



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-0001  
PLAZA NOMINEE TRUST  
1234-1240 BOYLSTON STREET

Petitioner, Frederic H. Margolis, Trustee of the Plaza Nominee Trust u/d/t August 9, 1993, applied to the Building Commissioner for permission to demolish 1234 and 1240 Boylston Street and construct a new two-story commercial building with 15,868s.f. of office and retail space including a drive-through bank. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 2, 2015 at 7:30p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on March 12, 2015 and March 19, 2015 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

### **NOTICE OF HEARING**

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**1234 BOYLSTON ST – DEMOLISH TWO BUILDINGS AND CONSTRUCT ONE NEW COMMERCIAL BUILDING WITH APPROXIMATELY 15,868 S.F. OF OFFICE AND RETAIL SPACE, INCLUDING A BANK DRIVE THROUGH WINDOW, in a G-2.0, General Business district, on April 2, 2015, at 7:30 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: Plaza Nominee Trust u/d/t August 9, 1993, c/o Frederic H. Margolis (Trustee); Owner: Plaza Nominee Trust u/d/t August 9, 1993, c/o Frederic H. Margolis (Trustee)) *Precinct 15.***

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- Section 4.07: Table of Use Regulation Use #39**
- Section 5.09.2.a: Design Review**
- Section 6.02.1.c: Off-Street Parking Space Regulations**
- Section 6.06.4; 6.06.7: Off-Street Loading Regulations**
- Section 6.07.3: Design and Layout of Off-Street Loading Facilities**
- Section 7.00.1.b: Signs in All Districts**
- Section 8.02.1: Alteration or Extension (parking Lot)**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneirson@brooklinema.gov](mailto:rsneirson@brooklinema.gov).***

*Jesse Geller, Chair*

*Christopher Hussey*

*Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were Robert Muscaro and Alex Bardin, The Growth Companies, 1234 Boylston Street, Chestnut Hill, MA, and Joseph Geller, Larry

Grossman, and Steven Tierney, Stantec Consulting Services, Inc., 226 Causeway Street, 6<sup>th</sup> Floor, Boston, MA.

Zoning Board of Appeals Chairman Jesse Geller called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner proposes to demolish 1234 and 1240 Boylston Street and construct a new commercial building with 15,868 s.f. of office and retail space, including a drive-through window.

Board of Appeals Member Johanna Schneider asked whether traffic and/or storm water management reports were submitted by the Petitioner. Mr. Allen stated that if the Board of Appeals approves the zoning relief, the Petitioner will be required to submit final plans subject to the approval of the Director of Engineering/Transportation, the Planning Board, the Building Commissioner, and the Assistant Director of Regulatory Planning. Ms. Schneider stated that new construction of this scale is typically accompanied by various impact and mitigation studies including traffic, parking, construction, drainage. Chairman Geller agreed and noted that traffic, parking, and construction were study areas specifically listed as conditions for issuance of the final building permit.

In response, Joseph Geller, Stantec Consulting Services, Inc., 226 Causeway Street, 6<sup>th</sup> Floor, Boston, MA, stated that the Petitioner is actively working with Mass DOT and the Town of Brookline Transportation and Engineering Department to execute a parking and transportation demand management plan, including a new curb cut and re-striping and positioning of the existing crosswalk on Route 9. Mr. Allen also noted that the new project was no larger than the gross floor area of the existing improvements being demolished.

Chairman Geller stated that the existing structures total 15,010 s.f. and the proposed gross floor area is 15,868 s.f. Attorney Allen clarified that the proposal is a relatively small commercial development that will be relocated on a parcel of land zoned for similarly sized commercial activity. He

noted that the layout for the existing parking lot will largely remain unchanged and that the Preservation Commission issued a certificate of non-significance for 1234 Boylston Street in 2012 and 1240 Boylston Street in 2013. Mr. Allen noted that the development is along the commercial corridor of Route 9 and the neighborhood surrounding the site has expressed little opposition to the proposal. Mr. Allen stated that this is likely due to the neighborhood meeting held on December 16, 2014 as well as subsequent Planning Board meetings.

Mr. Joseph Geller described the project details to the Board of Appeals stating that: the proposal includes first floor retail space and second floor office and retail space; the windows will face Route 9, with a “band” of large windows around the front portion of the second floor; construction materials include a stone base, aluminum storefronts with brick and metal accent trim, subject to final design review and approval by the Planning Board; two points of vehicular egress will be maintained including a vehicle lane for a bank drive-through and a pedestrian warning light included at the drive-through exit; bicycle parking and improved dumpster facilities are also proposed. Mr. Geller commented that simple excavation is required in connection with construction of the new building.

Larry Grossman, Stantec Consulting Services, Inc., 226 Causeway Street, 6<sup>th</sup> Floor, Boston, MA described the HVAC equipment and parapet screening in more detail. Mr. Grossman stated that the equipment will not be visible from Route 9, and that discussions with the Planning Board resulted in the suggestion to raise signage above the second-story window band, necessitating a variance for signage.

Attorney Allen stated that the proposal complies with all dimensional requirements and that not a great deal of relief is required. He continued that the Petitioner requests special permit relief pursuant to Town of Brookline Zoning By-Law **Section 4.07, Use # 39** in order to create a new drive-through for the proposed bank, **Section 5.09.2.a** for design review of a new building located on Boylston Street, **Section 6.02.1.c** to reduce the parking requirement from 246 to 245 parking spaces, **Sections 6.06.4,**

6.06.7, and 6.07.3 in order to create two off-hour loading spaces using existing mixed use parking spaces, and Section 8.02.2 to alter pre-existing non-conforming parking stall dimensions. Mr. Allen stated that the Petitioner also requests variance relief pursuant to Section 7.00.1.b of the Zoning By-Law to install retail tenant signage that is 25 feet above the ground.

Mr. Allen stated that the parking spaces are calculated based on shared use by the occupants of the entire commercial complex located at 1234-1262 Boylston Street, which includes a parking lot located on Tully Street. Mr. Allen noted that the parking estimates are complex due to a variety of use types, but the Petitioner seeks relief for one parking space.

Chairman Geller inquired about the impact on parking during periods of construction. Robert Muscaro stated that the existing bagel shop and hair salon will not be operating during construction and parking in the rear parking lot will be useable during the majority of the construction period. Mr. Joseph Geller stated that valet and isle parking in the Tully Street lot will be made available during periods of demolition and excavation.

Attorney Allen discussed special permit relief under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location for such use where the proposal is located in a well-trafficked area of Brookline, is significantly below the maximum floor area allotment, and meets the dimensional, height, landscape and usable open space requirements; (2) there will be no adverse effect on the neighborhood where the use will stay predominantly retail and commercial space, with a second floor office along Route 9; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the proposal consolidates the entrances and exits for two existing buildings, recreates a safe pedestrian friendly egress by installing a pedestrian warning light for the drive-through, creates a safe off-street loading facility, and includes a wider entrance and exit; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use which will include adequate

signage; and (5) the development will have no effect on the supply of housing available for low and moderate income people.

Mr. Allen next discussed variance relief for **Section 7.00.1.b** of the Zoning By-Law pursuant to M.G.L., C.40A, Section 10. He stated that no sign or other advertising device may be more than 25 feet above the ground level except signs announcing the name of an individual building issued by special permit. Mr. Allen stated that a variance is required in order for the applicant to install a retail tenant sign above 25 feet on the front façade of the building.

Mr. Allen argued that the signage height must be above 25 feet because Route 9 is a major thoroughfare and sign height is critical in terms of distance and visibility for motorists passing by. Attorney Allen stated that the Board of Appeals has previously granted sign variances under **Section 7.00.1.b** of the Zoning By-Law for the Senior Health Center, 615 Heath Street; Dana Farber Cancer Institute, 111 Washington Street; and most recently the Hilton Homewood, 111 Boylston Street. Mr. Allen stated that that due to the nature of the streetscape, this proposal similarly requires high visibility signage as a way-finding device for passersby in order to ensure economic viability for a second floor retail tenant. He noted that the building will mainly be seen while driving on Route 9 since this is not a pedestrian friendly area. Finally, he stated that The Street Development located across the Route 9 corridor has signage well above 25 feet; therefore the height of the signage will fit in with the Route 9 Chestnut Hill Village streetscape.

Chairman Geller asked for clarification of the pre-existing non-conformity. Mr. Allen stated that parking setbacks and dimensions were previously granted special permit relief. Mr. Geller questioned why greater review was not required for parking, traffic impacts, drainage and other impact issues typical for commercial projects of this magnitude. Mr. Allen stated that the Planning and Community

Development did not designate the proposal as major impact because it is a commercial development that is below 25,000 square feet and there is no substantial environmental impact.

It was noted that Sleepy's was interested in leasing a portion of the retail space. Mr. Zuroff questioned whether Sleepy's signed a lease or letter of intent. Mr. Allen confirmed that they signed a letter of intent. Mr. Zuroff asked for additional detail regarding use of the basement. Mr. Allen stated that basement space will be used for storage and equipment for the Petitioner's office space. Mr. Zuroff asked if mattresses or box springs would be sold on site. Mr. Allen stated that if Sleepy's is the tenant, the majority of the products will be sold on site and shipped from a different location.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in opposition to the application. Liz Moore, 25 Holly Lane, stated that she had a neutral stance on the proposal. Ms. Moore stated that delivery and trash truck noise in the parking lot is loud and often occurs after 9:00pm. Ms. Moore questioned what the term "off-hour loading" meant. Ms. Moore requested additional information regarding delivery truck turnaround patterns, pedestrian crosswalk changes, and noise associated with the pedestrian drive-through warning system.

In response, Mr. Allen stated that standard loading hours do not run past 9:00pm and 7:00am-9:00pm delivery times are required for the issuance of a Common Victualler License. He stated that loading related trucks will travel to the end of the lot in order to turn and exit, a pattern that will not generate new noise for rear residential properties and is the safest pattern for turnaround and parking. He stated that pedestrian warning signals must comply with safety regulations and the signal will require a light. He stated that the pedestrian crosswalk across Route 9 will be re-located to the West of the structure and be angled to meet the existing pedestrian island on Route 9.

John Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning

Board:

FINDINGS:

1. Section 4.07 – Table of Use Regulations, Use #39: Any drive-in use, other than those classified as vehicular uses, requires a special permit.
2. Section 5.09.2.a – Design Review: Any demolition of an existing building, or construction of a new building, on Boylston Street requires a special permit subject to the design review standards listed under *Section 5.09.4(a-m)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:
  - a) Preservation of Trees and Landscape – There is very little landscaping on site now. The landscaping that is on site is along the parking lot edges and within parking lot islands. This is not expected to be significantly changed with the proposal.
  - b) Relation of Buildings to Environment – There are very few “natural” features on site currently. This proposal will be located entirely where there is already impervious surface.
  - c) Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed building will be very similar in massing and design to the existing commercial buildings along this stretch of Boylston Street. The building is located along the front lot line, similar to neighboring buildings, with all parking at the rear.
  - d) Open Space – Not applicable.
  - e) Circulation – The property would continue to have two access points to Route 9, however only one would be two-way; the other drive would be egress only and serve the new drive-through teller window. The plans do not indicate any bicycle parking or alternative transportation facilities. The majority of the parking lot would remain unchanged with this proposal.
  - f) Storm Water Drainage – The applicant has not indicated there are any special drainage considerations for this property.
  - g) Utility Service – All electric, telephone, and other wiring to the site shall be underground. The dumpster for the site will continue to be located in the far rear corner of the property. The Board would like to ensure the trash location area is sufficient enough to accommodate new commercial recycling requirements as well as the proper disposal of waste. Screening of this dumpster needs to be indicated on the plans.
  - h) Advertising Features – The submitted plans show signage that is likely too large and too high (i.e. over 25 feet) than what would be allowed under the Zoning By-law. The Planning

Board expects the applicant to submit detailed signage plans for review and approval prior to installation at a later date.

i) Special Features – The plans do not indicate where loading facilities will be located. This information will need to be provided prior to the Board of Appeals hearing, or appropriate relief should be requested and reviewed with the applicable Town departments.

j) Safety and Security – The applicant will need to review all new building plans with public safety officials to ensure adequate accessibility for emergency personnel. The Planning Board does not foresee any problems with safety and security for the subject property.

k) Heritage – Not applicable. The developer has obtained certificates of non-significance for both buildings that are to be demolished with this application.

l) Microclimate – No adverse impacts on light, air and water resources are expected with this application.

m) Energy Efficiency – The applicant has not indicated any energy efficiency measures for the property. The applicant may want to consider taking advantage of high-efficiency systems and/or renewable energy facilities such as solar PV panels on the building’s roof.

**3. Sections 6.02.1.c, 6.06.4, 6.06.7 and/or 6.07.3 – Off-Street Parking Space Regulations; Off-Street Loading Regulations; Design and Layout of Off-Street Loading Facilities:** The new building requires two loading spaces. The applicant has not yet indicated how loading facilities will be provided for the new building. Should the applicant wish to not provide loading facilities for this building, or provide a reduced number of spaces and/or with alternate dimensions than specified in the By-law, then special permit relief under these sections is required.

	<b>Required/Max</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Floor Area Ratio</b>	165,998 s.f. 2.0	72,552 s.f. 0.9	73,410 s.f. 0.9	Complies
<b>Height</b>	45 ft.	36 ft.	32 ft.	Complies
<b>Parking Spaces</b>	246	254	245	Special Permit*
<b>Loading Spaces</b>	2	0	0	Special Permit**

\*Under Section 6.02.1.c, the number of spaces required in a common parking facility may be reduced below this total by special permit under Article IX if it can be demonstrated to the Board of Appeals that the hours or days of peak parking need for uses are so different that a lower total will provide adequately for all uses served by the facility.

\*Under Section 6.02.5.d, the Board of Appeals by special permit may waive up to half the number of parking spaces specified in the table in §6.02, paragraph 1 if a use is of such a kind that the occupancy of floor-space by customers, clients, or employees is substantially below the normal or average for retail and office uses.

\*\*Under Sections 6.06.4 and 6.06.7, the Board of Appeals may allow for a reduced number of loading bays by special permit, following recommendations by the Director of Engineering/Transportation and the Director of Planning & Community Development.

4. **Section 7.00.1.b – Signs in All Districts** No sign or other advertising device, or part thereof, shall be more than 25 feet above the ground level except signs announcing the name of an individual building by special permit of the Board of Appeals. A variance is required if the applicant intends to install retail tenant signage that is above 25 feet.
5. **Section 8.02.1 – Alteration or Extension (parking lot)** A special permit is required to alter a pre-existing non-conforming structure or use.

Mr. Rosa stated that the Planning Board unanimously supported this proposal. He stated that overall massing is appropriate for the location along Route 9 and neighborhood impact is largely unchanged from that of the existing commercial activity. He stated that the Planning Board did feel that side building facades could be more creative, including plane change and materials, but he noted that the Planning Board agreed that the Petitioner would return to discuss pertinent project details as outlined in the proposed conditions. Therefore the Board recommended approval of the plans by ADD Inc., dated 2/12/2015, and the zoning plan prepared by Stantec dated 2/12/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final building plans and elevations, including details regarding exterior building materials, subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating all parking, bicycle parking, loading facilities, dumpster location, lighting, and landscaping, subject to the review and approval of the Director of Engineering/Transportation and the Planning Board.
3. Prior to the issuance of a building permit, the applicant shall submit a parking and transportation demand management (P&TDM) plan, subject to the review and approval of the Director of Engineering/Transportation and the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, a construction management plan, including details regarding dumpster locations, parking for construction vehicles and rodent control methods, shall be submitted to the Building Commissioner for review and approval.

5. Prior to the issuance of a certificate of occupancy, the applicant shall install a pedestrian warning light at the Boylston Street egress for the drive-through window, subject to the review and approval of the Assistant Director of Regulatory Planning.

6. Prior to the issuance of a building permit for the installation of any signage, the applicant shall submit plans for such signage to the Planning Board for review and approval.

7. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa delivered the findings of Mike Yanovitch, Interim Chief Building Inspector. He stated that the Building Department had no objection to the proposal and that the proposal complies with all dimensional requirements. He stated that the requested relief is minimal for a project of this scope, aside from the signage height. He noted that the as-built structure will be an asset for the Chestnut Hill Neighborhood and the Department supports the development of a construction management plan to mitigate adverse impact during construction. Finally, he stated that should the Board of Appeals find that the standards for relief have been met, the Building Department will work with the applicant to ensure compliance with building codes.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Ms. Schneider stated that the standards for special permit relief are met and the proposed location is appropriate for such development. She stated that she was troubled by the fact that critical studies and evaluation of the proposed impact beyond pure zoning requirements were left pending. With respect to the signage height, Ms. Schneider agreed that the sign looks better if located above front windows, but she noted that the applicant had not made a clear case for this variance relief.

Mr. Zuroff concurred. He stated that it is atypical and that more parking and traffic related evaluation was not presented to the Board. In this instance, the Planning Board has recommended clear

conditions to evaluate/approve these impact topics, and Mr. Zuroff was not opposed to granting relief if the Planning Department intends to handle these issues.

Chairman Geller reiterated the fact that it is odd that no traffic, parking, and drainage studies were completed and submitted for consideration by the Zoning Board of Appeals in connection with its decision. Mr. Zuroff and Ms. Schneider agreed with this concern but felt that the proposed project is essentially replacing what already exists on the site, both physically and impact wise.

Mr. Geller agreed that zoning relief is relatively small. Noting that the Board has approved similar reductions in loading bay requirements even though tenant types are subject to change. In this instance, the applicant is proposing to provide a loading zone so it is not a pure waiver of loading, but rather the waiver of a physically attached loading dock. Mr. Geller also noted that bank drive-through facilities already exist in this area.

Regarding the signage height, Mr. Geller stated that similar structures on Route 9 have received variance relief (One Brookline Place) and that this is not an unusual request in order to more effectively mark buildings and attract financing/tenants.

Mr. Geller commented that the requirements of **Section 9.05** of the Zoning By-Law are satisfied for the reasons stated by Mr. Allen. Mr. Geller also noted that there has been no opposition to the requested relief. Ms. Schneider and Mr. Zuroff concurred.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of **Sections 4.07 – Table of Use Regulations, Use #39, 5.09, 6.02, 6.06, 6.07, 7.00, and 8.02.2** of the Zoning By-Law pursuant to **Sections 4.07, 5.09.2.a, 6.02.1.c, 6.06.4, 6.06.7, 6.07.3, 7.00.1.b, 8.02.2, and 9.05** of the Zoning By-Law were met. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.

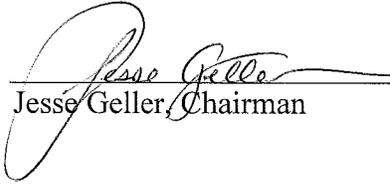
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

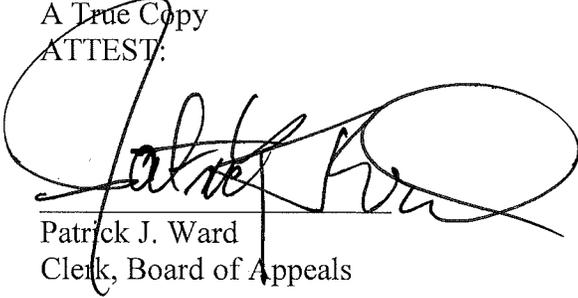
1. Prior to the issuance of a building permit, the applicant shall submit final building plans and elevations, including details regarding exterior building materials, subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating all parking, bicycle parking, loading facilities, dumpster location, lighting, and landscaping, subject to the review and approval of the Director of Engineering/Transportation and the Planning Board.
3. Prior to the issuance of a building permit, the applicant shall submit a parking and transportation demand management (P&TDM) plan, subject to the review and approval of the Director of Engineering/Transportation and the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, a construction management plan, including details regarding dumpster locations, parking for construction vehicles and rodent control methods, shall be submitted to the Building Commissioner for review and approval.
5. Prior to the issuance of a certificate of occupancy, the applicant shall install a pedestrian warning light at the Boylston Street egress for the drive-through window, subject to the review and approval of the Assistant Director of Regulatory Planning.
6. Prior to the issuance of a building permit for the installation of any signage, the applicant shall submit plans for such signage to the Planning Board for review and approval.
7. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 6/8/15

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:

  
\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals

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