance.

89. The Board also could not have found that the application of the Code would deprive the Proponent of the reasonable use of the Premises. In the past the Premises houses commercial storefronts; a reasonable use of the Premises.

90. The Decision does not explain how that “for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variances

^{16/} The Premises is highlighted for ease of reference.

is necessary for the reasonable use of the land or structure and that the variances as granted by the Board are the minimum variances that will accomplish this purpose[.]”

91. The Decision does not list *any* “practical difficulty or demonstrable and substantial hardship.”

92. The Decision also does not provide any explanation as to why variances for height, rear yard setback, floor area ratio, ground floor dining exceeding twenty-five-hundred (2,500) square feet, and rooftop dining are the *minimum* necessary for the reasonable use of the land.

93. The Decision simply states that the Proponent “contends that the supporting restaurants and rooftop dining are critical amenities for the success of a downtown hotel.”^{17/} But maximizing financial success is not reasonable use of the land.

94. Nor could the Board make these findings. The developer seeks to maximize its return on investment of the Premises, which it purchased for the sole purpose of constructing the Proposed Project. It is well-established that financial hardship or the inability to maximize the theoretical potential of a parcel of land is not a substantial hardship.

95. The Decision does not explain how “the granting of the variance will be in harmony with the general purpose and intent of this code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare[.]”

96. The Decision does not even state the general purpose and intent of the Code, let alone how the Proposed Project would be in harmony with it.

97. Nor could the Board make this finding. The goals and objectives of Article 54 are set forth in Section 54-1 and provides as follows: “The goals and objectives of this Article and the North End Neighborhood Plan are to manage the future development of the North End for the

^{17/} The necessity of rooftop dining to the success of a downtown hotel is also suspect given the abundance of hotels in the downtown Boston area without rooftop dining.

benefit of the inhabitants of the North End and Boston; to preserve and enhance the North End neighborhood; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the North End neighborhood; to lessen congestion in the streets; to provide adequate light and air, and to prevent overcrowding of land; to promote appropriate economic development for the benefit of residents; to promote residential development that is affordable to all segments of the community, particularly low and moderate income residents; to discourage displacement of residents; to preserve, enhance, and create open space to be enjoyed by residents; and to promote the public safety, health and welfare of the people of Boston.”

98. The Proposed Project would frustrate nearly all of these goals and subject numerous abutting properties – specifically Plaintiff’s home – to adverse impacts related to light, shadows, airflow, traffic, congestion, overcrowding, and other interests that Article 54 is intended to protect.

99. Because the Board failed to make the required findings necessary to approve variances pursuant to Section 7-3 of the Code at its Hearing or in its Decision and the Board could not have made such required findings given the facts, the Decision must be annulled.

The Board’s Decision to Allow the Proposed Project to Exceed the Height of the Structures Existing on the Premises as of June 24, 1985, Exceeded its Authority

100. The Board’s decision to allow the Proposed Project to exceed the height of the structures existing on the Premises as of June 24, 1985 is arbitrary and capricious and not based on substantial evidence and exceeds its authority.

101. The Decision does not address whether the Proposed Project “has the potential for significantly restricting light and/or air flow to adjacent structures and/or significantly restricting views from roofs, windows, doors, or balconies.”

102. The Decision states that Eric Robinson “remarked that he had reviewed the shadow studies submitted during the BPDA process and that the Proposed Project would have minimal

shadow impact on the surrounding structures and nearby local park.” But Eric Robinson did not comment on the shadow impact to surrounding structures; at the Hearing he stated that he reviewed a shadow analysis as part of the Article 80 process, and that “there is around the park existing six-story buildings actually, so there is minimal impact on the park.” He did not state there would be minimal impact on adjacent structures.

103. The Proposed Project will tower over abutting structures and cast shadows,^{18/} restrict light, restrict air flow, and significantly restrict views from roofs, windows, doors, or balconies.

104. The Proposed Project will also cast shadows over Cuttillo Park. As described by the Boston Parks and Recreation Department in a letter to the BPDA on April 19, 2021,^{19/} the Proposed Project “will have adverse impacts on the sun and shadows on Cutllo Park” and “[v]egetation will receive few hours of sunlight which may reduce the viability of new planting[.]”

The Board’s Decision Granting Conditional Use Permits for the Proposed Project Exceeded its Authority

105. The Board’s Decision to grant conditional use permits for the Proposed Project is arbitrary and capricious and not based on substantial evidence and exceeds its authority.

106. The Decision does not adequately explain why “the specific site is an appropriate location for such use[.]”

107. At the Hearing the Board discussed whether a hotel would be appropriate at the site, but the Board’s ultimate findings, if there were any, are not present in the Decision.^{20/}

^{18/} A true and accurate copy of the Proponent’s shadow study from the Supplemental Filing to the BPDA is attached hereto at Exhibit H.

^{19/} A true and accurate copy of the Boston Parks and Recreation Department’s letter is attached hereto at Exhibit I.

^{20/} The Decision notes that Joseph Ruggiero stated the restaurants were appropriate for the area; but the restaurants require variances, not conditional use permits.

108. The Decision does not explain why “the use will not adversely affect the neighborhood.”

109. The Decision lists benefits the Proponent claims the Proposed Project will have, but is completely devoid of any independent findings of the Board or consideration of both potential positive and negative effects of the Proposed Project.

110. The Decision also noted that approval from elected officials and “numerous members of the community further supports the Board’s finding that the requested relief will have no negative impact on the surrounding area[.]” The Decision ignores the large number of North End residents and community groups that vehemently oppose the Proposed Project.

111. Additionally, despite stating the support of certain elected officials and members of the community “further supports the Board’s finding that the requested relief will have no negative impact on the surrounding area,” the Decision does not include the factual basis for that finding.

112. The Proposed Project would in fact have an adverse impact on the neighborhood by, among other things, adding congestion and overcrowding by an estimated daily increase of 3,000 automobile, transit, and pedestrian/bicycle trips, and severely impacting direct abutters of the Proposed Project by cutting off light and airflow to their residences and the public parks around the Proposed Project.

113. The Decision does not adequately address why “there will be no serious hazard to vehicles or pedestrians from the use or what “adequate and appropriate facilities will be provided for the proper operation of the use.”

114. The Decision states that the Proposed Project will not include parking but that the “Applicant presented that it will work with existing garages in the area to meet the limited anticipated parking needs of the hotel[.]” The Decision provides no details on what existing

garages the Applicant contacted, or whether they actually agreed to provide parking to the Proposed Project.

115. The Decision does not explain how a one-hundred and thirty-four (134) room hotel with multiple restaurants would only require “limited” parking.

116. Nor could the Board make this finding. The Proposed Project will require hundreds of employees, attract visitors to the on-site restaurants, and accommodate one-hundred and thirty-four (134) rooms’ worth of hotel patrons. Without providing any parking to accommodate this influx of people that will be traveling to the Proposed Project, the Proposed Project does not provide adequate or appropriate facilities for the proper operation of the Proposed Project.

117. Additionally, the Proposed Project would be located on an already-congested street. The influx of people, many of whom will likely travel to the hotel via ride share services, will make an already poor traffic situation worse, posing a hazard to both vehicles and pedestrians.

118. The Decision does not adequately address why “no nuisance will be created by the use.”

119. Nor could the Board make this finding. The Proposed Project would add three restaurants; including one restaurant on a rooftop deck, a use that is forbidden by the Code. The noise generated by the restaurants, especially the rooftop restaurant, will cause a nuisance to the North End residents that live around the building. North End residents will also suffer excess noise from the congestion around the Proposed Project.

120. The Decision did not make any of the findings of fact required to grant a variance from the requirements of Article 25-6 of the Code, applicable to Flood Hazard Districts.

121. Nor could the Board make the required findings. The Board did not receive information needed to decide if the Proposed Project will derogate from the purpose of Article 25

of the Code, overload any public water, drainage or sewer system, or result in an increase in flood levels during the base flood discharge.

COUNT I: APPEAL PURSUANT TO SECTION 11 OF THE ENABLING ACT

122. Plaintiff incorporates all allegations set forth above as if fully set forth herein.

123. As a direct abutter to the Proposed Project, Mary Beth Sweeney is presumed to be a “person aggrieved” by the Board’s Decision.

124. Mary Beth Sweeney is a “person aggrieved by the Board’s Decision. Ms. Sweeney will suffer specific and unique harms that will not be experienced by the public generally if the Decision is not annulled and the Proposed Project goes forward. As an abutter, those harms include, among other things:

- The Proposed Project, which will be built mere feet from her property will cast shadows over her property and block critical light and air-flow.
- The Proposed Project will cut off the view from Ms. Sweeney’s property of downtown Boston replace it with a solid wall mere feet from her window.
- The Proposed Project will add to the congestion around Ms. Sweeney’s property by injecting one-hundred and thirty-four (134) hotel rooms into an already crowded area.
- The Proposed Project will place a loading dock and garage within feet of Ms. Sweeney’s windows, causing excess noise and smell. Additionally, kitchen vents of the Proposed Project will face the windows of Ms. Sweeney’s apartment, projecting smells from the Proposed Project directly into Ms. Sweeney’s apartment.
- The Proposed Project and its impacts will reduce the market value of Ms. Sweeney’s property.

125. The Proposed Project will cause Ms. Sweeney to suffer infringement of these and other legal rights that the Enabling Act and Boston Zoning Code were intended to protect.

126. The Decision is improper, legally untenable, arbitrary and capricious, not based on substantial evidence, unreasonable and was rendered in excess of the Board's authority in violation of the Boston Zoning Code and applicable law.

127. Among other things: the Proposed Project does not satisfy the requirements for granting variances that are needed for the Proposed Project; the Decision does not set forth sufficient findings for the granting of a variance as required under Section 7-3 of the Code; the Decision purports to approve variances pursuant to Section 7-3 of the Code without sufficient facts or evidence; the Board did not deliberate and/or make the required findings necessary to approve the variances for the Proposed Project pursuant to Section 7-3 of the Code; the Proposed Project does not satisfy the requirements for granting conditional use permits pursuant to Section 6-3 of the Code; the Decision purports to approve conditional use permits pursuant to Section 6-3 of the Code without sufficient facts or evidence; the Board did not deliberate and/or make the required findings necessary to approve conditional use permits pursuant to Section 6-3 of the Code; the Proposed Project does not satisfy the requirements for granting a variance pursuant to Article 25 of the Code; the Decision purports to approve a variance pursuant to Article 25 of the Code without sufficient facts or evidence; the Board did not deliberate and/or make the required findings necessary to approve a variance pursuant to Article 25.

128. Accordingly, the Decision should be annulled.

129. For all the reasons stated herein, the Board acted with gross negligence in issuing the Decision.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully asks that this Court enter judgment in its favor and:

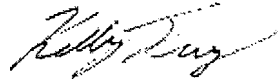
130. Enter judgment annulling the Decision;

131. Enter such further relief as this Court deems just and proper, including Plaintiff's attorney fees and costs.

Respectfully submitted,

MARY BETH SWEENEY,

By her attorneys,



Kelly Frey, BBO #676234
Michael Molstad, BBO #707524
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
One Financial Center
Boston, MA 02111
Tel: (617) 542-6000
Fax: (617) 542-2241
klfrey@mintz.com
mpmolstad@mintz.com

Date: October 20, 2022

Exhibit A



NOTICE OF DECISION
CASE NO. BOA1337499
PERMIT #ERT1306878
APPEAL SUSTAINED
WITH PROVISOS

In reference to appeal of

Michael Doherty

Concerning premises

40 – 42 Cross Street, Ward 03

to vary the application of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been granted.

Decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, Fourth Floor, Boston, MA 02118, and is open for public inspection.

Date of entry of this decision in the Inspectional Services Department was September 30, 2022.

Please be advised, due to the ongoing COVID-19 public health emergency, this decision of the Board has been reviewed and signed electronically by the signing Board Members. The addition of the certification of the Executive Secretary to the signature page attests that each Board Member who has signed this decision electronically has had an opportunity to review the written decision and has given his or her express written permission to the Executive Secretary to sign this decision electronically.

FOR THE BOARD OF APPEAL

/s/Thomas J. Broom

Thomas J. Broom
Principal Administrative Assistant



DECISION OF THE BOARD ON THE APPEAL OF

August 23, 2022
DATE

Michael Doherty

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8,
at premises: 40 – 42 Cross Street, Ward 03

For the terms of the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect: **Variance, Conditional Use Permit, and
or other reliefs as appropriate**

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Article 54 Section 13	Dimensional Regulations	Max. floor area allowed: 3 Proposed: 5.21
Article 54 Section 13	Dimensional Regulations	Max. building height allowed: 1 story (15') as per section 54.18 Proposed: 5+Penthouse (65')
Article 54 Section 13	Dimensional Regulations	Min. rear yard: 20' Proposed: 0'
Article 54, Section 18	Roof Structure Restrictions	- Access to roof deck is not through a hatch or bulkhead. - Roof deck's handrail is not set back 1 foot for each foot of height of the structure Roof structures area exceeds 10% of total's roof area, hence they shall be included while measuring the building height. - The height of any existing building (currently three, 1-story / 15' buildings) shall determine the allowed building height on that lot after the buildings are demolished.
Art. 54 Section 12	Use: Conditional	Hotel
Art. 54 Section 12	Use: Forbidden	Restaurant use on ground floor (exceeding 2,500 sqft)
Art. 54 Section 12	Use: Forbidden	Restaurant use on penthouse/ roof floor
Art. 32 Sec. 32-4	Groundwater Conservation Overlay District, Applicability	
Article 54 Section 15	Establishment of Freedom Trail Neighborhood Design Overlay District	
Article 49A Section 3	GWOD Applicability	
Art. 25 Sec. 5	Flood Hazard Districts	

Purpose: New construction of 134 room hotel with ground floor open air public passageway to Cuttillo Park, hotel lobby & restaurant, tenant restaurant and seasonal rooftop dining terrace. Project also includes major redesign of Cross Street Plaza and improvements to Morton Street. In conjunction with ALT1310128, ALT1310129, ALT1310130 and ALT1315554. Application requires demolishing 3 existing buildings (46 50 Cross St. under SF:# ; 28 32 Cross St. under SF:# and 40 42 Cross St. under SF: #)

In his formal appeal, the Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered BOA-1337499 and made a part of this record. In conformity with the law, the Board mailed reasonable notice of the public hearing to the petitioner and to the owners of all property deemed by the Board to be affected thereby, as they appeared on the then most recent local tax lists, which notice of public hearing was duly advertised in a daily newspaper published in the City of Boston, namely:

THE BOSTON HERALD on Tuesday, August 02, 2022

The Board took a view of the petitioner's land, examined its location, layout and other characteristics. The Boston Planning & Development Agency was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BPDA to render a recommendation to the Board, as prescribed in the Code After hearing all the facts and evidence presented at the public hearing held on Tuesday, August 23, 2022 in accordance with notice and advertisement forementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned section of the Boston Zoning Code, all as per Application for Permit#ERT1306878 and March 11, 2022 plans submitted to the Board at its hearing and how on file in the Building Department



DECISION OF THE BOARD ON THE APPEAL OF

40-42 Cross Street, Ward 3
BOA-1337499
Date of Hearing: August 23, 2022
Permit: # ERT1306878
Page: # 2

This appeal seeks permission to construct a hotel with supporting restaurant use at 40-42 Cross Street in the North End (the "Project"). The Project is located in the Hanover Community Commercial zoning subdistrict in the North End Neighborhood zoning district governed by Article 54 of the Boston Zoning Code (the "Code"). The Project requires relief from the terms of the Code.

Specifically, this appeal seeks a conditional use permit for hotel use pursuant to Article 54, Section 12; use variances pursuant to Article 54, Section 12 for ground floor restaurant use in excess of 2500 square feet and restaurant use above the first floor; dimensional variances pursuant to Article 54, Section 13 for Floor Area Ratio (FAR), building height, and rear yard setback; a height variance and conditional use permit for the roof deck pursuant to Article 54, Section 18; a variance from Article 25, Section 5 (Flood Hazard Districts); a conditional use permit pursuant to Article 32, Section 32-4 (Ground Water Conservation Overlay District); approval pursuant to Article 49A, Section 3 (Greenway Overlay District); and approval pursuant to Article 54, Section 15 (Freedom Trail Neighborhood Design Overlay).

The Applicant contended that the Inspectional Services Department (ISD) erred in citing the Project for a violation of Article 54, Section 18 with respect to height and roof structure restrictions and submitted a legal memorandum to the Board in support of this argument. While acknowledging the Applicant's position, the Board declines to opine on this question and therefore considers the Applicant's appeal from all violations for which it was cited. The Applicant concedes that the mechanicals and screening on the roof of the Project exceed the height limit of 55 feet under Article 54, Section 18, but argues that these components should be excluded from the calculation of roof height for the Project under applicable zoning.

The Project is prominently located on the edge of the North End and the Greenway. To the front, it abuts the Cross Street Plaza, which is currently owned by the Massachusetts Department of Transportation (MassDOT) and envisioned by the Boston Planning and Development Agency (BPDA) as a pedestrian-only zone. To the rear, it is abutted by Morton Street, which the Applicant presented has a history of hundreds of 311 complaints for issues including trash, illegal drug use/needles, graffiti, and rodents. The Applicant presented that the Project site, which is uniquely narrow and highly constrained by abutting properties, MassDOT and Boston Water and Sewer Commission infrastructure, Morton Street, and Cross Street Plaza, is currently developed with mostly vacant, dilapidated one-story commercial buildings and a surface parking lot surrounded by a chain link fence.



DECISION OF THE BOARD ON THE APPEAL OF

40-42 Cross Street, Ward 3
BOA-1337499
Date of Hearing: August 23, 2022
Permit: # ERT1306878
Page: # 3

The Project proposes to replace the existing structures with a 5-story, 134-room hotel with two ground floor restaurants totaling approximately 4,864 square feet and a seasonal rooftop dining area of approximately 6,502 square feet. The Project design includes a two-story open-air pedestrian passageway connecting the Greenway to Cuttillo Park. The Project also entails significant improvements to the public realm, including investment of up to \$1.3 million in improvements to Cross Street Plaza and Morton Street. These improvements will include reconstruction of Morton Street to address existing degraded roadway surface conditions and drainage issues, collection and treatment of stormwater runoff, and substantial groundwater infiltration. The Applicant presented that it intends to implement robust waste management and rodent control programs as well as improved security measures around the site, thereby eliminating existing safety and nuisance conditions. The Applicant also intends to incorporate numerous sustainability measures, including construction of an energy efficient, LEED Gold certifiable building; increased vegetated surfaces to reduce the urban heat island effect; and the addition of 10 new shade trees along Cross Street.

The Project will bring 134 new hotel rooms to a highly walkable location, well-served by public transportation. The Applicant contends that the supporting restaurants and rooftop dining area are critical amenities for the success of a downtown hotel. The Project will not provide parking on-site, but the Applicant presented that it will work with existing garages in the area to meet the limited anticipated parking needs of the hotel; the Applicant has identified several neighborhood parking opportunities for vehicles that currently park at the Project site.

The Applicant presented that the BPDA, through its Large Project Review,¹ focused on converting Cross Street Plaza into a pedestrian plaza. The Applicant's design reflects this intent, and several elected representatives, members of the North End community, and immediate abutters testified that the design of the Project does enhance pedestrian access and safety in the area. The Applicant explained that its traffic studies submitted to the BPDA during the Article 80 Large Project Review process evidenced that the Project will not have a detrimental impact on the surrounding roadway network. Ultimately, the BPDA approved the Project.

At the Board hearing, the Board's sitting architect, Eric Robinson, remarked that he had reviewed the shadow studies submitted during the BPDA process and that the Project would have minimal shadow impact on the surrounding structures and nearby local park. Mr. Robinson

¹ The BPDA conducts Large Project Review pursuant to Article 80 of the Code.



DECISION OF THE BOARD ON THE APPEAL OF

40-42 Cross Street, Ward 3
BOA-1337499
Date of Hearing: August 23, 2022
Permit: # ERT1306878
Page: # 4

also remarked that, although the Project overall was meritorious for the location, that the design of the rear structure could be altered to further reduce any impact on the rear abutters. The Board voted to include a BPDA design review proviso, so that the BPDA could investigate the possibility of these design changes as well as take a final look at the overall design of the Project. Board Member Joseph Ruggiero also noted that the Project was appropriate in height for its location in the neighborhood and concluded that both ground floor and rooftop restaurants were appropriate uses for the Project because of the abundance of restaurants and similar outdoor eating arrangements in the North End and around North Station. With respect to the Flood Hazard violation, counsel for the Project testified that it had no occupancy located in the floodplain. She also testified that the Applicant had designed the Project with the intent of minimizing any impact to the rear abutters.

Christian Simonelli from the Boston Groundwater Trust, the agency tasked with monitoring groundwater levels in Boston, testified that the Project satisfied the requirements of the Groundwater Conservation Overlay District (GCOD). He noted that the Applicant had submitted a letter from the Boston Water and Sewer Commission detailing that the Project complied with the technical specifications of the Code, and a letter from a Massachusetts engineer stating that the Project would cause no permanent harm to groundwater levels. The Board also received those letters.

The Board also sought community input on the nature and scope of the Project. City Councilor Gabriella Coletta, the councilor for the Project's district, agreed that the Project would substantially improve the current traffic flow and pedestrian walkability issues with the site. However, she was not fully in support of the Project because of process concerns. State Representative Aaron Michelwicz, the representative for the Project's district, spoke in support of the Project and noted that the Project was appropriate in height and size for the neighborhood, and that it would improve pedestrian and traffic safety in the area and better link the North End to the Greenway. The Board also heard from local residents in support of the Project, and it heard extensive opposition from the residents of 26 Stillman Street, which abuts the Project to the rear. It also received many letters in support and opposition to the Project. However, on balance, the showing of approval from elected officials and numerous members of the community further supports the Board's finding that the requested relief will have no negative impact on the surrounding area, and is in harmony with the general purpose and intent of the Code.



DECISION OF THE BOARD ON THE APPEAL OF

40-42 Cross Street, Ward 3
BOA-1337499
Date of Hearing: August 23, 2022
Permit: # ERT1306878
Page: # 5

For these reasons, the requested relief may be granted in harmony with the general purpose and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

With respect to the requested use and dimensional variances, the Board of Appeal finds that all of the following conditions are met:

- (a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variances are sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the lot, or exceptional topographical conditions thereof), which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this Code would deprive the appellant of the reasonable use of such land or structure; and
- (b) That for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variances is necessary for the reasonable use of the land or structure and that the variances as granted by the Board are the minimum variances that will accomplish this purpose; and
- (c) That the granting of the variances will be in harmony with the general purpose and intent of this Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In determining its findings, the Board of Appeal has taken into account: (1) the number of persons residing or working upon such land or in such structure; (2) the character and use of adjoining lots and those in the neighborhood; and (3) traffic conditions in the neighborhood.



DECISION OF THE BOARD ON THE APPEAL OF

40-42 Cross Street, Ward 3
BOA-1337499
Date of Hearing: August 23, 2022
Permit: # ERT1306878
Page: # 6

With respect to the requested conditional use permits, the Board finds that all of the conditions for granting the requested conditional relief in accordance with Article 6, Section 6-3 of the Code are met, as follows:

- (a) The specific site is an appropriate location for such use;
- (b) The use will not adversely affect the neighborhood;
- (c) There will be no serious hazard to vehicles or pedestrians from the use;
- (d) No nuisance will be created by the use; and
- (e) Adequate and appropriate facilities will be provided for the proper operation of the use.

Further, pursuant to Articles 6 and 32 of the Code, the Board finds that the Project complies with the following standards set forth in Article 32-6, applicable to Groundwater Conservation Overlay Districts, in addition to the standards set forth in Article 6:

- (a) The Project promotes infiltration of rainwater into the ground by capturing within a suitably designed system a volume of rainfall on the lot equivalent to no less than 1.0 inches across that portion of the surface area of the lot to be occupied by the Project; and
- (b) The Project will result in no negative impact on groundwater levels within the lot in question or adjacent lots, subject to the terms of any (i) dewatering permit or (ii) cooperation agreement entered into by the Applicant and the Boston Redevelopment Authority, to the extent that such agreement provides standards for groundwater protection during construction.



DECISION OF THE BOARD ON THE APPEAL OF

40-42 Cross Street, Ward 3
BOA-1337499
Date of Hearing: August 23, 2022
Permit: # ERT1306878
Page: # 7

Finally, pursuant to Articles 7 and 25 of the Code, the Board finds that the Project complies with the following standards set forth in Article 25-6 of the Code, applicable to Flood Hazard Districts, in addition to the standards set forth in Article 7:

- (a) The Project will not derogate from the purpose of Article 25;
- (b) The Project will comply with the provisions of the underlying subdistrict or subdistricts, subject to the relief granted by this Board;
- (c) The Project will not overload any public water, drainage or sewer system to such an extent that the proposed use or any developed use in the area or in any other area will be unduly subjected to hazards affecting health, safety or the general welfare; and
- (d) The Project will not result in an increase in flood levels during the base flood discharge.

In making its findings pursuant to Article 25, Section 6, the Board has considered the following factors: (a) the danger that materials may be swept onto other lands to the injury of others; (b) the danger to life and property due to flooding; (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner; (d) the importance of the services provided by the proposed facility to the community; (e) the necessity to the facility of a waterfront location, where applicable; (f) the availability of alternative locations for the proposed use which are not subject to flood damage; (g) the compatibility of the proposed use with existing and anticipated development; (h) the relationship of the proposed use to the comprehensive plan and flood plain management program of the area; (i) the safety of access to the property in times of flood for ordinary and emergency vehicles; (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and (k) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges. The Board hereby advises the Applicant that: (1) construction permitted by said variance will be subject to increased flood insurance rates commensurate with the degree of nonconformity; and (2) construction below the base flood elevation increases risks to life and property.

The Board is of the opinion that all conditions required for the granting of a variance under Article 7, Section 7-3, and a conditional use permit under Article 6, Section 6-3, and GCOD relief under



DECISION OF THE BOARD ON THE APPEAL OF

40-42 Cross Street, Ward 3
BOA-1337499
Date of Hearing: August 23, 2022
Permit: # ERT1306878
Page: # 8

Article 32, Section 32-6, and a Flood Hazard variance under Article 25, Section 25-6 of the Code have been met, and that the varying of the terms of the Code as outlined above will not conflict with the intent and spirit of the Code.

Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) voted to grant the requested Variances, Conditional Use permits, GCOD relief, Flood Hazard variance as described above, annuls the refusal of the Building Commissioner and orders him to grant a permit in accordance with this decision, with the following provisos which, if not complied with, shall render this decision null and void.


APPROVED AS TO FORM:

PROVISO(S): BPDA design review.


Assistant Corporation Counsel

Signed: September 27, 2022

With my affixed signature I, the Executive Secretary of the Board of Appeal, hereby certify that the signatories of this decision have given their express permission for electronic signature:


Thomas J. Broom, Esq.
Executive Secretary
Board of Appeal

- /s/ Christine Araujo
Christine Araujo – Chair (Voted in Opposition)
- /s/ Mark Fortune
Mark Fortune – Secretary (Voted in Favor)
- /s/ Mark Erlich
Mark Erlich (Voted In Favor)
- /s/ Joseph Ruggiero
Joseph Ruggiero (Voted In Favor)
- /s/ Eric Robinson
Eric Robinson (Voted In Favor)
- /s/ Sherry Dong
Sherry Dong (Voted In Favor)
- /s/ Jeanne Pinado
Jeanne Pinado (Alternate) (Voted in Favor)

Exhibit B

NORTH END CROSS ST BOUTIQUE HOTEL

42 CROSS STREET, NORTH END NEIGHBORHOOD, BOSTON MA, 02113

PROGRAM SUMMARY:

Basement (for Fitness Center, Most of hotel BOH, Laundry & Storage, Employee Bike Parking (16 spaces) and Mechanical Spaces)

1st Floor Hotel Lobby, Loading, Train Room, Partial BOH areas and Open Air Passageway (with 4 Bike Parking Spaces)

134 Hotel Rooms (Floor 2-5)

2,547 SF Hotel Restaurant (127 seats - 1st Floor)

620 SF Hotel Kitchen

2,317 SF Food & Beverage (Tenant) Restaurant (115 seats - 1st Floor)

222 SF 548 (1st Floor)

6,502 SF Deck at Roof Level (Total 5,516 SF - Usable / Approx. 275 persons)

Mechanical Penthouse (1)

ZONING SUMMARY:

Item	North End Neighborhood Zoning Submitter (CC)	Proposed Project	Roll of Required
Hotel Use	Conditional	Approx. 134 Rooms	Conditional
Restaurant Use - 1st Floor	Allowed	Approx. 247 Seats (Total for 2 Restaurants)	No
Restaurant Use - Roof Level	Prohibition (2nd Floor & Above)	Approx. 275 Seats (Assoc. with Hotel)	Yes
Minimum Lot Area	No Requirement	13,354 SF	No
Lot Area for Each Additional DU	No Requirement	N/A	N/A
Lot Width Minimum	No Requirement	Approx. 182 ft.	No
Lot Frontage Minimum	No Requirement	Approx. 245 ft.	No
Gross Floor Area (Construction SF)		78,351 SF	
Front Yard Minimum	None	0'	
Side Yard Minimum	None	0'	
Rear Yard Minimum	12 Feet	0'	Yes
Project Square Footage (Net SF per Zoning)		69,613 SF	
Floor Area Ratio (FAR)	3.0 Allowed	5.21	Yes
Building Height	55 ft.	55 ft.	No
Roof Structure	Article 54-18 Compliance Required	10% Max Footprint for Penthouses & Mech Equip. (Above 50 ft)	Conditional
Roof Structure Revisions		N/A	N/A
Usable Open Space per DU	55' per DU		
Usable Open Space	No Requirement	1,328 SF Open Air Passageway to Cullin Park	No
Bicycle Parking	Per Article 80 Review Process	161 Long-Term Employee Spaces & 4 Short-Term Guest Spaces	No
Vehicle Parking	Per Article 80 Review Process	No On-Site Parking; Valet Parking Accommodations will be available 24/7	No

PROJECT DATA:

Floor Level	Project Square Footage (FAR SF)	Non-FAR Square Footage (MEP, Storage, Laundry)	Gross Floor Area	Other / Notes
Basement	5,600 SF	6,719 SF (MEP, Storage, Laundry)	12,319 SF	898 SF sewer assessment (umball except for foundations)
1st Floor	11,047 SF	502 SF (MEP)	11,629 SF	Open Passageway, 328 SF, not included in FAR or Gross Floor Area
2nd Floor	11,455 SF	1,112 SF (MEP)	12,597 SF	28 hotel rooms (due to pass-thru and resiliency requirements for main electrical room & water service room)
3rd Floor	13,662 SF	35 SF (MEP)	13,717 SF	36 hotel rooms
4th Floor	13,662 SF	35 SF (MEP)	13,717 SF	36 hotel rooms
5th Floor	13,250 SF	35 SF (MEP)	13,285 SF	34 hotel rooms
Roof Level	867 SF (Bike + Penthouse)	220 SF (MEP Penthouse)	1,087 SF	*Use Structure = 1,087 SF; Deck at Roof Level = 5,516 SF; Total Conditioned roof area = 13,717 SF; Roofing MEP Equip. = 220 SF
TOTAL	66,643 SF	8,738 SF	78,351 SF	Needs inclusion of mechanical spaces



© The Architectural Team, Inc.
 50 Commonwealth Way #4 Administs Hill
 Boston, MA 02113
 P 617.884.4402
 F 617.884.4829
 architecturalteam.com

Consultant: _____

Revision: 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:

Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan: _____

Project Name:
Cross St Hotel

42 Cross St
 Boston, MA
 02113

Sheet Name:
**PROJECT DATA
 & ZONING
 SUMMARY**

Project Number:
 19201

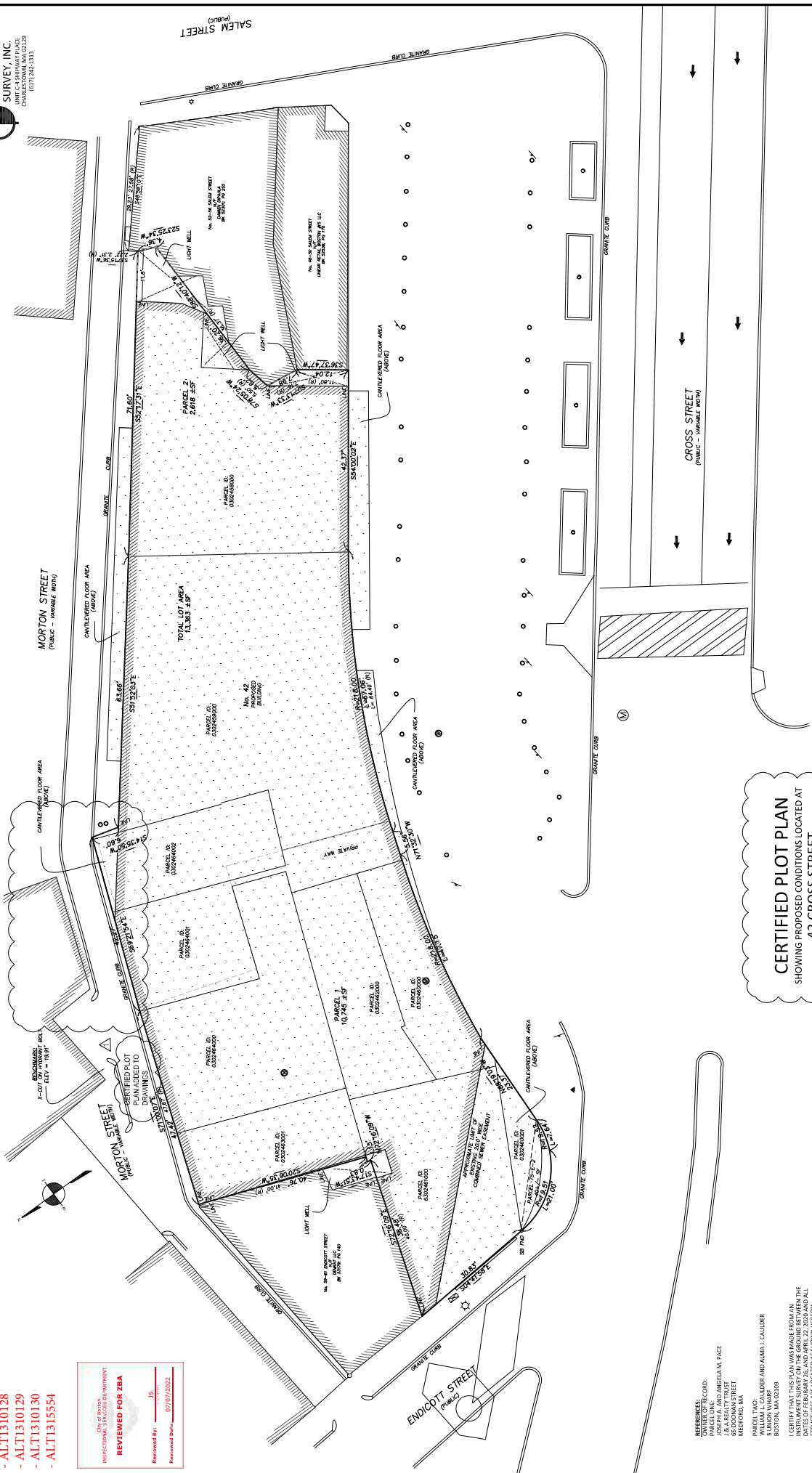
Issue Date:
 03/10/2022

Sheet Number:
T1.02

ORIGINAL PARCELS.
LOT ADDITION APPROVED ON APPLICATIONS:
 - ALT1310128
 - ALT1310129
 - ALT1310130
 - ALT1315554

City of Boston
 INSPECTIONAL SERVICES DEPARTMENT
REVIEWED FOR ZBA
 Reviewed By: [Signature]
 Reviewed Date: 07/07/2022

BOSTON SURVEY, INC.
 UNIT C4 SHIPWAY PLACE
 CHARLESTOWN, MA 02129
 (617) 242-1233



CERTIFIED PLOT PLAN
 SHOWING PROPOSED CONDITIONS LOCATED AT
42 CROSS STREET
 BOSTON, MA
 DATE: MAY 3, 2022. SCALE: 1.0 INCH = 10.0 FEET



CERTIFIED PLOT
 PLAN SUBJECT TO
 DRAWINGS.

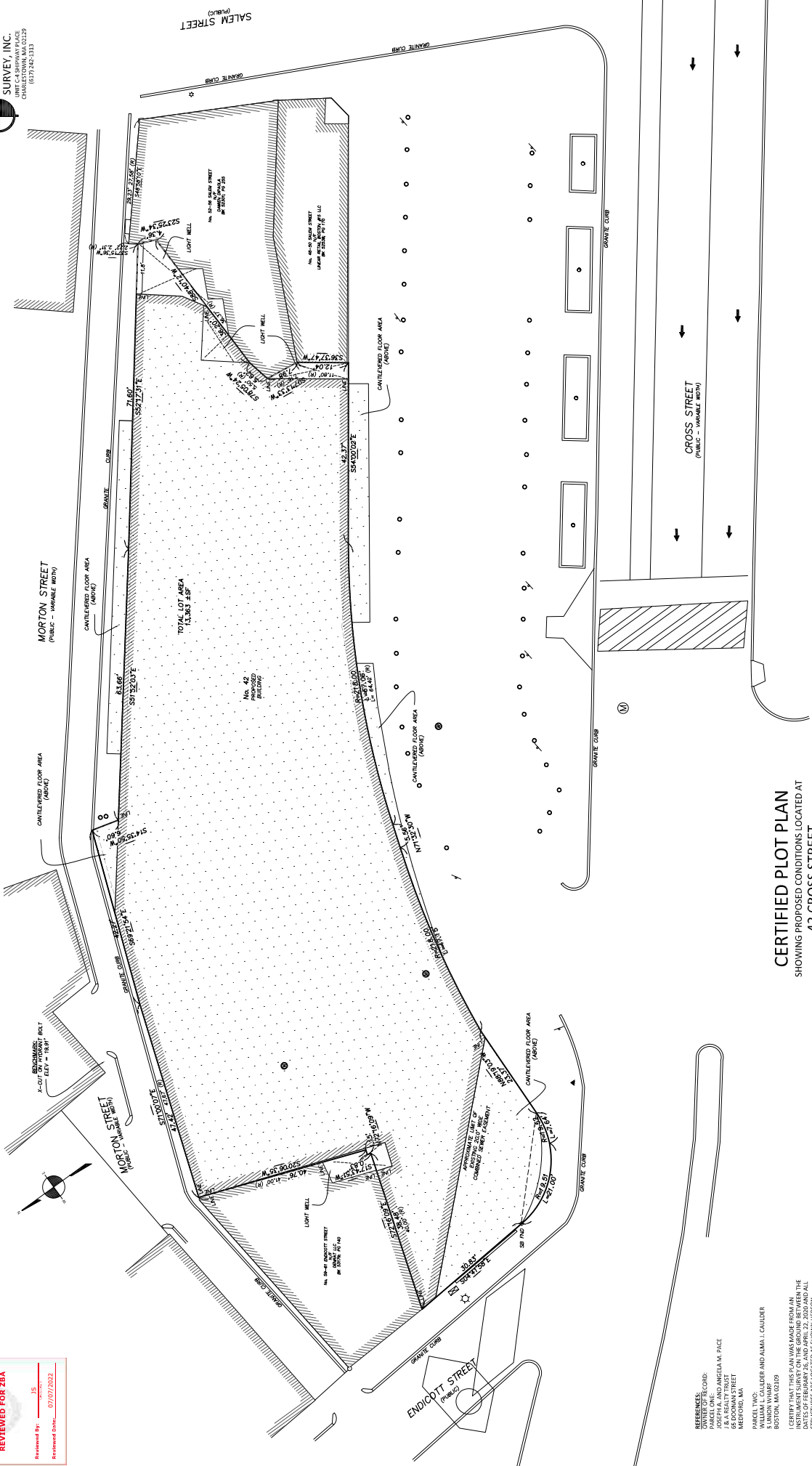
REFERENCES:
 PARCEL ONE: 2000 MASSA W. PLACE
 J.B. A REALTY TRUST
 88 DORCHESTER STREET
 BOSTON, MA
 WILLIAM L. CAULDER AND AMAL J. CAULDER
 5 UNION WHARF
 BOSTON, MA 02210
 I CERTIFY THAT THIS PLAN WAS MADE FROM AN
 INSPECTED FEMA MAP, AND THE MAJOR IMPROVEMENTS ON
 THE DATES OF FEBRUARY 26, AND APRIL 22, 2020 AND ALL
 STRUCTURES ARE LOCATED AS SHOWN HEREON.
FEMA
 ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT
 AGENCY (FEMA) MAPS, THE MAJOR IMPROVEMENTS ON
 THE DATES OF FEBRUARY 26, AND APRIL 22, 2020 AND ALL
 STRUCTURES ARE LOCATED AS SHOWN HEREON.
 ZONE: FIRM PANEL X-56560001
 EFFECTIVE DATE: MARCH 16, 2016

FIELD:	J.H.
DRAWN:	S.A.P.
CHECKED:	G.C.C.
DATE:	05/03/22
JOB #	20-00183



FIELD:	J.H.
DRAWN:	S.A.P.
CHECKED:	G.C.C.
DATE:	05/03/22
JOB #:	20-00123

City of Boston
 INSPECTIONAL SERVICES DEPARTMENT
REVIEWED FOR ZBA
 Reviewed By: LS
 Reviewed Date: 07/07/2022



CERTIFIED PLOT PLAN
 SHOWING PROPOSED CONDITIONS LOCATED AT
42 CROSS STREET
BOSTON, MA

DATE: MAY 3, 2022. SCALE: 1.0 INCH = 10.0 FEET

REFERENCES:
 PARCEL RECORDS
 J.B. & REALTY TRUST
 88 DODMAN STREET
 BOSTON, MA

WILLIAM L. CAULDER AND ALMA J. CAULDER
 BOSTON, MA 02109

I CERTIFY THAT THIS PLAN WAS MADE FROM THE
 BEST AVAILABLE INFORMATION AND THAT THE
 DATES OF FEBRUARY 26, AND APRIL 22, 2020 AND ALL
 STRUCTURES ARE LOCATED AS SHOWN HEREON.

FEMA
 ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT
 AGENCY (FEMA) MAPS, THE MAJOR IMPROVEMENTS ON
 THE DATE OF THIS PLAN ARE AS SHOWN ON THE
 ZONE: FLOOD HAZARD ZONE
 X: 66560000
 EFFECTIVE DATE: MARCH 16, 2016

tat

© The Architectural Team, Inc.
 50 Commonwealth Way at Admirals Hill
 Boston, MA 02113
 P 617.869.4402
 F 617.884.4329
 architecturalteam.com

Consultant:

Revision: 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:



Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

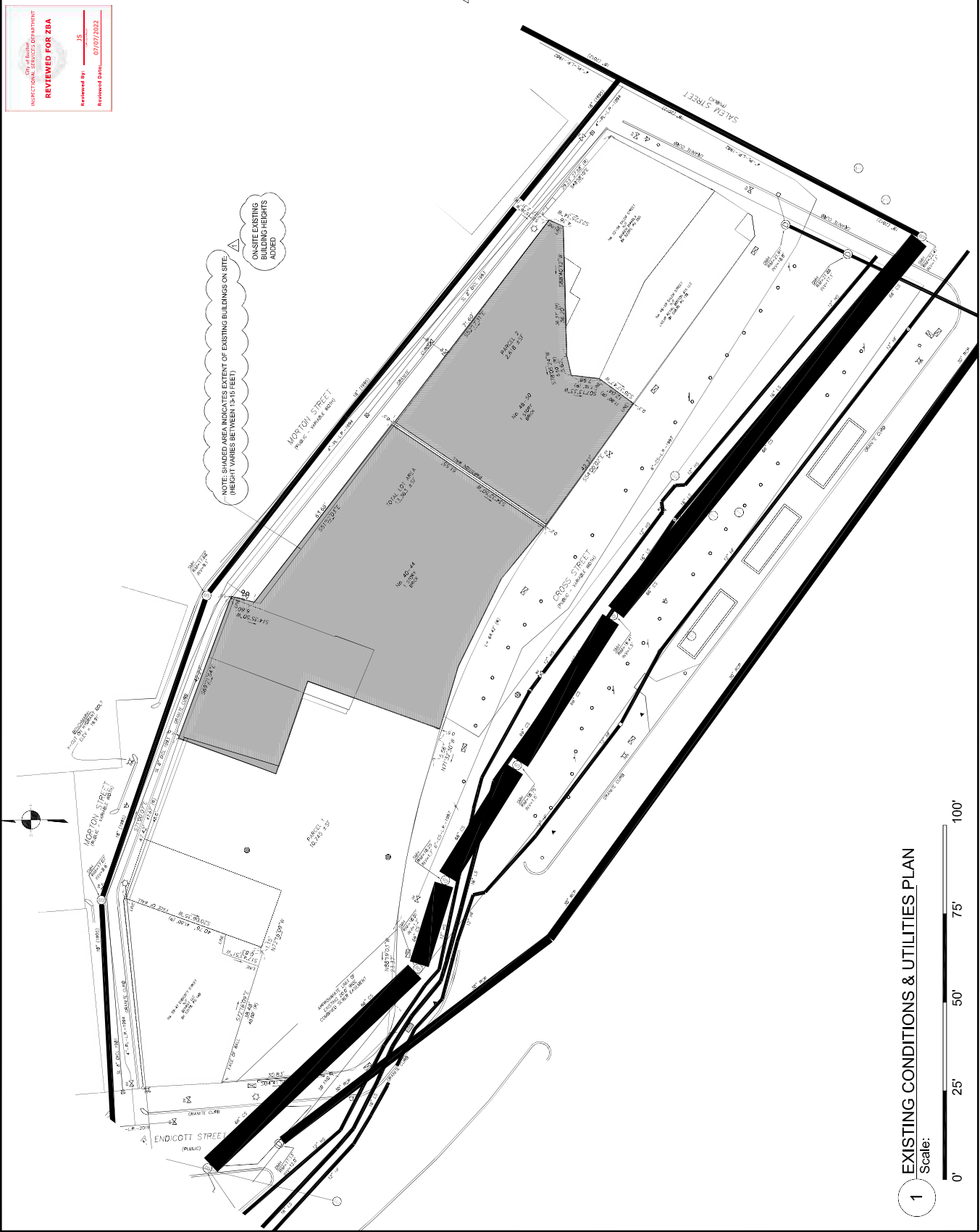
Project Name:
Cross St Hotel
 42 Cross St
 Boston, MA
 02113

Sheet Name:
**EXITING
 CONDITIONS &
 UTILITIES PLAN**

Project Number:
 19201
 Issue Date:
 03/10/2022
 Sheet Number:

A1.00

City of Boston
 Inspection Services Department
REVIEWED FOR ZBA
 Reviewed By: [Signature]
 Reviewed Date: 07/07/2022





© The Architectural Team, Inc.
 50 Commonwealth Way at Adirondack Hill
 Cambridge, MA 02142
 P 617.869.4422
 F 617.884.4829
 architecturalteam.com

Consultant:

Revision: 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:



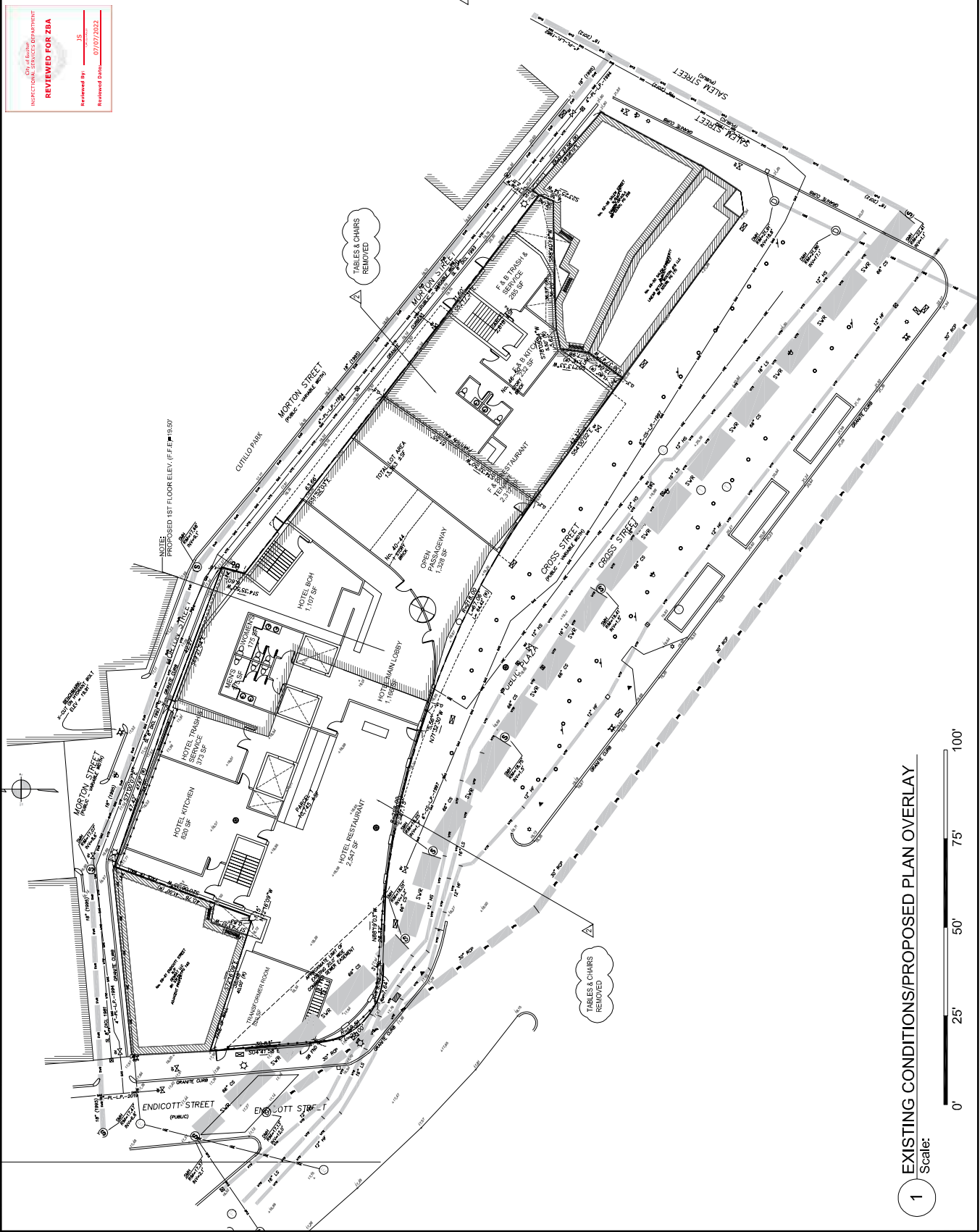
Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

Project Name:
Cross St Hotel
 42 Cross St
 Boston, MA
 02113

Sheet Name:
**COORDINATION
 PROPOSED &
 EXISTING PLAN**

Project Number:
 19201
 Issue Date:
 03/10/2022
 Sheet Number:
A1.00B

City of Boston
 Inspection Services Department
REVIEWED FOR ZBA
 Reviewed By: [Signature]
 Reviewed Date: 07/07/2022



1 EXISTING CONDITIONS/PROPOSED PLAN OVERLAY
 Scale: 1" = 100'





© The Architectural Team, Inc.
 50 Commonwealth Way at Admins Hill
 Boston, MA 02113
 P 617.889.4402
 F 617.884.4829
 architecturalteam.com

Consultant:

Revision:
 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:



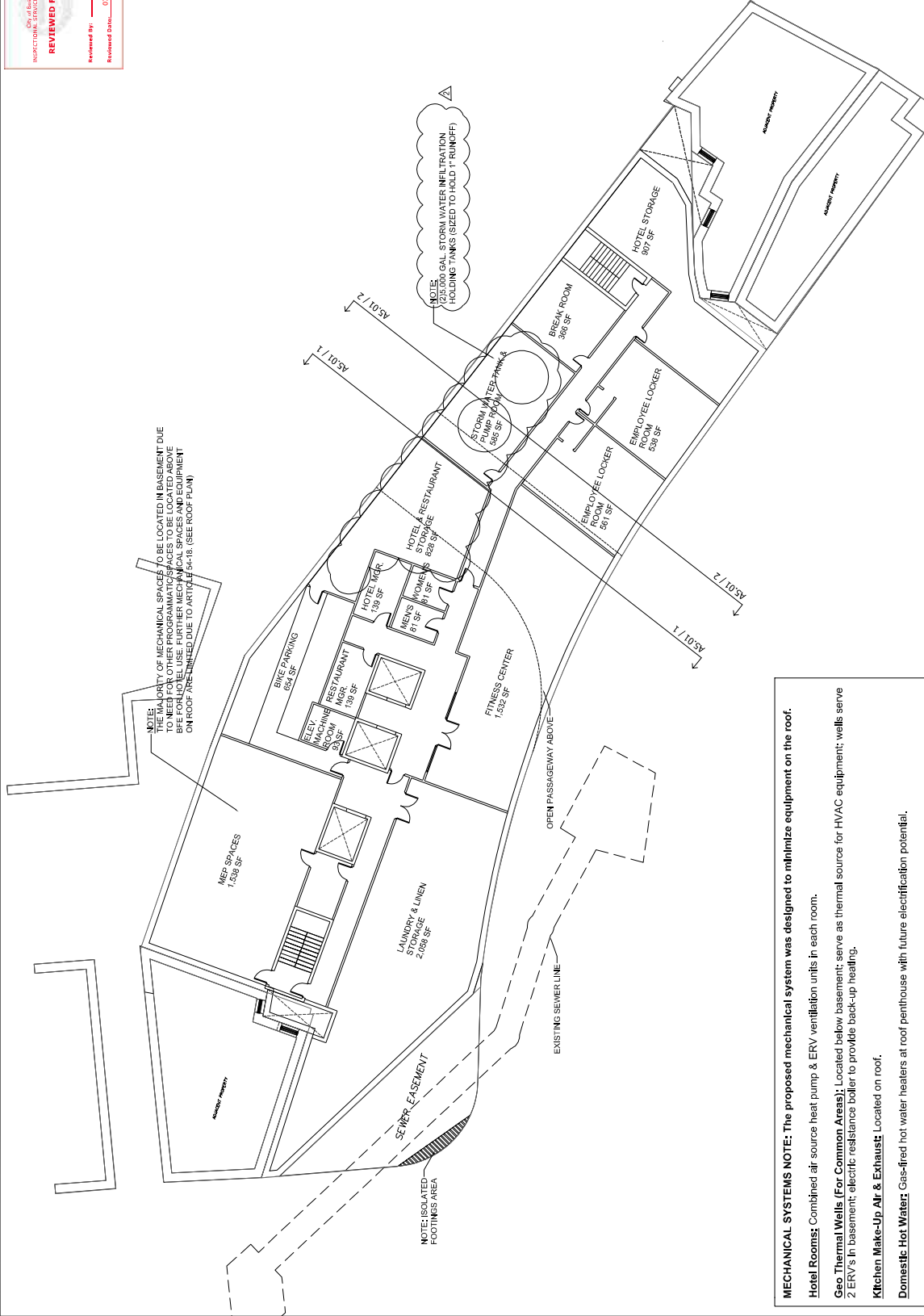
Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

Project Name:
Cross St Hotel
 42 Cross St
 Boston, MA
 02113
 Sheet Name:
BASEMENT FLOOR PLAN

Project Number:
 19201
 Issue Date:
 03/10/2022
 Sheet Number:
A1.01



NOTE:
 THE MAJORITY OF MECHANICAL SPACES TO BE LOCATED IN BASEMENT DUE TO NEED FOR OTHER PROGRAMMATIC SPACES TO BE LOCATED ABOVE BIE FOR HOTEL USE. FURTHER MECHANICAL SPACES AND EQUIPMENT ON ROOF ARE LIMITED DUE TO ARTICLE 5A-16. (SEE ROOF PLAN)



MECHANICAL SYSTEMS NOTE: The proposed mechanical system was designed to minimize equipment on the roof.

Hotel Rooms: Combined air source heat pump & ERV ventilation units in each room.

Geo Thermal Wells (For Common Areas): Located below basement; serve as thermal source for HVAC equipment; wells serve 2 ERV's in basement; electric resistance boiler to provide back-up heating.

Kitchen Make-Up Air & Exhaust: Located on roof.

Domestic Hot Water: Gas-fired hot water heaters at roof penthouse with future electrification potential.

Emergency Generator: At roof level.

1 BASEMENT FLOOR PLAN
 Scale: 3/32" = 1'-0"



© The Architectural Team, Inc.
 50 Commonwealth Way in Admins Hills
 Boston, MA 02113
 P 617.489.4402
 F 617.484.4359
 architecturalteam.com

Consultant:

Revision: 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:



Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

Project Name:
Cross St Hotel
 42 Cross St
 Boston, MA
 02113
 Sheet Name:
FIRST FLOOR PLAN

Project Number:
 19201
 Issue Date:
 03/10/2022
 Sheet Number:
A1.02



NOTE: FLOOR ELEVATION (F.F.E.) DESIGNED AT 19.50' (SEE) TO ENSURE FULLY ACCESSIBLE ENTRANCES. BASED ON EXISTING GRADES AT SITE EDGES. THIS 1ST FLOOR F.F.E. TO BE REFINED AND MODIFIED AS NECESSARY DURING FURTHER DESIGN REVIEW PROCESS WITH THE BPDA.

LIGHT WELL #2:
 3 ft x 1 ft additional per floor above the 2nd floor (m3) = 6 feet.
 Minimum Width = 3 ft.
 10 ft x 2 ft additional per floor above the 2nd floor (m3) = 16 feet.

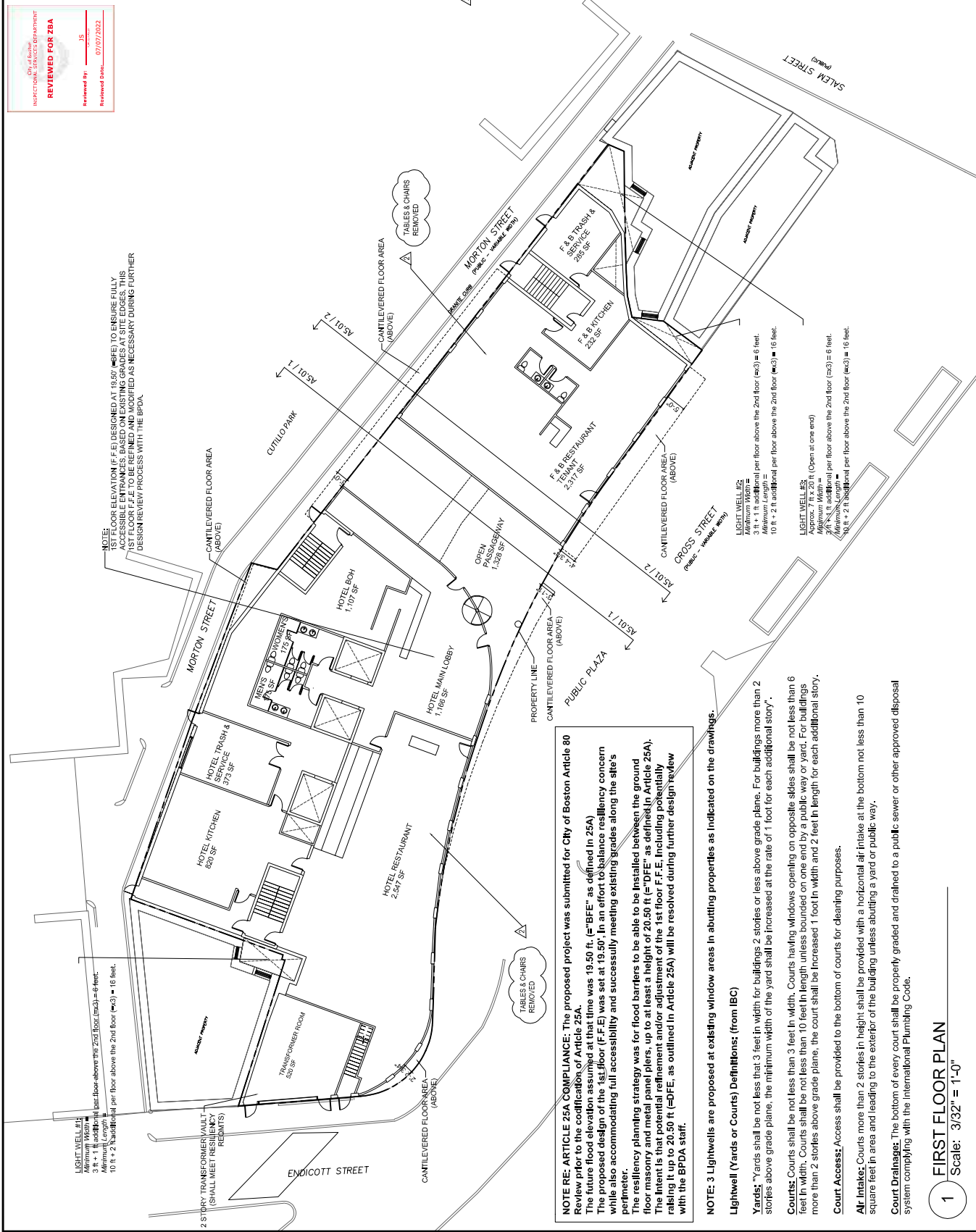
LIGHT WELL #2:
 3 ft x 1 ft additional per floor above the 2nd floor (m3) = 6 feet.
 Minimum Width = 3 ft.
 10 ft x 2 ft additional per floor above the 2nd floor (m3) = 16 feet.

LIGHT WELL #3:
 3 ft x 1 ft additional per floor above the 2nd floor (m3) = 6 feet.
 Minimum Width = 3 ft.
 10 ft x 2 ft additional per floor above the 2nd floor (m3) = 16 feet.

NOTE RE: ARTICLE 25A COMPLIANCE: The proposed project was submitted for City of Boston Article 80 Review prior to the codification of Article 25A.
 The proposed design of the floor (F.F.E.) was set at 19.50'. In an effort to balance resiliency concern while also accommodating full accessibility and successfully meeting existing grades along the site's perimeter, the resiliency planning strategy was for flood barriers to be able to be installed between the ground floor (1st floor) and the 2nd floor (2nd floor), up to at least a height of 20 ft ("DFE", as defined in Article 25A). The intent is to provide a barrier to the ground floor (1st floor) F.F.E. including potentially raising it to 20.50 ft ("DFE", as outlined in Article 25A) will be resolved during further design review with the BPDA staff.

NOTE: 3 Lightwells are proposed at existing window areas in abutting properties as indicated on the drawings.
Lightwell (Yards or Courts) Definitions: (from IBC)
 Yards: "Yards shall be not less than 3 feet in width for buildings 2 stories or less above grade plane. For buildings more than 2 stories above grade plane, the minimum width of the yard shall be increased at the rate of 1 foot for each additional story."
 Courts: Courts shall be not less than 3 feet in width. Courts having windows opening on opposite sides shall be not less than 6 feet in width. Courts shall be not less than 10 feet in length unless bounded on one end by a public way or yard. For buildings more than 2 stories above grade plane, the court shall be increased 1 foot in width and 2 feet in length for each additional story.
Court Access: Access shall be provided to the bottom of courts for cleaning purposes.
Air Intake: Courts more than 2 stories in height shall be provided with a horizontal air intake at the bottom not less than 10 square feet in area and leading to the exterior of the building unless abutting a yard or public way.
Court Drainage: The bottom of every court shall be properly graded and drained to a public sewer or other approved disposal system complying with the International Plumbing Code.

1 FIRST FLOOR PLAN
 Scale: 3/32" = 1'-0"





© The Architectural Team, Inc.
 50 Commonwealth Way at Admirals Hill
 Cambridge, MA 02142
 T 617.895.4402
 F 617.894.4825
 architecturalteam.com

Consultant:

Revision: 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:



Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

Project Name:
Cross St Hotel
 42 Cross St
 Boston, MA
 02113
 Sheet Name:
**SECOND FLOOR
 PLAN**

Project Number:
 19201
 Issue Date:
 03/10/2022
 Sheet Number:

A1.03



1 SECOND FLOOR PLAN
 Scale: 3/32" = 1'-0"



© The Architectural Team, Inc.
 50 Commonwealth Way at Admirals Hill
 Cambridge, MA 02142
 T 617.889.4402
 F 617.884.4829
 architecturalteam.com

Consultant:

Revision: 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:

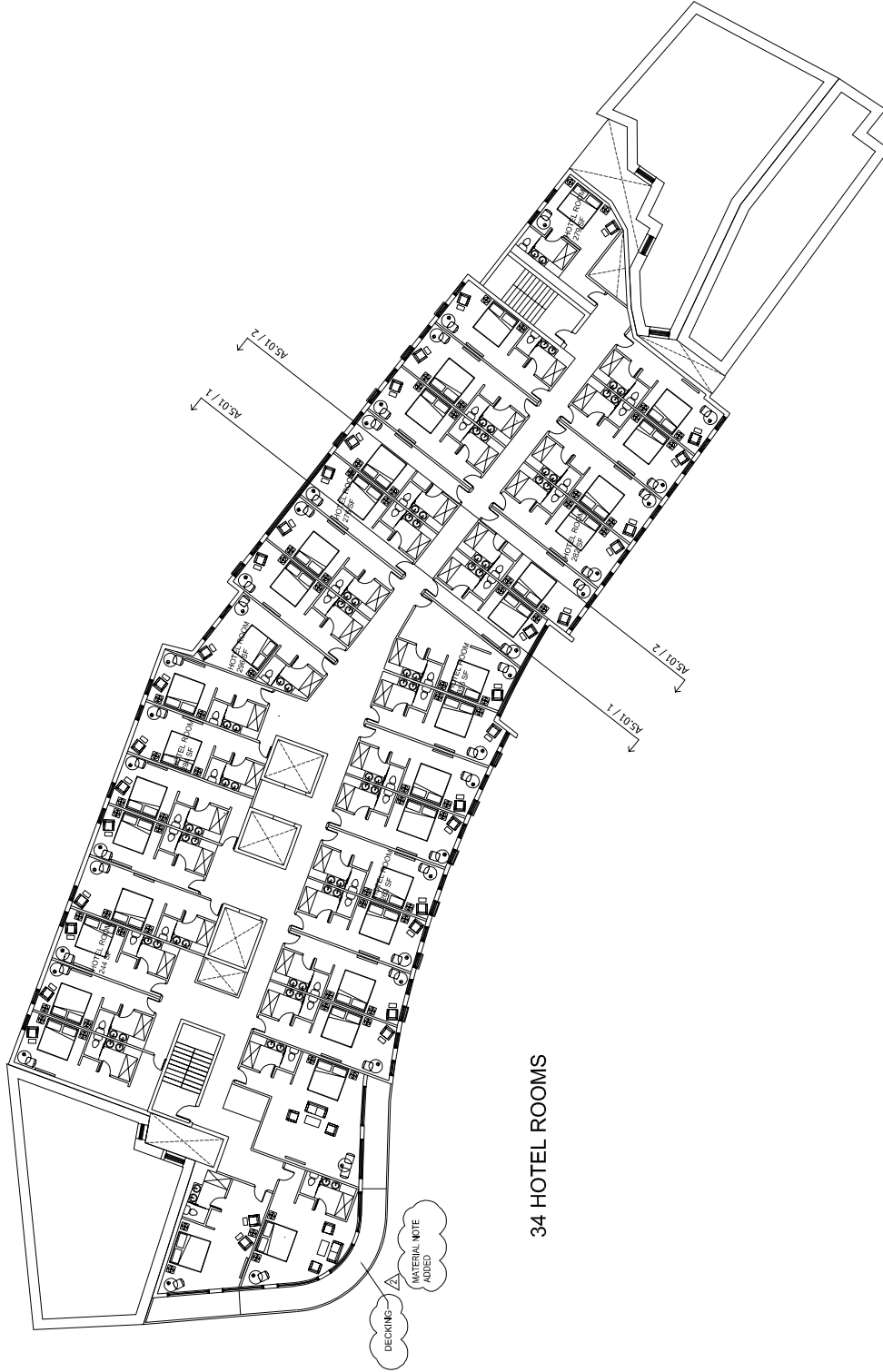


Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

Project Name:
Cross St Hotel
 42 Cross St
 Boston, MA
 02113
 Sheet Name:
**5TH FLOOR
 PLAN**

Project Number:
 19201
 Issue Date:
 03/10/2022
 Sheet Number:

A1.05

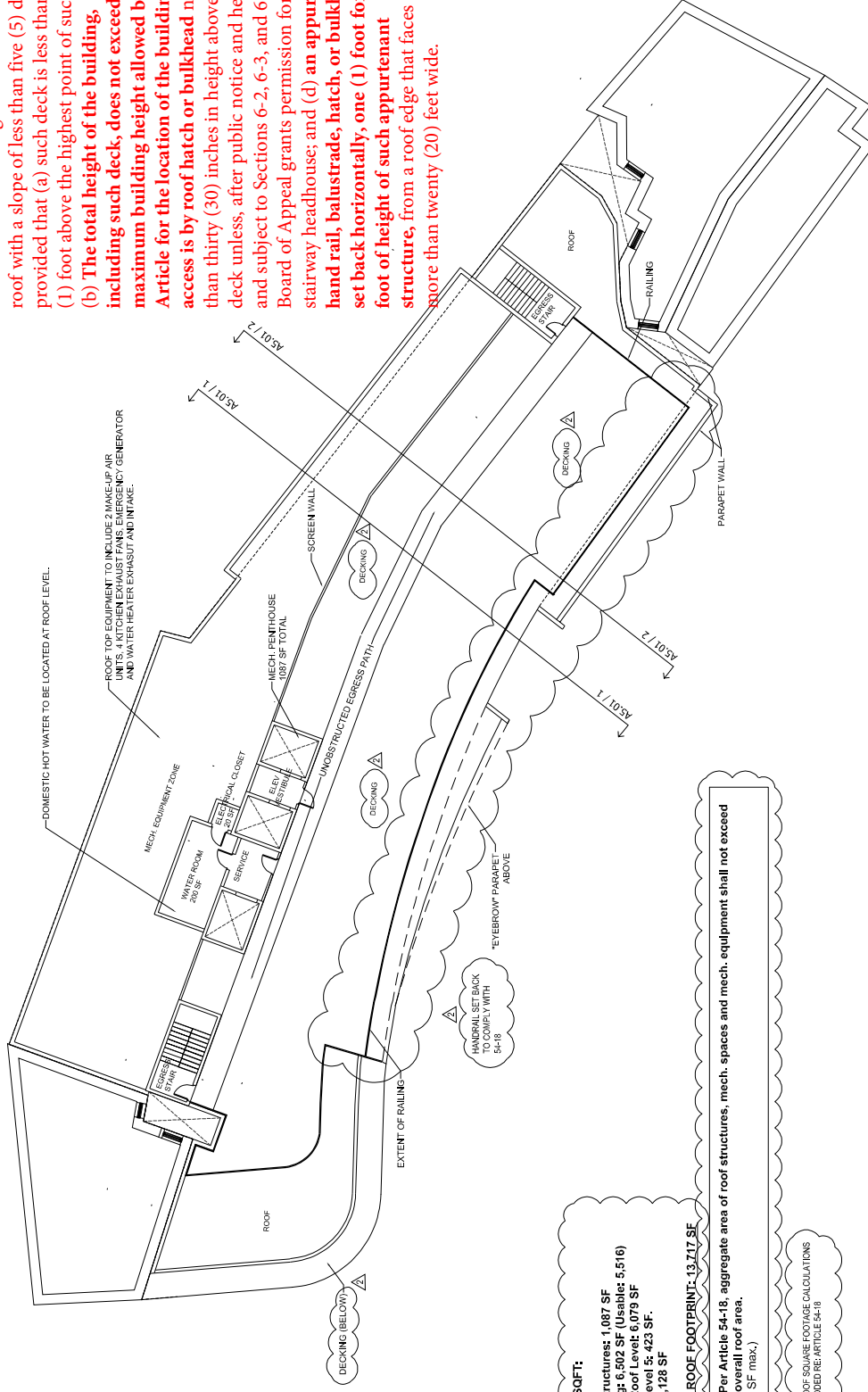


34 HOTEL ROOMS

1 5TH FLOOR PLAN
 Scale: 3/32" = 1'-0"

In the North End Neighborhood District, no roofed structure designed or used for human occupancy, access (except as allowed in following paragraph), or storage, and no roof structure, headhouse, or mechanical equipment normally built above the roof and not designed or used for human occupancy, shall be erected or enlarged on the roof of an existing building if such construction relocates or alters the profile and/or configuration of the roof or mansard, unless after public notice and hearing and subject to Sections 6-2, 6-3, and 6-4, the Board of Appeal grants a conditional use therefor.

- (a) An open roof deck may be erected on the main roof of a building with a flat roof or a roof with a slope of less than five (5) degrees, provided that (a) such deck is less than one (1) foot above the highest point of such roof;
- (b) The total height of the building, including such deck, does not exceed the maximum building height allowed by this Article for the location of the building;
- (c) Access is by roof hatch or bulkhead no more than thirty (30) inches in height above such deck unless, after public notice and hearing and subject to Sections 6-2, 6-3, and 6-4, the Board of Appeal grants permission for a stairway headhouse; and (d) an appurtenant hand rail, balustrade, hatch, or bulkhead is set back horizontally, one (1) foot for each foot of height of such appurtenant structure, from a roof edge that faces a street more than twenty (20) feet wide.



ROOF SQFT:
 Roof Structures: 1,087 SF
 Decking: 6,302 SF (Usable: 5,516)
 Roof Level: 6,079 SF
 Level 5: 423 SF
 Roof: 6,128 SF
TOTAL ROOF FOOTPRINT: 13,717 SF

NOTE: Per Article 54-18, aggregate area of roof structures, mech. spaces and mech. equipment shall not exceed 10% of overall roof area.
 (=1,371 SF max.)

ROOF SQUARE FOOTAGE CALCULATIONS ADDED PER ARTICLE 34-6

1 ROOF LEVEL PLAN
 Scale: 3/32" = 1'-0"

CITY OF BOSTON
INFRASTRUCTURAL SERVICES DEPARTMENT
REVIEWED FOR ZBA
 Reviewed By: [Signature]
 Review Date: 03/10/2022



© The Architectural Team, Inc.
 50 Commonwealth Way at Admirals Hill
 Boston, MA 02110
 P 617.689.4402
 F 617.684.4859
 architecturalteam.com

Consultant:

Revision:
 05/03/2022 REVISION 1
 06/27/2022 REVISION 2



Architect of Record:
 Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

Project Name:
Cross St Hotel
42 Cross St
 Boston, MA
 02113
 Sheet Name:
ROOF FLOOR PLAN

Project Number:
 19201
 Issue Date:
 03/10/2022
 Sheet Number:
A1.06



The Architectural Team, Inc.
50 Commonwealth Way at Admirals Hill
Boston, MA 02113
P 617.689.4402
F 617.684.4329
architecturalteam.com

Consultant:

Revision: 05/03/2022 REVISION 1
06/27/2022 REVISION 2

Architect of Record:

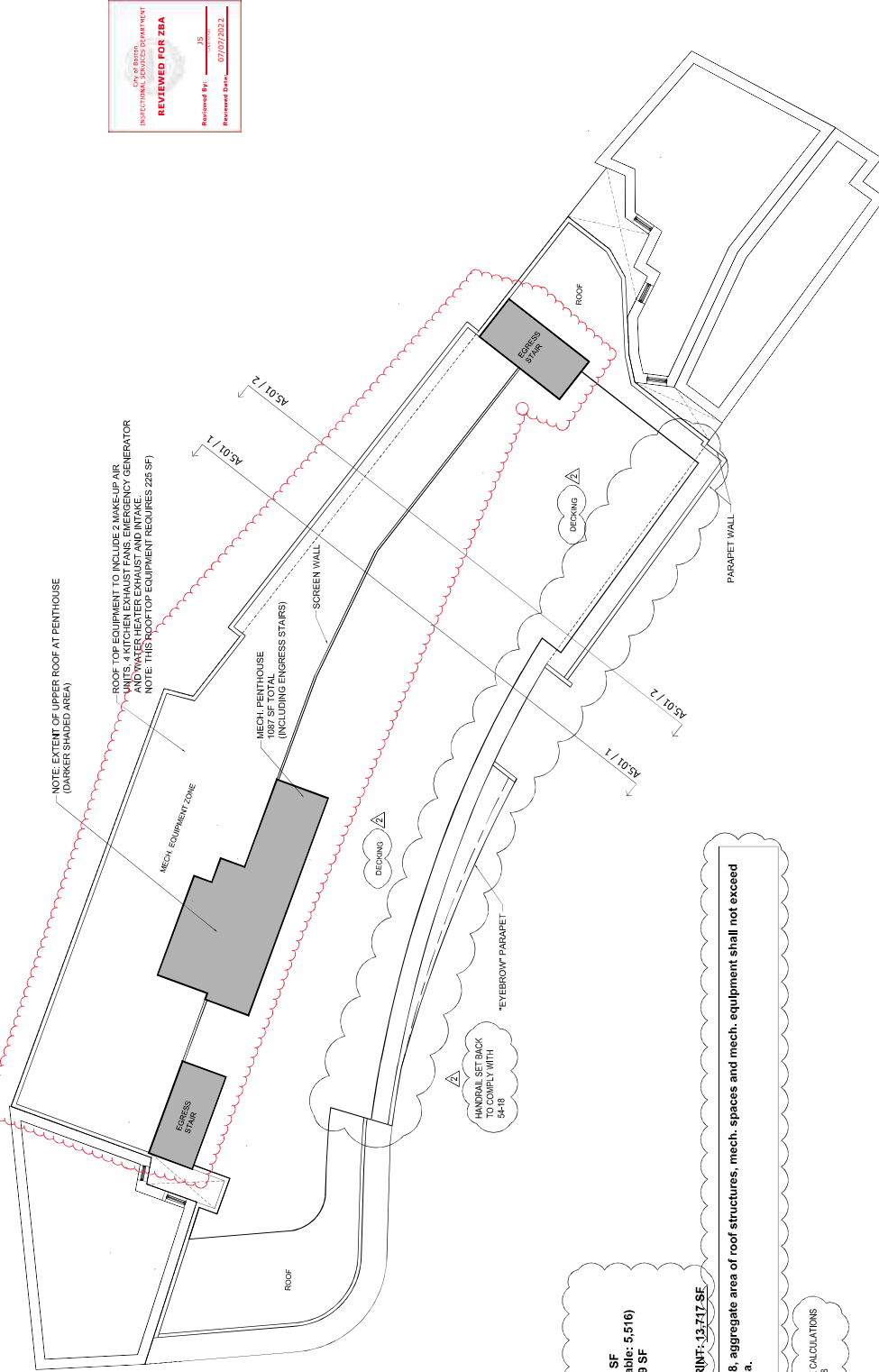


Drawn: TAT
Checked: TAT
Scale: AS NOTED
Key Plan:

Project Name:
Cross St Hotel
42 Cross St
Boston, MA
02113
Sheet Name:
**UPPER ROOF
FLOOR PLAN**

Project Number:
19201
Issue Date:
03/10/2022
Sheet Number:
A1.07

Roof structures, headhouses, and mechanical equipment normally built above the roof and not designed or used for human occupancy shall be included in measuring the building height if the total area of such roof structures, headhouses, and mechanical equipment exceeds in the aggregate: (a) 330 square feet, if the total roof area of the building is 3,300 square feet or less; or (b) ten percent (10%) of the total roof area of the building, if such total roof area is greater than 3,300 square feet.



ROOF SQFT:
Roof Structures: 1,087 SF
Decking: 6,302 SF (Usable: 5,516)
Roof Level: 6,079 SF
Level S: 423 SF
Roof: 6,128 SF
TOTAL ROOF FOOTPRINT: 13,717 SF

NOTE: Per Article 54-18, aggregate area of roof structures, mech. spaces and mech. equipment shall not exceed 10% of overall roof area.
(=1,371 SF max.)

1 UPPER ROOF LEVEL PLAN
Scale: 3/32" = 1'-0"

UPPER ROOF PLAN
ADDED FOR CLARIFICATION



© The Architectural Team, Inc.
50 Commonwealth Way in Admin's Hill
Boston, MA 02113
P 617.884.4422
architecturalteam.com

Consultant:

Revision:
06/03/2022 REVISION 1
06/27/2022 REVISION 2

Architect of Record:

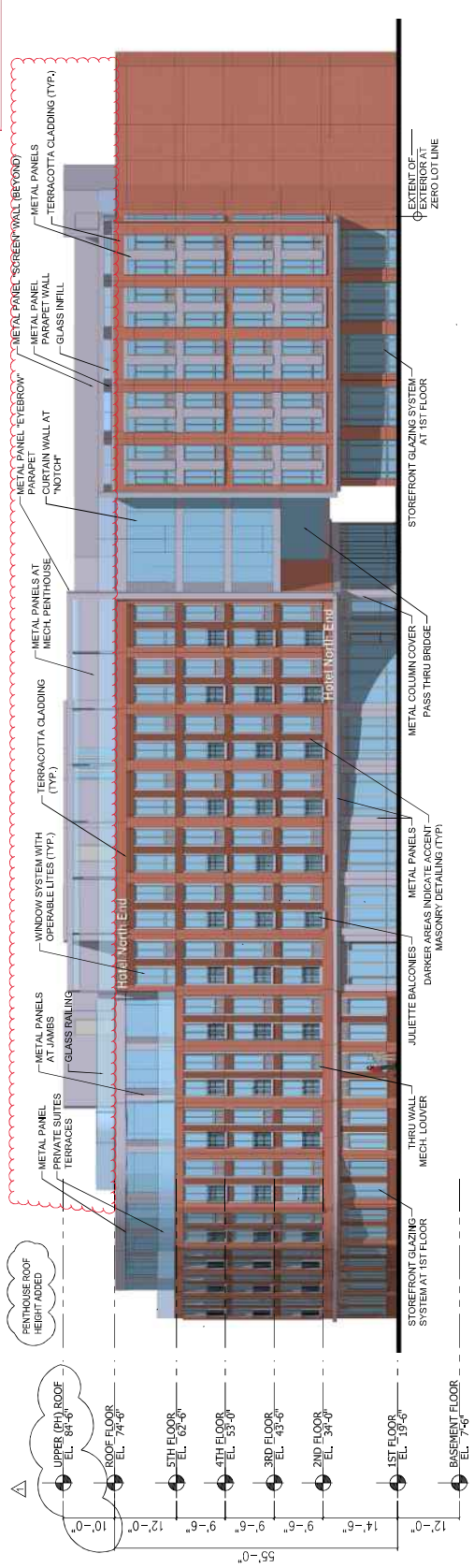


Drawn: TAT
Checked: TAT
Scale: AS NOTED
Key Plan:

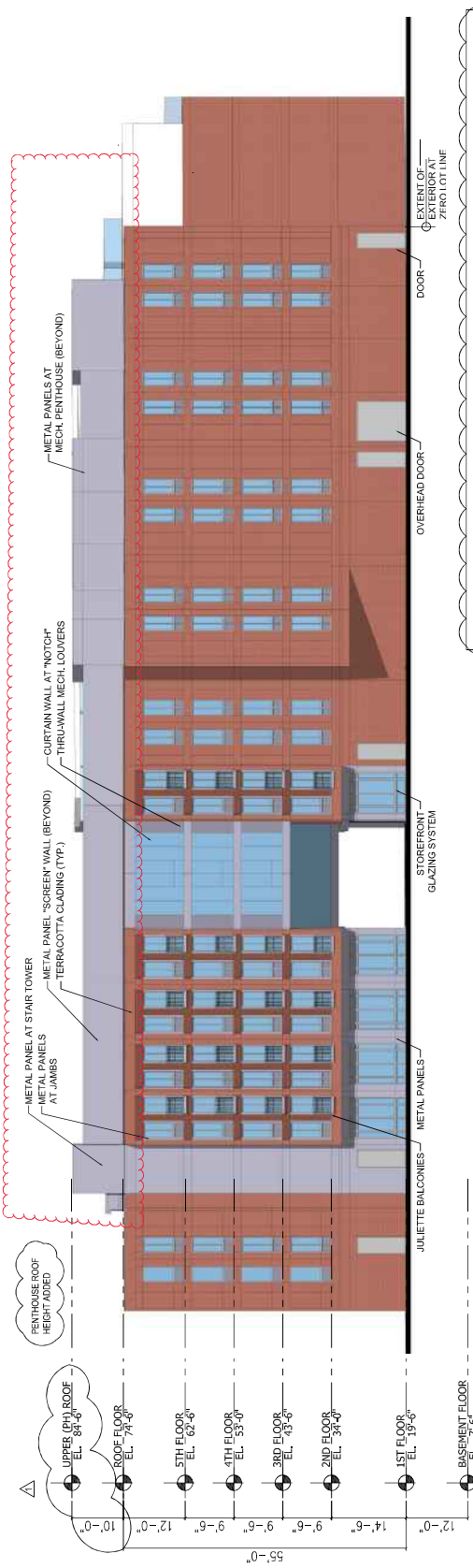
Project Name:
Cross St Hotel
42 Cross St
Boston, MA
02113
Sheet Name:
**EXTERIOR
ELEVATIONS**

Project Number:
19201
Issue Date:
03/10/2022
Sheet Number:
A4.01

City of Boston
Department of Planning
REVIEWED FOR ZBA
Reviewed By: [Signature]
Reviewed Date: 07/07/2022



1 CROSS STREET ELEVATION
Scale: 3/32" = 1'-0"



2 MORTON STREET ELEVATION
Scale: 3/32" = 1'-0"

NOTE: Roof structures and rooftop mech equipment fully comply with article 54-18.

Roof structures, headhouses, and mechanical equipment normally built above the roof and not designed or used for human occupancy shall be included in measuring the building height if the total area of such roof structures, headhouses, and mechanical equipment exceeds in the aggregate: (a) 330 square feet, if the total roof area of the building is 3,300 square feet or less; or (b) ten percent (10%) of the total roof area of the building, if such total roof area is greater than 3,300 square feet.



© The Architectural Team, Inc.
 50 Commonwealth Way in Adminstr's Hill
 Boston, MA 02116
 P 617.884.4422
 F 617.884.4859
 architecturalteam.com

Consultant:

Revision:
 05/03/2022 REVISION 1
 06/27/2022 REVISION 2

Architect of Record:



Drawn: TAT
 Checked: TAT
 Scale: AS NOTED
 Key Plan:

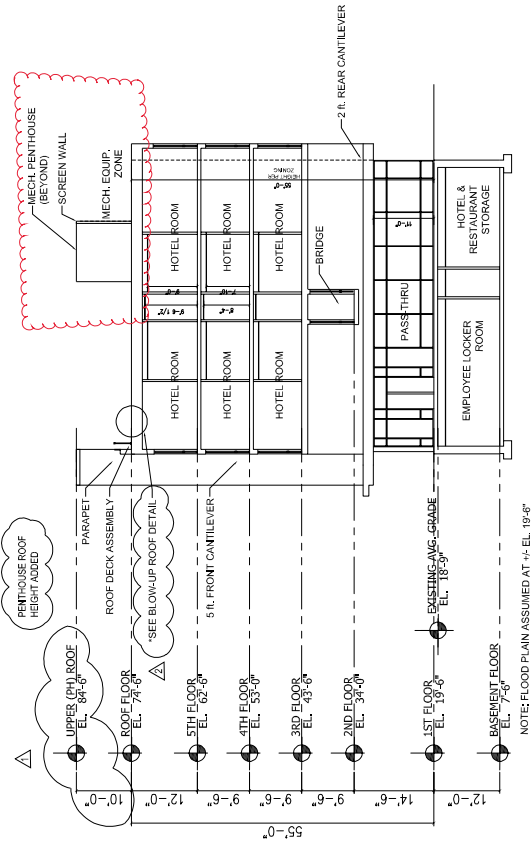
Project Name:
Cross St Hotel
 42 Cross St
 Boston, MA
 02113

Sheet Name:
BUILDING SECTIONS

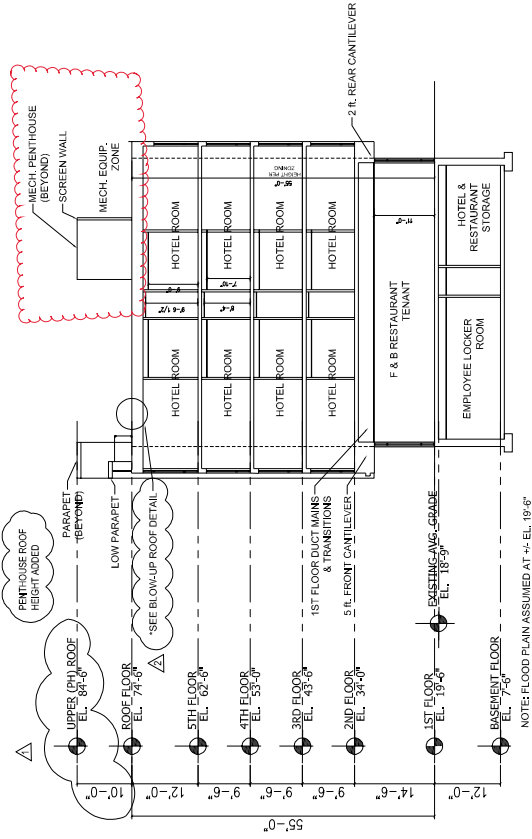
Project Number:
 19201

Issue Date:
 03/10/2022

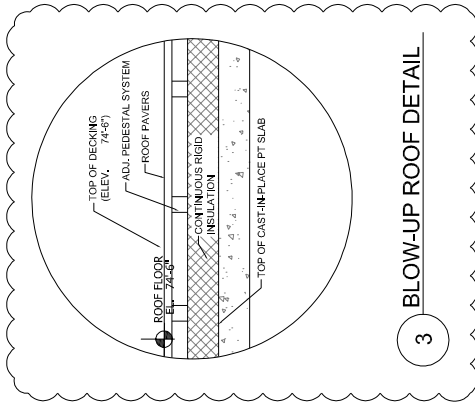
Sheet Number:
A5.01



1 BUILDING SECTION THRU PASS-THRU
 Scale: 3/32" = 1'-0"



2 BUILDING SECTION THRU F&B RESTAURANT
 Scale: 3/32" = 1'-0"



3 BLOW-UP ROOF DETAIL
 DETAIL REVISED

NOTE RE: ARTICLE 25A COMPLIANCE: The proposed project was submitted for City of Boston Article 80 Review prior to the codification of Article 25A. The future flood elevation assumed at that time was 19.50 ft. ("BFE" as defined in 25A). The proposed design of the 1st floor (F.F.E) was set at 19.50'. In an effort to balance resiliency concern while also accommodating full accessibility and successfully meeting existing grades along the site's perimeter. The resiliency planning strategy was for flood barriers to be able to be installed between the ground floor masonry and metal panel piers, up to at least a height of 20.50 ft ("DFE" as defined in Article 25A). The intent is that potential refinement and/or adjustment of the 1st floor F.F.E, including potentially raising it up to 20.50 ft ("DFE", as outlined in Article 25A) will be resolved during further design review with the BPDA staff.

NOTE: 1st floor elevation (F.F.E) designed at 19.50' (=B.F.E) to ensure fully accessible entrances based on existing grades at site edges. This 1st floor F.F.E to be refined and modified as necessary during further design review process with the BPDA.

NOTE: Roof structures and rooftop mech equipment fully comply with article 54-1B.

City of Boston
 INSPECTION SERVICES DEPARTMENT
REVIEWED FOR ZBA
 Reviewed By: JS
 Reviewed Date: 07/07/2022

Exhibit C



March 11, 2022

Sean Lydon, Interim Commissioner
City of Boston Inspectional Services Department
1010 Massachusetts Avenue
Boston, MA 02118

RE: Cross Street Hotel – Cross Street Ventures LLC (applicant), 28-46 Cross Street, Boston, MA 02113

Dear Commissioner Lydon,

Attached, please find a building permit application for the above referenced project. The application is being submitted with the knowledge that the project will need zoning relief and will therefore be rejected for zoning purposes based on the zoning analysis performed. An outline of the relief sought has been added to the plan set submitted on the second page and below for reference.

Item	North End Neighborhood Zoning District; Community Commercial sub-district (CC)	Proposed Project	Relief Required
Hotel Use	Conditional	Approx. 134 Rooms	Conditional
Restaurant Use – Roof Level	Forbidden (2 nd Floor & Above)	Approx. 275 Seats (Assoc. with Hotel)	Yes
Rear Yard Minimum	12 feet	0'	Yes
Project Square Footage (FAR SF per Zoning Def.)		69,613 SF	
Floor Area Ratio (FAR)	3.0 Allowed	5.21	Yes
Roof Deck with Temporary Seasonal Enclosure	Article 54-18 Compliance Required	10% Max Footprint for Penthouse & Mech Equip. (Above 55 ft)	Conditional (for Temporary Seasonal Enclosure)

I request that only a payment of a nominal fee of three hundred fifty dollars (\$350) be paid at this time in lieu of the full building permit fee given that this application for the above referenced project will be rejected.

If you have any questions or need to contact me for any reason, please do so by email at bcaulder@6mdev.com or by phone at 617-320-1420.

Thank you in advance for your attention to this.

Sincerely,

William Caulder
Manager
Cross Street Ventures LLC

Exhibit D



Boston Inspectional Services Department

Planning and Zoning Division

1010 Massachusetts Avenue Boston, MA 02118 Telephone: (617) 635-5300

Michelle Wu
Mayor

ZONING CODE REFUSAL

Marc A. Joseph
Inspector of Buildings

MICHAEL DOHERTY
50 COMMANDANT'S WAY
CHELSEA, MA 02150

May 20, 2022

Location: 40-42 CROSS ST BOSTON MA 02113
Ward: 03
Zoning District: North End Neighborhood
Zoning Subdistrict: HANOVER CC
Appl. #: **ERT1306878**
Date Filed: March 11, 2022
Purpose: New construction of 134 room hotel with ground floor open air public passageway to Cuttillo Park, hotel lobby & restaurant, tenant restaurant and seasonal rooftop dining terrace. Project also includes major redesign of Cross Street Plaza and improvements to Morton Street. **In conjunction with ALT1310128, ALT1310129, ALT1310130 and ALT1315554. Application requires demolishing 3 existing buildings (46-50 Cross St. under SF:# ; 28-32 Cross St. under SF:# and 40-42 Cross St. under SF: #) eplan -- BOA**

YOUR APPLICATION REQUIRES RELIEF FROM THE BOARD OF APPEAL AS SAME WOULD BE IN VIOLATION OF THE BOSTON ZONING CODE TO WIT: CHAPTER 665, ACTS OF 1956 AS AMENDED:

<u>Violation</u>	<u>Violation Description</u>	<u>Violation Comments</u>
Art. 25 Sec. 5	Flood Hazard Districts	
Art. 32 Sec. 32-4	Groundwater Conservation Overlay District, Applicability	
Art. 54 Section 12 * **	Use: Forbidden	Restaurant use on ground floor (exceeding 2,500 sqft)
Art. 54 Section 12 * **	Use: Forbidden	Restaurant use on penthouse/ roof floor
Art. 54 Section 12 **	Use: Conditional	Hotel
Article 49A Section 3	GWOD Applicability	
Article 54 Section 13	Dimensional Regulations	Max. floor area allowed: 3 Proposed: 5.21
Article 54 Section 13	Dimensional Regulations	Max. building height allowed: 1 story (15') as per section 54.18 Proposed: 5+Penthouse (65')
Article 54 Section 13	Dimensional Regulations	Min. rear yard: 20' Proposed: 0'
Article 54 Section 15	Establishment of Freedom Trail Neighborhood Design Overlay	
Article 54, Section 18	Roof Structure Restrictions	- Access to roof deck is not through a hatch or bulkhead. - Roof deck's handrail is not set back 1 foot for each foot of height of the structure. - Roof structures area exceeds 10% of total's roof

Location: 40-42 CROSS ST BOSTON MA 02113
Ward: 03
Zoning District: North End Neighborhood
Zoning Subdistrict: HANOVER CC
Appl. #: **ERT1306878**
Date Filed: March 11, 2022
Purpose: New construction of 134 room hotel with ground floor open air public passageway to Cuttillo Park, hotel lobby & restaurant, tenant restaurant and seasonal rooftop dining terrace. Project also includes major redesign of Cross Street Plaza and improvements to Morton Street. **In conjunction with ALT1310128, ALT1310129, ALT1310130 and ALT1315554. Application requires demolishing 3 existing buildings (46-50 Cross St. under SF:# ; 28-32 Cross St. under SF:# and 40-42 Cross St. under SF: #) eplan -- BOA**

area, hence they shall be included while measuring the building height.

- The height of any existing building (currently three, 1-story / 15' buildings) shall determine the allowed building height on that lot after the buildings are demolished.

Notes

Parking spaces and loading areas to be determined by art. 80 LPR

THIS DECISION MAY BE APPEALED TO THE BOARD OF APPEAL WITHIN FORTY-FIVE (45) DAYS PURSUANT TO CHAPTER 665 OF THE ACTS OF 1956, AS AMENDED. APPLICATIONS NOT APPEALED WITHIN THAT TIME PERIOD WILL BE DEEMED ABANDONED. IF YOU HAVE INQUIRIES REGARDING THE NEIGHBORHOOD PROCESS AND PUBLIC PARTICIPATION, PLEASE CONTACT THE MAYOR'S OFFICE OF NEIGHBORHOOD SERVICES AT 617-635-3485. For more information visit boston.gov/zba-appeal.

Jordi Segales-Perez
(617)961-3280
for the Commissioner

Refusal of a permit may be appealed to the Board of Appeal within 45 days. Chapter 802, Acts of 1972, and Chapter 656, Acts of 1956, Section 19.

Exhibit E

Building Permits Code Enforcement License Trade License Customer Service

Viewer Lookup Reviews (BPLR) Building Application More Form Code

Description BOA Intake Page

Details Comments

Zoning Appeal Form

What is the reason for the appeal? Describe the scope of work Appeal Type Variance Parent Permit Number ERT

H2 H3 normal HTML

[Empty text area for appeal description]

How will the proposal impact the surrounding community?

H2 H3 normal HTML

Utilities below grade and adjacent make it extremely costly to build upon
Overall exorbitant development costs of the project make a smaller project infeasible
The program is in keeping with the North End and the Greenway Overlay Guidelines

Signature [Empty box]

Signature Date // : [Empty box]

Proviso's

Proviso Codes

Proviso Code Proviso Description Comme...

Exhibit F



NORTH END / WATERFRONT RESIDENTS ASSOCIATION

August 10, 2022

Mayor Michelle Wu
One City Hall
Boston, MA 02201

Christine Araujo, Chairwoman
City of Boston Board of Appeal
1010 Massachusetts Avenue, Fifth Floor
Boston, MA 02118

James Arthur Jemison II, Chief of Planning/Director
Boston Planning and Development Agency
One City Hall, Ninth Floor
Boston, MA 02201

Re: North End Cross Street Boutique Hotel Project

Dear Mayor Wu, Chair Araujo, and Mr. Jemison:

North End/Waterfront Residents' Association (NEWRA) is extremely concerned about, and strongly opposed to, the abdication of community process that has occurred with respect to the proposed North End Cross Street Hotel Project (the "Project").

We understand that the Project has been placed on the agenda for the August 23, 2022, Zoning Board of Appeals ("ZBA") hearing prior to the occurrence of any public abutters' meetings or any appearances by the Developer before either NEWRA or the North End Waterfront Neighborhood Council ("NEWNC"). While an earlier version of the Project did undergo the first steps of the Article 80 BPDA Large Project Review process, the modified version of the Project that was "approved" by the BPDA and submitted to the City of Boston Inspectional Services Department ("ISD"), resulting in the issuance by ISD of a denial letter, did not undergo any public review at all.

Public review and comment on the Project effectively ended with the Supplemental Filing submitted by the Project developer in September of 2021. The Project purportedly approved by the BPDA in March of 2022 was not the same project that had been presented to the public in the Supplemental Filing. Changes to the proposed Project were only presented by the developer verbally at a Zoom meeting on February 16, 2022 but were never available to the public in written form of any sort for review. Those changes included, among other things, increased use of the roof area resulting in ISD's determination, as set forth in the denial letter, that the proposed building is greater than both the 1 story height limit under Article 54, Section 18 and the 55-foot height limit.

The result of this lack of public process is that the ZBA will be hearing, on August 23, a project that was "approved" by BPDA, but never presented to the public, including but not limited to the Project's IAG, NEWRA and NEWNC. To our knowledge, this complete abdication of public process has not occurred before in Article 80 Large Project review.

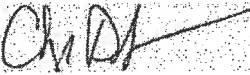
The Project is a sizable hotel project with restaurants and other ancillary uses that will have many major impacts on the North End community, Cutillo Park and the Rose Kennedy Greenway. These impacts have been documented by NEWRA and other organizations in letters submitted to the BPDA in connection with the Project as originally proposed; we refer you to those letters and are happy to provide copies. We also expressed, in letters following the February 16, 2022, Zoom meeting, our serious concerns with the procedural defects concerning that meeting.

This lack of public process flies in the face of everything we have been told that the City's new Mayoral administration and new BPDA leadership stand for. Our concern is not only with the lack of proper public process prior to the Project being heard by the ZBA. We are also concerned that the BPDA process did not address impacts directly related to the zoning violations and conditional uses that are intended to be addressed by the ZBA in a public forum and with community input, including the impact of excessive height and the impacts to abutters specified under Article 54, Section 18. It is our understanding that the BPDA and the ZBA are independent agencies with the authority and obligation for independent review and public process. The Article 80 process and BPDA approval should not relieve the ZBA of its obligations, including considering public comment regarding projects and their impacts.

NEWRA and NEWNC are the key North End community civic organizations. NEWRA is an association run by its membership, and NEWNC is a City established body elected by community residents. Input from each community group is vital to the ZBA process. Project developers are generally required by the ZBA to present their projects to each of NEWRA and NEWNC prior to appearing before the ZBA to obtain zoning relief. There is no apparent reason why the Project proponent should not be required to take the same steps prior to being heard by the ZBA.

We must insist that the Project be removed from the August 23 ZBA agenda, and the Project proponent be required to present the final Project (as submitted to ISD) to each of NEWRA and NEWNC.

Sincerely,



Cheryl Delgreco
President, NEWRA

cc: Mayor Michelle Wu
Senator Lydia Edwards
Representative Aaron Michlewitz
District 1 Councilor Gabriella Coletta
John Romano, Mayor's Office of Neighborhood Services
Ciara D'Amico, Mayor's Office of Neighborhood Services
Joel Faller, President, North End/Waterfront Neighborhood Council

Exhibit G



NORTH END / WATERFRONT NEIGHBORHOOD COUNCIL

Facebook.com/NEWNCBoston

Twitter @NEWNCBoston

Joel Faller, *President*,
Rory Harrington, *Vice President*
Amy Pollutro, *Secretary*
Tania Green, *Sergeant of Arms*

Marie Simboli, *Member*
Carmine Guarino, *Member*
Ashley Leo, *Member*
Kevin Fleming, *Member*
Kendra Berardi, *Member*

August 22, 2022

Christine Araujo, Chairwoman
Zoning Board of Appeals for the City of Boston
1010 Massachusetts Avenue, 5th Floor
Boston, MA 02118

RE: BOA-1337499, Address: 40-42 Cross Street Ward 3 (the “Cross Street Hotel Project”)

Dear Chairwoman Araujo:

I hope this letter finds you well. I am writing to express the OPPOSITION of the North End Waterfront Council (NEWNC) to the Zoning Board of Appeals awarding variances and other zoning relief to the Cross Street Hotel Project at the August 23, 2022 hearing or at any other time before the project has come before NEWNC for a formal presentation and vote as part of the usual community process. This opposition is the result of a vote conducted in executive session as a result of the project proponent’s failure to bring the matter before us for a public vote. It would be a terrible precedent and bad policy for the ZBA to approve a project of such scope and impact to the residents of the North End without following the usual community process.

For background, NEWNC was established as part of a program by the City of Boston by the Mayor’s Office of Neighborhood Services in an effort to increase communication between the neighborhoods and City departments and agencies. The Council program is organized to provide structured participation in the City’s decisions affecting land use, development, delivery of services and the quality of life in a particular neighborhood. Through this process, a

partnership has been created between the neighborhood residents and the City of Boston to maximize the ability of NEWNC to participate fully as an advisory board in municipal affairs.

A primary role in NEWNC's mission is to review projects for which an applicant has applied to the ZBA for a variance or permit in a public setting and inform the ZBA in an advisory capacity whether the project has the support or opposition of the Council, as a democratically elected body within the neighborhood. NEWNC holds monthly meetings in a setting convenient for North End residents to attend (more recently virtually), which gives both the proponents and residents ample time to express their views on the impact of a given project in greater detail than the ZBA is able to afford at its meetings. While the ZBA is in no way bound by the advisory positions provided by NEWNC, its consideration of the community feedback contained in those positions is of crucial importance. It has been my experience that the Office of Neighborhood Services and the ZBA have considered a project proponent's appearance before NEWNC to be an absolute prerequisite to its granting zoning relief in projects involving the North End, especially before the awarding of variances.

The Cross Street project, if approved, would be the largest approved development in the North End in recent memory. It has been the subject of public interest among North End residents for a lengthy period of time. If approved, the project will have a substantial impact on the North End and the quality of life of its residents.

The project will impact traffic along a major artery in the North End. Cross Street is the primary means for a large segment of the North End leading into Charlestown, the West End and I-93 North and also leads to access points to Storrow Drive. During rush hour and at other times, Cross Street is already frequently subject to gridlock and standstill traffic. The proponent of the Cross Street Hotel Project proposes to use Cross Street for its deliveries and drop-off/pick-up and check-in locations with no proposed traffic mitigation, and a proposed narrowing of existing traffic lanes. It is highly likely that the construction of a massive hotel on that location will exacerbate an already difficult traffic situation.

The proposed hotel abuts Cuttillo Park, which has been the subject of recent City grants and neighborhood beautification efforts. It also abuts the Rose Kennedy Greenway, which is a treasured local resource. The hotel structure will increase shadows cast on both parks and create a massive structure dominating the views from Cuttillo Park.

The proposed structure abuts numerous residential units and will impact residents' views and access to light and air. Numerous residents have expressed strong opposition to the project because of the impact they expect that it will have on their quality of life. I expect that you will hear testimony from some of these residents but will not have enough time to hear from all who wish to speak. At NEWNC meetings, we do our best to allow each resident to have his or her voice heard and considered before we provide feedback to the ZBA.

The proposal calls for a variance allowing the proponents to construct a building that is more than double the permissible FAR under zoning, which is far more massive than almost any other building in the North End. It calls for a variance from the height restriction, which historically NEWNC and the ZBA very rarely support. The proposal contains a roof deck, on which commercial dining would occur. Because of the likely intrusion on neighbors in the form of noise and visual obstruction resulting from roof decks, NEWNC has historically heavily scrutinized any variance proposals including a roof deck and listened closely to the concerns of abutters regarding such proposals.

There is no doubt that there would be beneficial impacts from the project. However, the proponent's refusal to formally present to NEWNC has prevented us from considering those and weighing them against the negative impacts mentioned above. We strongly believe that The ZBA would have benefited from the community process following its natural course so that it could have had NEWNC's input as a representative body much closer to those who will be impacted by the project.


There is no reason that this project could not have been presented to NEWNC so we could vote our support or opposition. NEWNC has been very accommodating to the proponents of the project and provided them with time at two separate meetings to give informal presentations to the residents of the neighborhood before final plans and a zoning application was ready. However, we made it clear to them that although we were happy to allow them to present informally, they would need to come before us formally for a council vote once the application to you was pending. It is our understanding that the project has substantially changed from what they had preliminarily presented to us. We remain open to considering the project if the proponents follow the usual process and present it to us at a future meeting.

The proponents have made no effort to contact us to put the project on our agenda. Had they done so, we would have made it a priority to schedule them. The refusal to present the final plans to us and obtain a vote of the Council is extremely disrespectful to the North End Community. That disrespect causes us further concern as to the responsiveness that they will show to the community to address future issues that will predictably arise in the future if the hotel is constructed.

Until and unless the proponents fully participate in the community process, NEWNC OPPOSES the Cross Street Hotel Project.

Please contact me at NEWNCBoston@gmail.com or via mobile phone at 802-598-4520 with any questions and/or concerns. Thank you.

Sincerely,

By: 
Joel E. Faller
President, NEWNC

cc: Mayor Michelle Wu
Senator Lydia Edwards
Representative Aaron Michlewitz
Councilor Gabriela Coletta
Councilor Michael Flaherty
Councilor Julia Mejia
Councilor Ruthzee Louijeune
Councilor Erin Murphy
Arthur Jemison
Ciara D'Amico, Mayor's Office of Neighborhood Services
Cheryl Delgreco, President, NEWRA

Exhibit H



March 21 @ 9:00 AM
Altitude: 33.0
Azimuth: 125.7



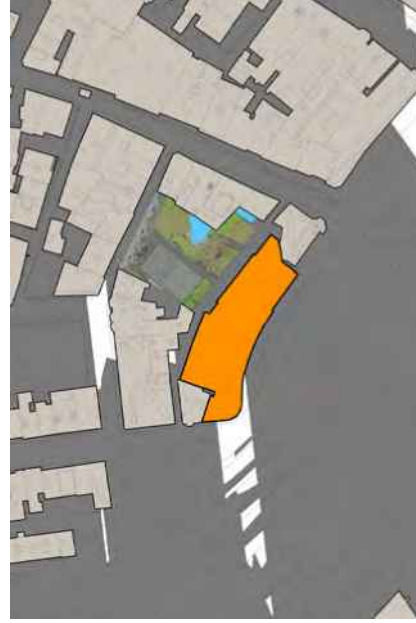
March 21 @ 11:00 AM (Proposed Shadow Enters Cutillo Park)
Altitude: 46.6
Azimuth: 161.2



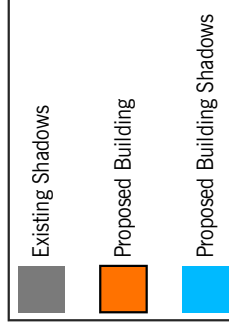
March 21 @ 12:00 PM
Altitude: 48.0
Azimuth: -176.9



March 21 @ 3:00 PM
Altitude: 30.6
Azimuth: 238.5



March 21 @ 6:00 PM
Altitude: -0.96
Azimuth: 271.94





June 21 @ 9:00 AM
Altitude: 39.9
Azimuth: 93.5



June 21 @ 12:00 PM
Altitude: 68.8
Azimuth: 149.4



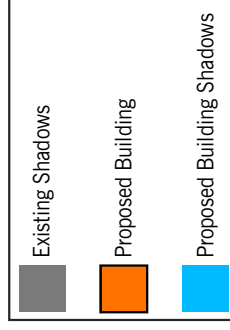
June 21 @ 1:00 PM (Proposed Shadow Enters Cuttillo Park)
Altitude: 70.9
Azimuth: 246.3



June 21 @ 3:00 PM
Altitude: 56.5
Azimuth: -113.7



June 21 @ 6:00 PM
Altitude: 23.9
Azimuth: -79.3





September 21 @ 9:00 AM
Altitude: 25.9
Azimuth: 115.12



September 21 @ 10:50 AM (Proposed Shadow Enters Cuttillo Park)
Altitude: 41.7
Azimuth: 142.9



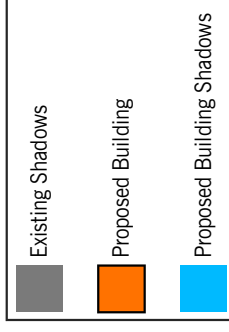
September 21 @ 12:00 PM
Altitude: 47.4
Azimuth: 166.0



September 21 @ 3:00 PM
Altitude: 37.4
Azimuth: -132.9



September 21 @ 6:00 PM
Altitude: 7.3
Azimuth: -96.0





December 21 @ 9:00 AM
Altitude: 14.2
Azimuth: 141.9



December 21 @ 9:20 AM (Proposed Shadow Enters Cuttillo Park)
Altitude: 16.51
Azimuth: 146.14



December 21 @ 12:00 PM
Altitude: 24.1
Azimuth: -175.6



December 21 @ 3:00 PM
Altitude: 10.0
Azimuth: -135.1



December 21 @ 6:00 PM
Altitude: N/A (Sun has set)
Azimuth: N/A (Sun has set)

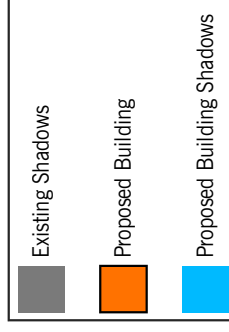


Exhibit I

BOSTON

Mayor Kim Janey

April 19, 2021

Ms. Teresa Polhemus
Boston Planning and Development Agency
One City Hall Square
Boston, MA 02201

RE: 42 Cross Street adjacent to Cutillo Park and the Rose Fitzgerald Kennedy Greenway

Dear Ms. Polhemus:

The Boston Parks and Recreation Department (BPRD) has reviewed the *Expanded Project Notification Form for the North End Cross Street Boutique Hotel* (PNF) located at 42 Cross Street, adjacent to Cutillo Park and the Rose Fitzgerald Kennedy Greenway. BPRD has also reviewed the letter by the North End Waterfront Residents Association (April 9, 2021) and the letter by the Friends of Cutillo Park, Inc. (April 13, 2021) which include open space concerns.

The project is sited between the Rose Fitzgerald Kennedy Greenway and Cutillo Park. The project does not include onsite open space to serve the users of the hotel and restaurants. The proponent desires to design, program and utilize the public plaza at Cross Street for a dedicated vehicular drop-off and pedestrian-focused space to serve the hotel. An open passageway under the building will provide a connection between the greenway and the park.

Height and Massing

The PNF describes the project as a five-story building that is 55' tall and includes 134 rooms, amenities and ground floor and rooftop restaurants. The stated height does not include the rooftop restaurant, temporary enclosure and mechanicals shown in the renderings. These features appear to add another 12' and 1-2 stories to the building, particularly from the rear perspective.

D-1 The project will request zoning relief for height; FAR, and insufficient rear yard setback. The proposed height, massing and footprint will have adverse impacts on the sun and shadows on Cutillo Park. The shadows begin to hit the park at noon or early afternoon, year round. The proponent should provide sunlight and shadow studies from dawn until dusk, year round - for the full building height including rooftop amenities, enclosures and mechanicals.

The height and massing will impact the public's experience of the park, year round. Views over the existing commercial buildings provide access to light and sky in the dense North End neighborhood. Containing this side of the park with a 67' tall building will reduce the quality of the open space. Vegetation will receive fewer hours of sunlight which may reduce the viability of new plantings (existing trees will survive but new trees in the future may not be successful).



(617) 635-4505 
www.boston.gov/parks 
1010 Massachusetts Avenue, 3rd floor
Boston, MA 02118 

BOSTON

Mayor Kim Janey

Cross Street Public Plaza

- D-2** The project proposes to design, program and use the plaza at Cross Street for a dedicated vehicular drop-off and pedestrian-focused space to serve the hotel. The use of a publicly owned open space for private use should be carefully evaluated, negotiated and mitigated.

Cutillo Park

Cutillo Park is a well-used public open space which provides mature trees and active recreational space for the neighborhood. BPRD is currently undergoing a public planning process for future improvements to the park which include the retention of the current active recreational uses. BPRD will continue to permit, manage and maintain the space consistent with other public parks.

A previous draft of the hotel proposal included a conceptual plan and renderings of a redesign of the park. The current submittal has removed that proposed park design. The proponent is welcome to submit input during BPRD's public planning process for the park.

Passageway

- D-3** The design of the hotel includes an open passageway under the building which will allow a connection between the greenway and the park. The proponent should detail how this passageway will be designed to ensure that the general public will feel welcome to use it.

- D-4** BPRD is currently planning for improvements to Cutillo Park. Once that final plan is available, the proponent should consider the most successful means to make the connection between the park and its site. This may include a realignment of the passageway or a redesign of Morton Street to better accommodate pedestrian flow between the passageway and the park.

Morton Street

Morton Street is a narrow alley between Cutillo Park and the rear of the proposed hotel. BPRD will collaborate with other agencies and the proponent on a design effort to make this alley into a pedestrian oriented public way that is complementary to both the park and hotel use.

- D-5** Morton Street needs to be cleaned up. The proponent should take the lead on working with PWD, ISD and PIC to remove trash from this right of way.

- D-6** The PNF notes that the service, loading and trash removal for the hotel and restaurants will be handled from this alley. The project should be designed so that there is no service, loading, trash or other back of house uses abutting the park or sited at the threshold to the park entrance.



BOSTON

Mayor Kim Janey

Rooftop amenities should be located away from the sight lines to the park and screened to minimize visual and auditory impacts. Building mechanicals, ventilation, restaurant exhaust systems, etc. should also be sited away from the park.

Impact Mitigation

The above comments detail the impacts of the design of the proposed project on nearby public open space. These issues should be resolved during the Article 80 review process.

D-7

Further, the project does not include onsite open space, so its users will rely on public open space for recreational needs. These impacts should be mitigated through a long-term commitment to maintaining Cuttillo Park at an enhanced level. This could include maintenance of ornamental plantings; integration of irrigation systems to support such plantings; additional park cleaning and trash pick-up beyond standard City schedules; maintenance of specialty lighting if desired; and support of programming in the park that might enhance its use and value to its neighbors.

Sincerely,

Carrie M. Dixon

Carrie Marsh Dixon, Executive Secretary
Boston Parks and Recreation Commission

cc: Ryan Woods, Commissioner, Boston Parks and Recreation Department
Liza Meyer, Chief Landscape Architect, Boston Parks and Recreation Department
Michael Cannizzo, Deputy Director, Urban Design, Boston Planning and Development
Jill Zick, Senior Landscape Architect, Boston Planning and Development Agency
Lance Campbell, Project Manager, Boston Planning and Development Agency



(617) 635-4505 
www.boston.gov/parks 
1010 Massachusetts Avenue, 3rd floor
Boston, MA 02118 