

Attachment A
Spring 2010 Town Meeting Articles relative to the Study Site

ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will amend the Zoning By-Law as follows:

- I. With respect to the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline:
 - 1. Create a new zoning district designated G-1.0 (DP) to define the zoning of the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline.

- II. With respect to a ZONING MAP CHANGE:
 - 1. Change the Zoning Map to reflect the new G-1.0 (DP) as described in this Article.

- III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01 – CLASSIFICATION OF DISTRICTS, insert the following new number 8:
 - 8. G-1.0 (DP) Davis Path (Refer to §5.06, Special District Regulations)

- IV. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, add a new line in the Table after G-1.0 for the new district G-1.0 (DP) as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ² (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	FRONT ¹²	Side ²	Rear	Landsc.	Useable ¹³
G-1.0 (DP)	Any Structure or Principal use (dwelling-footnote 5)	None ⁴	1.0	N/A	None	40	N/A	N/A	None	None	10+L/10	See §5.06	None

- V. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add a new paragraph e. under Special Districts, to read as follows:
 - e. Davis Path General Business District G-1.0 (DP)
 - 1. The Minimum Yard Setback from the property line bordering the MBTA train tracks shall be 30 feet.
 - 2. No less than 50% of this Minimum Yard Setback shall be devoted to landscaped open space.

PETITIONER’S ARTICLE DESCRIPTION

The intent of this Article is to correct the Town Zoning By-Laws in order to adequately protect the Emerson Garden and historical White Place neighborhoods. It has been

demonstrated that the current G-2.0 zoning is not sufficient protection for the small, residential area. Additionally, Article 1, section 1 of the Zoning By-Laws requires greater protection for the neighborhoods than that afforded by the current G-2.0 zoning.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by Citizen Petition and proposes to change the zoning of the parcels located at 111 Boylston Street, 10-12 Kerrigan Place and the Town-owned parcel between those two lots, by reducing the allowed FAR of 2.0 to 1.0 (and therefore removing the ability to participate in Public Benefit Incentives for additional height or FAR), reducing the allowed height to 40', and creating an overlay district, called G-1.0 (DP), with a minimal dimensional requirement for the yard setback of the building from the MBTA property line of 30 feet, and requiring that 50% of this yard be landscaped open space. In 1993, Town Meeting rezoned these properties from I-1.0 to G-2.0, thus acknowledging that for redevelopment to occur, greater density would need to be allowed. At this time, a shadow study was completed to show that the greater density would have minimal impact on White Place, compared to existing shadows. The 2005-2015 Comprehensive Plan designated this area as an appropriate location for development and an opportunity to enhance the Route 9 corridor streetscape and provide a greater tax base to the Town.

In 2008, the Planning Board gave a favorable recommendation and the Board of Appeals approved special permits for a commercial development for this site. The proposed building was three stories, with a recessed fourth story, and underground parking for 265 cars. The proposed building was setback 20 to 47 feet from the MBTA tracks and was heavily landscaped. An abutter appealed the Board of Appeals approval but subsequently withdrew it when it appeared the development was not going forward. Recently, a requested one year time extension from the developer was withdrawn, meaning that the special permit approvals will expire on April 15, 2010. Any future project would be required to begin anew the review and approval process.

The Planning Board believes that halving the FAR for these sites is not appropriate and would be a disincentive to new development. Rather, design guidelines addressing setbacks, landscaping, building design and number of required parking spaces should be further evaluated to ensure greater protection to the White Place neighborhood. Replacing the dilapidated and vacant Red Cab building with a new development will speed the revitalization of this area and greatly enhance the appearance of Boylston Street.

Therefore, the Planning Board unanimously recommends NO ACTION on Article 14 and that further study of the site be undertaken to evaluate appropriate design guidelines to minimize the impact on White Place while allowing appropriate redevelopment.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen plans on taking a vote on Article 14 at its May 11 meeting. A recommendation will be included in the Supplemental mailing that will be sent out the weekend before Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This article is being submitted by Citizen Petition and proposes to change the zoning of the parcels located at 111 Boylston Street, 10-12 Kerrigan Place and the Town-owned parcel between those two lots, by reducing the allowed FAR of 2.0 to 1.0 (and therefore removing the ability to participate in Public Benefit Incentives for additional height or FAR), reducing the allowed height to 40', and creating an overlay district, called G-1.0 (DP), with a minimal dimensional requirement for the yard setback of the building from the MBTA property line of 30 feet, and requiring that 50% of this yard be landscaped open space. In 1993, Town Meeting rezoned these properties from I-1.0 to G-2.0, thus acknowledging that for redevelopment to occur, greater density would need to be allowed. At that time, a shadow study was completed to show that the greater density would have minimal impact on White Place, compared to existing shadows. The 2005-2015 Comprehensive Plan designated this area as an appropriate location for development and an opportunity to enhance the Route 9 corridor streetscape and provide a greater tax base to the Town.

In 2008, the Planning Board gave a favorable recommendation and the Board of Appeals approved special permits for a commercial development for this site. The proposed building was three stories, with a recessed fourth story, and underground parking for 265 cars. The proposed building was setback 20 to 47 feet from the MBTA tracks and was heavily landscaped. An abutter appealed the Board of Appeals approval but subsequently withdrew it when it appeared the development was not going forward. Recently, a requested one year time extension from the developer was withdrawn, meaning that the special permit approvals will expire on April 15, 2010. Any future project would be required to begin anew the review and approval process.

DISCUSSION:

The Advisory Committee heard a summary of the subcommittee hearing testimony and heard directly from a number of petitioners and a representative of EDAB. The following summarizes that information:

In Support of Article 14, a number of petitioners, including residents of White Place, utilizing software provided by the prior developer of the property, visually outlined the effect

(largely shadow and massing) of the proposed development that had been previously approved.

Petitioners noted that, in their view, the Town now had the opportunity to get development on the parcel “right” since the proponent of the prior permitted project was not seeking an extension to their previously granted permit. The presentation demonstrated that, at the current setback of twenty feet (and a FAR of 2.0), there was significant shadow on the parcel, especially in the winter months. They noted that in addition to the height of the then proposed structure, the current required setback (twenty feet), and the use by the proponent of the pathway (instead of Boylston Street) as frontage made the effects more pronounced. When questioned, petitioners could not demonstrate what the shadow effect of an FAR 1.0 development (as proposed in Article 14) would be.

Petitioners noted that while some have suggested that their proposal may constitute “spot zoning”, actually the zone was created in 1993, and its current zoning (2.0) for this parcel is greater than the allowed FAR of surrounding parcels.

The Planning Department in addressing the article noted that while the surrounding parcels were zoned with FAR 1.0, a number of properties in the area had greater FAR due to their status as non-conforming buildings. The department’s spokesperson did agree that the shadow effect of the prior approved development was an issue.

A member of the Planning Board testified that the Board had recommended “No Action” on the Article, but that the Board had sympathy for the White Place neighborhood given the demonstrated shadow effect. The member also noted that because “above ground” parking did not count against FAR (unlike the zoning in Coolidge Corner where “above ground” parking is included in FAR calculation), the massing situation was heightened. In restating the Planning Board’s position, he noted that the Planning Board believes that halving the FAR for these sites is not appropriate and would be a disincentive to new development. Rather, design guidelines addressing setbacks, landscaping, building design and number of required parking spaces should be further evaluated to ensure greater protection to the White Place neighborhood. Replacing the dilapidated and vacant Red Cab building with a new development will speed the revitalization of this area and greatly enhance the appearance of Boylston Street. The Planning Board felt that further study of the site be undertaken to evaluate appropriate design guidelines to minimize the impact on White Place while allowing appropriate redevelopment.

The property owner testified that her family had owned the parcel since the mid 1970’s, and that she hoped to find a developer who could bring an appropriate economic development to the property that would be of benefit to the Town.

A member of the Economic Development Advisory Board testified that while EDAB had sympathy for the abutters’ points of view, the parcel was an important development opportunity for the Town, and the petitioners’ proposal had the effect of making development on the parcel uneconomical.

There was broad discussion between the petitioners, neighbors, Planning Board and Planning Department representatives, the property owner and the members of the Subcommittee.

A number of Subcommittee members suggested that given neighborhood concerns as demonstrated by the modeling software and surrounding zoning, the Article was warranted. Specific discussion was given to the basic framework of the Town's zoning, and the importance held in it to a development that was consistent with surrounding neighborhoods and buildings.

Various participants noted that a FAR of 1.0 would not allow (economically) an appropriate use of the parcel.

Others noted that (1) including above ground parking in the FAR calculation, and (2) establishing greater setbacks might resolve the problems presented, but that such changes would be in all likelihood beyond the scope of the article. It was noted that the Planning Department had requested \$50,000 to study these various questions, but given the Town's fiscal constraints, those funds have not been committed, so the studies the Planning Department needed to provide informed advice were not available.

There was then discussion as to whether, given the general view, that there were legitimate issues presented related to setbacks and shadow, and since the current project proponents right to build the development had lapsed, a short term imposition of the petitioners' zoning proposal (with a clear and definitive sunset provision) might not provide an opportunity for all the stakeholders to achieve consensus. The subcommittee stated that this would be its recommendation.

A representative of EDAB stated that he supported the intent of Article 14 to reduce the proposed building's shadow impact on the abutting residential neighborhood, but does not support a moratorium because that would freeze development on the parcel and would create uncertainty for developer. He suggested that a 2.0 FAR development could generate an additional \$400,000 in property taxes for the town and a moratorium would delay that, and that an FAR below 2.0 would not be financially feasible. Instead, he proposed a new article that would: 1) establish a 40 foot height maximum and a 30 foot rear setback; 2) keep the FAR at 2.0; 3) with Public Benefits allow a height of 55 feet along Boylston Street, and limiting the height of that one story to minimize the shadow impact and required Design Guidelines to minimize the effect on White Place and the Boylston Street Playground.

The EDAB representative presented a drawing which presented a December 21st (noon) shadow model that showed that that smaller and set back additional floor would not produce shadows greater than a FAR 1.0 building. On questioning as to whether the same shadow impact would exist at 9am or 3pm on the same day, the representative stated that he had not done such a study.

RECOMMENDATION:

The modeling of the proposed project at 111 Boylston St which represented a maximum build out at the current zoning had a real impact on committee members and showed that current zoning is too dense for the site given its context. The committee heard a suggestion

that the Planning Board learned lessons from the project which will result in revised design guidelines for future projects. It also heard that EDAB may have designed a solution but that given timing, a full shadow study had not occurred. However, even with revised design guidelines, current zoning will permit the massing which will dwarf the buildings on White Place and impose shadows that will keep White Place in darkness for a good portion of the year.

The committee heard sympathy for the abutters from the Planning Department, Planning Board and from members of EDAB but also heard that it wasn't possible to get the zoning "right" without a zoning study and certainly not within the time frame necessary to implement for this town meeting and not within the confines of the zoning proposal before us. The committee is therefore proposing an effective development moratorium in this zoning district until after the 2011 Annual Town Meeting. This will provide the time necessary for the Planning Department, EDAB and the Planning Board to study what is the correct FAR, setbacks and parking requirements for the site which allow for an economically viable project that will be a better fit given the site's context. The fact that the development at 111 Boylston St. will not proceed as previously permitted provides us with an opportunity to really study what lessons are to be learned and get it right.

The vehicle for imposing the moratorium is to accept the petitioners proposed change in the zoning, under which EDAB has determined that an economically driven development project is not possible but have it sunset after the Spring 2011 Town Meeting. This should provide sufficient time for the appropriate study and process to occur to get the zoning right. The language proposed below takes the petitioner's proposal and reworks it based on drafting input from the Planning Department a bit so that it better fits into the zoning bylaw with the suggested sunset. The substance of the petitioner's proposal is unchanged.

The Advisory Committee voted 18-1-3 to accept the subcommittee recommendation and recommended FAVORABLE ACTION on amended Article 14. (Changes to the petitioners' article are shown in the italicized words in the vote below and the related reorganization is shown in the markup thereafter):

VOTED: That the Town amend the Zoning By-Law to create a new zoning district designated G-1.0 (DP) to define the zoning of the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline, by:

<u>G-1.0</u> <u>(DP)</u> ¹⁸	Any structure or principal use (dwelling-footnote 5)	none ⁴	1.0	N/A	none	40	N/A	N/A	none	none	10+L /10	See Sec 5.06	none ₅
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and the following footnote at the bottom of Table 5.01:

“18. See Section 5.06(4)(e), Special District Regulations. G-1.0 (DP) district shall be in effect until August 1, 2011. After that date, the district shall cease to be in effect and its line shall be removed from Table 5.01”

5. Amend Section 5.06, Special District Regulations by adding a new paragraph 5.06.4.e. as follows:

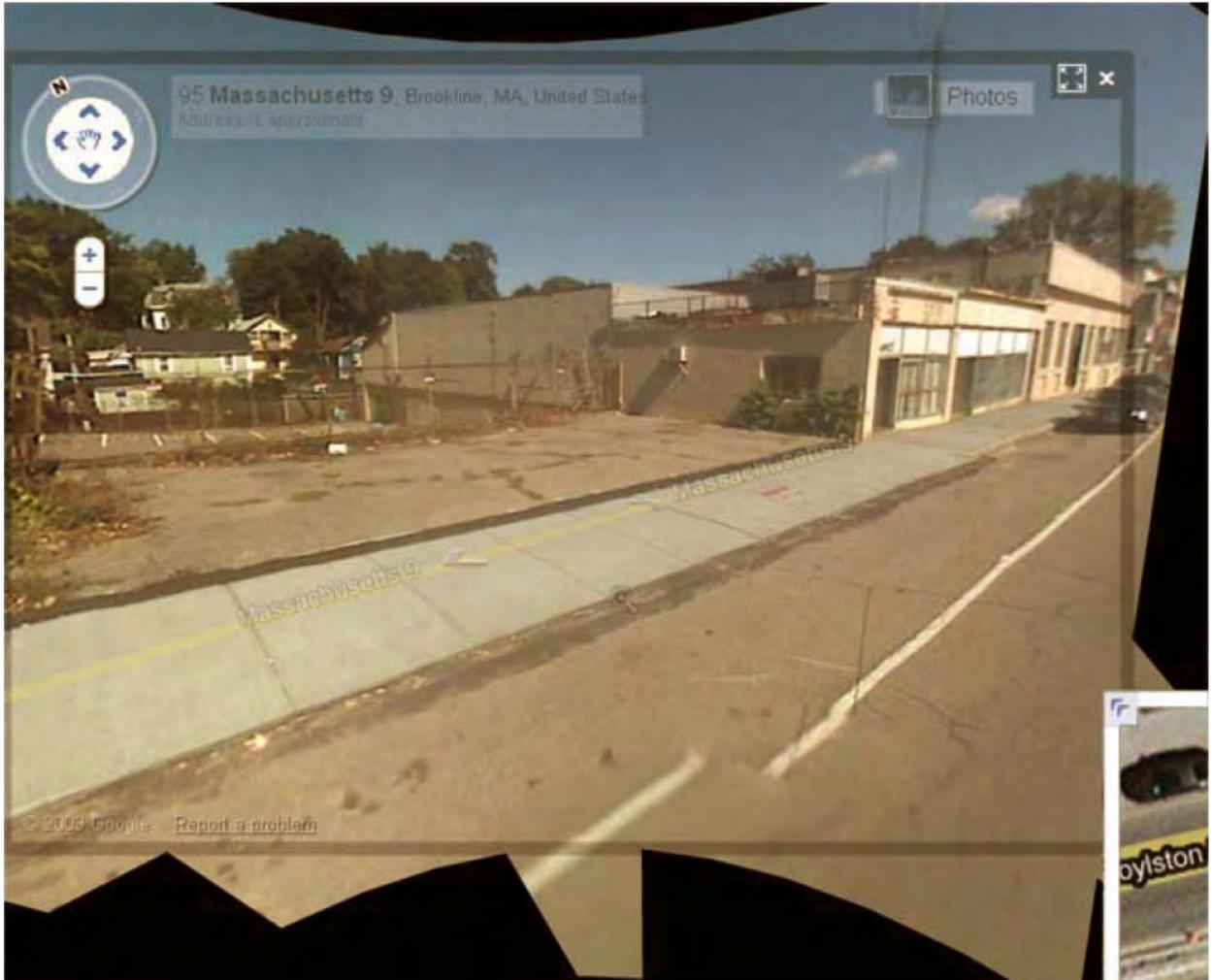
“e. Davis Path General Business District G-1.0 (DP)

1. The Minimum Yard Setback from the property line bordering the MBTA train tracks shall be 30 feet.

2. No less than 50% of this Minimum Yard Setback shall be devoted to landscaped open space.

3. Note: G-1.0 (DP) district shall be in effect until August 1, 2011. After that date, the district shall cease to be in effect and this section 5.06.4.e. shall be removed from the Zoning Bylaw.”





ARTICLE 14

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

Article 14 is a petitioned article that would downzone several parcels on the north side of Route Nine east of Davis Path. These parcels – 10-12 Kerrigan Place, 111 Boylston Street, and land owned by the Town in between – would be rezoned into a new special district called the “G-1.0 (DP)”, or Davis Path, special district. This rezoning would do the following:

- Reduce the allowed maximum Floor Area Ratio (FAR) from 2.0 to 1.0
- Reduce the allowed maximum height to 40 feet, with no option for an increase with public benefit incentives
- Require a setback of 30 feet from the MBTA tracks on the north side of the district, with an additional requirement that 50% of that area be landscaped.

This rezoning is in response to a proposed development of the area that many neighbors felt was too high and too massive. That proposed development raised concerns about shadow impacts and visual impacts to residents on White Place. While the petitioners acknowledged that a 1.0 FAR may be lower than is necessary to protect the neighborhood, they felt they had a limited time to draft a warrant article and submit it to Town Meeting. The petitioners have stated they are open to a higher allowed Floor Area Ratio as long as they feel shadow and massing impacts addressed.

Following the submission of this initial article, two proposed amendments have been brought forward. One amendment – as recommended by the Advisory Committee – would reformat the article slightly, but also would add a sunset provision. Under this proposed amendment, the parcels would revert to the existing zoning in August, 2011. The idea behind this amendment would be to provide time for a more permanent solution to the issues raised to be developed.

The other amendment – developed by TMM Don Warner, who also serves on the Economic Development Advisory Board – would retain the existing 2.0 Floor Area Ratio, retain the warrant article’s 40’ height limit and 30’ setback from the MBTA tracks, but would also permit an additional 15’ of height with public benefits if set back 64’ from the MBTA tracks and no longer than 194’ in length. This amendment would also mandate the Planning Board to create design guidelines for the district.

While these proposed zoning changes have been debated, the owners of the largest parcel affected by this rezoning – 111 Boylston Street – submitted a Preliminary Subdivision Plan for their parcel. As long as a Definitive Subdivision Plan is submitted in seven months, the existing zoning is frozen on this larger parcel for about eight years.

The Board of Selectmen discussed the original warrant article and the proposed amendments at length. The Board wants to make sure that the White Place neighbors do not bear an unreasonable shadow or massing impact from any development on these parcels. On the other hand, these parcels are some of the largest remaining sites for possible commercial development that might help the Town fund its schools and other services going forward.

Since the petitioners have expressed their support for the Advisory Committee language, the Board did not vote on the original warrant language. However, the Board did take the following votes:

- Don Warner amendment (failed 1-2-1)

DeWitt – No
Daly – No
Mermell – Yes
Benka – abstain

- Daly amendment (FAR of 1.5) to Advisory Committee vote (failed 2-1-1)

DeWitt – Yes
Daly – Yes
Mermell – No
Benka – abstain

- Advisory Committee vote (failed 1-2-1)

DeWitt – Yes
Daly – No
Mermell – No
Benka – abstain

Regardless of what happens with the zoning, the Board feels that there needs to be a thoughtful and detailed study that will resolve the multiple variables affecting appropriate redevelopment of this site. For this reason, the Board voted unanimously to appoint a Davis Path Special District Zoning Study Committee, whose charged is to review and analyze current conditions, zoning and parking requirements, design guidelines, shadow studies, and other land use planning tools such as transit oriented development. The Study Committee is to report back, at or before the November 2011 Town Meeting, with recommendations for zoning amendments to create a Special District under Sec. 5.06 of the Zoning By-Law that would permit appropriate development while mitigating impacts on adjacent neighborhoods and historic districts. The membership is as follows: Selectman, Advisory Committee, Planning Board, Zoning By-Law Committee, EDAB, and four Community Representatives.

ARTICLE 14

Amendment Offered by Donald A. Warner, TMM Prec-13

Moved: That the Town amend the Zoning By-Law:

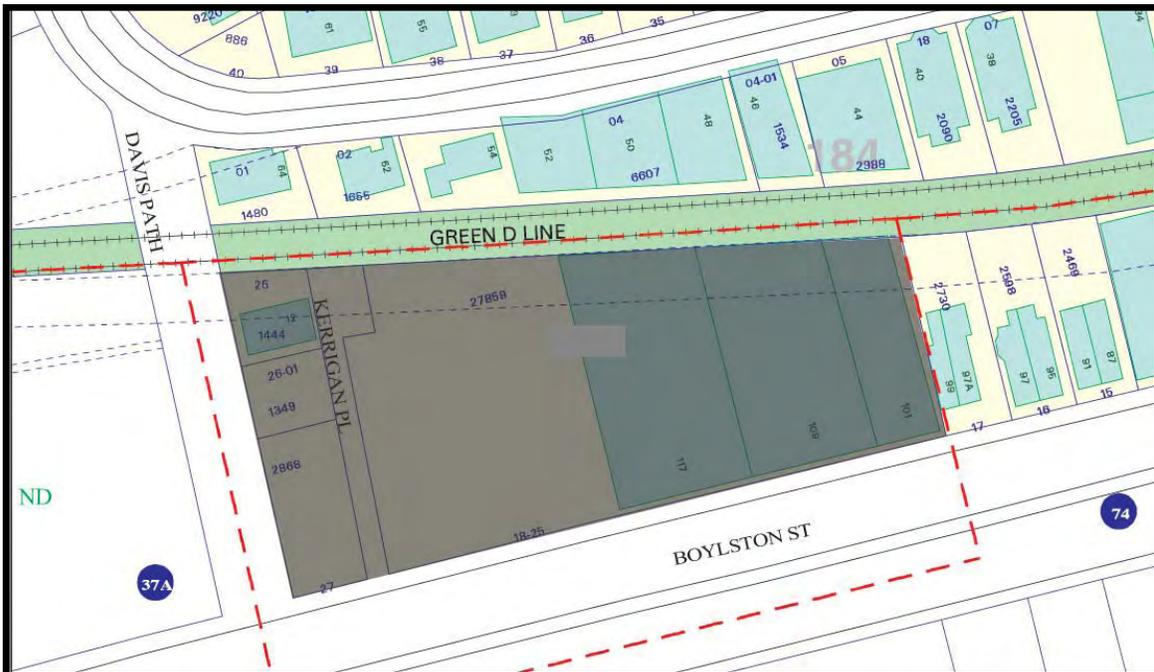
~~I. With respect to the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline:~~

~~1. to create a new zoning district designated G-12.0 (DP) to define the zoning of the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline., by:~~

~~II. With respect to a ZONING MAP CHANGE:~~

~~2. Change the Zoning Map to reflect the new G-1.0 (DP) as described in this Article.~~

1. Amending the map as shown to add a new G-2.0 (DP) district consisting of the properties currently zoned G-2.0 south of the Green Line and north of Boylston Street between (but not including) Davis Path and 99 Boylston Street:



~~III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01—CLASSIFICATION OF DISTRICTS, insert the following new number 8:~~

2. **Amend Section 3.01 (Classification of Districts) by adding a new 3.01.2.c.8 as follows:**

~~“8.)~~ G-~~12.0~~ (DP) Davis Path (Refer to ~~§Sec.~~ 5.06, Special District Regulations)

3. ~~IV. With respect to ARTICLE V – DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, add-~~ **Table Of Dimensional Requirements by adding a new line in the Table after G-~~12.0~~ for the new district G-~~12.0~~ (DP) as follows:**

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH ⁴ MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1.6}	Side ^{2,7}	Rear ⁸	Lands c.	Usable ¹³
G- 12.0 (DP) ¹⁸	Any structure or principal-use (dwelling-footnote 5)	none ⁴	4-0 <u>2.0</u>	N/A	none	40	N/A <u>55</u>	N/A <u>55</u>	none	none	10+ L/10	See Sec 5.06	none ⁵

18. Note: See Section 5.06(4)(e), Special District Regulations.

~~V. With respect to ARTICLE V – DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add~~

4. **Amend Section 5.06, Special District Regulations by adding a new paragraph e. under Special Districts, to read 5.06.4.e. as follows:**

~~“e.~~ *Davis Path General Business District G-~~12.0~~ (DP)*

1. The Minimum Yard Setback from the property line bordering the MBTA train tracks shall be 30 feet.
2. No less than 50% of this Minimum Yard Setback shall be devoted to landscaped open space.

3. Any additional height above 40 feet permitted under Section 5.31 (Public Benefit Incentives) shall be setback at least 64 feet from the property line bordering the MBTA train tracks and in no case shall be more than 55 feet in height.

4. Any portion of the building permitted under Section 5.31 (Public Benefit Incentives) shall not be longer than 194’.

5. The Planning Board shall adopt updated design guidelines for the G-~~2.0~~ (DP) district that delineate acceptable design for buildings in this district that will minimize shadow impacts on residences along White

Place and encourage a design and use of materials which will soften the north and west elevations to be more compatible with the abutting residences and Boylston Street Playground.

TO: Town Meeting Members
FR: Economic Development Advisory Board (EDAB)
RE: Proposed Warner Amendment to Warrant Article 14 – Red Cab Site Down Zoning

EDAB unanimously recommends favorable action on the amendment offered by Town Meeting and EDAB member Donald Warner, AIA, LEED-AP, for Warrant Article 14.

Background: The Red Cab site (AKA 111 Boylston), 10-12 Kerrigan Place, and an adjacent Town-owned parcel comprise a development site of approximately 35,318 SF. The site is currently zoned “G-2”, which was approved by Town Meeting in 1993. At this location, G-2 zoning provides for a maximum Floor Area Ratio (FAR) of 2.0 by right, a maximum building height of 45 feet by right, and up to 60 feet with public benefits. The development company Legatt McCall received a Special Permit for a 70,000 SF 3.5 story medical office building from the ZBA in September 2008. The Special Permit was appealed by local neighbors. Forced by the filing of Article 14 and the potential down zoning of the impacted parcels, the owner of 111 Boylston (the larger parcel east of Kerrigan Place) filed a Preliminary Subdivision Plan to freeze the current zoning.

Warrant Article 14: Article 14 proposes to reduce the FAR to a maximum of 1.0, eliminate the height bonuses for public benefits, reduce the maximum building height to 40 feet, and increase the rear (MBTA side) set-back to a minimum of 30 feet. The Advisory Committee has recommended adding a sunset clause which would reinstate the current zoning as of August 2011.

Warner Amendment: The amendment proposed by Don Warner would keep the FAR at 2.0, keep the expanded 30-foot setback from the MBTA property, and increase the building set-back for upper floors to 64 feet from the MBTA property, such that the shadow impact on adjacent White Place would be nearly identical to a new building meeting Article 14 standards (see attached graphic). The Warner Amendment also eliminates the sunset clause.

Rationale: Several factors are behind EDAB’s endorsement of the Warner Amendment:

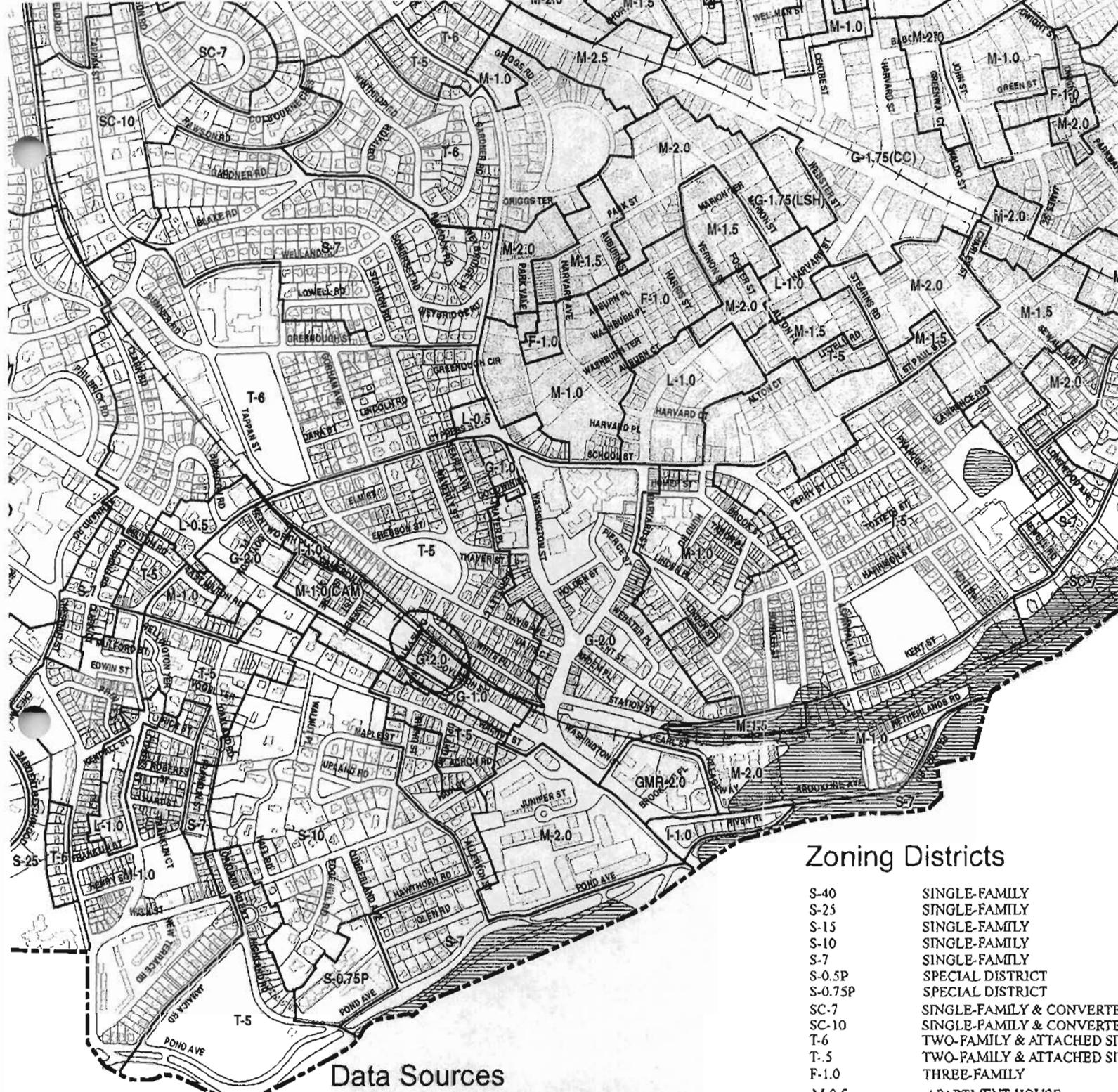
- **Existing Conditions:** The Red Cab site is an unattractive and under-utilized property. Given its size and proximity to public transportation, it is one of the very few sites in Brookline able to accommodate significant commercial development. Redevelopment of the site will have positive impacts on adjacent property along the Route 9 corridor, and serve as a key link between Brookline Village and the Cypress Street commercial area.
- **Financial Feasibility:** It is simply not financially feasible to redevelop the site with an FAR restriction of 1.0. An FAR of 1.0 (identical to the existing building) would not provide sufficient rentable square footage to support the cost of the substantial site improvements, a new building and underground parking. Worse yet, under Brookline's zoning by-law, any FAR below 1.5 would trigger significantly higher parking ratios per square foot—requiring more parking for less building. These restrictions would limit development of the site to a small, one-story, automobile-oriented retail use (such as a Dunkin Donuts or fast-food outlet)—or, more likely, force consideration of alternative development scenarios not limited by market conditions.
- **Alternative Development Scenarios—the Dover Amendment and Chapter 40-B:** Down zoning the site to effectively eliminate a financially feasible market rate development would invite alternative development options, such as a facility owned and occupied by a non-profit hospital or university, or Chapter 40-B affordable housing. Under the Dover Amendment, non-profit institutions are largely exempt from municipal zoning regulations. Eliminating real estate taxes and by-passing local zoning will make the site more attractive to hospitals and universities, especially given its proximity to the LMA. Chapter 40-B affordable housing development also enables the developer to by-pass most local zoning restrictions.
- **Loss of Tax Revenue:** The Leggatt McCall proposal included a long term tax agreement with the Town to provide for real estate tax payments *regardless of the ownership and occupancy*. As a result, development of the site under either the existing zoning or the Warner Amendment provisions would result in an increase in commercial property tax of approximately \$400,000 per annum. By contrast, a Dover Amendment development would result in little or no tax revenue. The loss of tax revenue impacts the entire Town, not just one neighborhood.
- **Shadow Impacts:** The issue of shadows on White Place is a legitimate one—but Article 14 is not the only way to address it. Key provisions of the Warner Amendment are the 30' rear set back from the MBTA property line, the upper-floor set back restriction of 64 feet, and size limitation of the upper-floor. The resulting shadows would be essentially the same as those cast by the smaller building allowed under Article 14. A genuine win-win outcome is available under the Warner Amendment.

- **Land Use Planning in Brookline:** Zoning is a legal tool to implement the Town's long-term Comprehensive Plan. Using Town Meeting to amend the zoning ordinance in response to a specific project proposal sets a terrible precedent for future development, and it fundamentally undercuts the Town's planning and permitting process. The Warner Amendment effectively addresses the shadow and massing concerns addressed in Article 14 but maintains the financial viability of the project and its tax benefits for the Town.

In summary, the Warner Amendment provides a fair and sensible compromise between the FAR required for new development and legitimate neighborhood concerns. By way of background, Mr. Warner is a Town Meeting member from Precinct 13 and has been a member of EDAB for 15 years. He is a registered architect with over 30 years experience in the planning and design of commercial buildings, with a specialty in medical facilities. He has been a LEED Accredited Professional since 2005.

We strongly encourage Town Meeting members to approve the Warner Amendment to Article 14.

**Attachment B
Zoning Map**



Zoning Districts

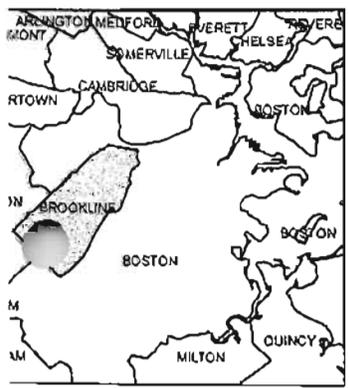
S-40	SINGLE-FAMILY
S-25	SINGLE-FAMILY
S-15	SINGLE-FAMILY
S-10	SINGLE-FAMILY
S-7	SINGLE-FAMILY
S-0.5P	SPECIAL DISTRICT
S-0.75P	SPECIAL DISTRICT
SC-7	SINGLE-FAMILY & CONVERTED
SC-10	SINGLE-FAMILY & CONVERTED
T-6	TWO-FAMILY & ATTACHED SINGLE-FAMILY
T-5	TWO-FAMILY & ATTACHED SINGLE-FAMILY
F-1.0	THREE-FAMILY
M-0.5	APARTMENT HOUSE
M-1.0	APARTMENT HOUSE
M-1.0(CAM)	APARTMENT HOUSE
M-1.5	APARTMENT HOUSE
M-2.0	APARTMENT HOUSE
M-2.5	APARTMENT HOUSE
L-0.5	LOCAL BUSINESS
L-1.0	LOCAL BUSINESS
G-1.0	GENERAL BUSINESS
G-1.75(CC)	GENERAL BUSINESS
G-1.75(LSH)	GENERAL BUSINESS
G-1.75(WS)	GENERAL BUSINESS
G-2.0	GENERAL BUSINESS
G-2.0(CA)	GENERAL BUSINESS
GMR-2.0	GENERAL BUSINESS AND ME
O-1.0	BUSINESS AND PROFESSIONAL
O-2.0(CH)	BUSINESS AND PROFESSIONAL
I-1.0	INDUSTRIAL SERVICE

Data Sources

Zoning: This data layer was developed in-house by BrooklineGIS staff. It is based upon street centerlines, parcels, and the zoning bylaw from the Planning and Community Development Dept. Originally created in 07/1998. Modified in 2004. The Town of Brookline makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the Town, including the implied validity of any uses of such data.

Map created by Brookline GIS in 08/06 and map doc: Standard-maps\zoningbw30x16.mxd

Context Map



Attachment C
Chronology of Past Zoning Changes relative to the Study Site

Chronology of Red Cab Zoning

- **1922 – GENERAL BUSINESS PURPOSES**
 - Maximum 60 feet or 5 stories or higher if the walls of the building are setback a distance two-thirds the height of the building.

- **1962 – INDUSTRIAL SERVICES**
 - Zoned I-1.0 (FAR of 1.0, 60' maximum height, 20' front setback, 10+L/10 for rear, and H+L/6 if over 40 ft).

- **1989 - BROOKLINE DEVELOPMENT COMMITTEE** appointed by Selectmen in 1989
 - Originally looked at two development corridors: south side of Commonwealth Ave & eastern portion of Boylston Street
 - After hearing concerns of local residents, Committee agreed to look at development opportunities throughout the entire town.

- **1990 – 1992 TOWN-WIDE TASK FORCE**
 - Town Meeting voted funding in September 1990 for study
 - Study went from 1991 through September 92
 - Over 60 community meetings.
 - Consultants met with Town Departments & Commissions, including Public Works, Preservation, & Conservation
 - Neighborhood Task Force Members just for Boylston Street included 41 people, including John Bassett, Tom Nally, David England, Frances Shedd Fisher, Linda Hamlin
 - Potential development areas included all land currently zoned commercial or industrial, large tracks of land zoned residential (many of which were public or institutional ownership)
 - Properties evaluated according to criteria: potential net financial gain to Town; potential enhancement of physical/human environment; impacts on urban design character, housing & neighborhoods, historic districts, public open space, and traffic; and development feasibility
 - 12 priority areas identified, including Commonwealth Ave & Boylston St. corridors, a series of locations along Harvard St., the western end of Boylston St. near Chestnut Hill Mall, the municipal transfer station off Newton Street, the Brookline Hospital, the Bournewood Hospital and the MBTA yards near Cleveland Circle.
 - One of these areas was Boylston Street, from Cypress to Washington, which was 12.7 acres of land zoned as Industrial I-1.0.
 - Noted that “new development could enhance urban design character” and that commercial financial benefits were annual tax revenues over \$1M
 - Red Cab site noted to be moderately good for development

- Design Guidelines included not exceeding 45; within 50' of residential property line; 20' rear setback; 70' height or less, but minimum of 45' at the Boylston Street sidewalk edge
 - Compromise warrant article passed at Fall 1992 TM
- **FALL 1992 TM – MORE DISCUSSION WAS NEEDED**
 - Goal of zoning change because areas were “zoned in a manner which was attracting development which was very incompatible with the character of the town. For example, the current industrial zoning on Boylston Street between Washington Street and Cypress Street has continued to attract uses which detract from the character of this important “gateway” area to Brookline Village and generate only a fraction of the tax revenues that more attractive development projects would generate.”..... “In many instances where lower FARs (FAR 1) have shaped development – the result has been an unattractive suburban strip pattern of development with predominantly single story commercial buildings surrounded by large parking areas. In addition to their generally unattractive urban design character, these predominantly auto-oriented retail businesses generate very significant levels of traffic in the town’s neighborhoods and produce relatively low tax revenues.”
 - Selectmen & PB voted yes (with some changes), Advisory voted on two small areas, but not on the others. Advisory did not vote favorably for Boylston area nor reduced parking requirements.
 - Development Committee withdrew articles that were not voted favorably by Advisory
- **FALL 1993 TM – COMPROMISE!**
 - Refers to several neighborhood task force meetings between '92 and '93 Town Meetings
 - Planning Board Recommendation refers to “Citizen Petition for map changes”, and Planning Board agreed to incorporate Bassett’s G-1.0 at Lincoln as part of compromise to comprehensive rezoning
 - Advisory report noted that the majority was persuaded to support the citizens’ petition for Boylston because it: (1) was better to have the entire Cameron Street area residential; and (2) was better to not upzone the Lincoln school and the Brigham Surgical Group buildings
 - Guideline attached to TM article stated that “Guideline related to Red Cab property is still under discussion”, but that buildings should not exceed 45’ within 50’ of an adjacent residential property line
 - Boylston area upzoning passed TM unanimously with 1 abstention.

- **2006-2009**

- Leggat McCall contacted EDAB in May 2006
- Joint EDAB & neighborhood meeting with 50 residents, ending in applause
- 2007 Town meeting vote to allow Selectmen to sell Town-owned parcel at end of Kerrigan Place
- Agreement for Tax Certainty
- Permitting commenced
- 2008 - Following Design Advisory Team (DAT) work, Planning Board sent team back to DAT for further refinement
- RFP for Town-owned parcel & permitting of Legatt-McCall plan
- Approved by Planning Board & Board of Appeals
- Special permit and appeal occurred in September; suit dropped April 15, 2009

- **2010**

- 2010 - special permit expired March 15, 2010
- Warrant Article 14 passed with sunset provision added via Advisory Committee

Attachment D
Design Guidelines for Boylston Street

BOYLSTON STREET DESIGN GUIDELINES (Cypress Street to Washington Street)

The following guidelines supplement the standards outlined in the Zoning By-Law under Section 5.09(4), Community and Environmental Impact and Design Standards.

Relationship to Adjacent Residential Neighborhoods:

- Landscape screening shall be provided and maintained by the developer between new commercial development and adjacent residential uses.
- Buildings shall not exceed three stories (45') within 50' of an adjacent residential property line.
- All above grade buildings shall be set back a minimum of 20' from the rear property line.
- Any new building on Red Cab property shall be designed so as to minimize the effect of shadows on residential properties on White Place by locating the highest mass toward the Boylston Street frontage. Reductions in shadows on White Place residences shall be considered a public benefit in conjunction with any request for building height above 45 feet proposed for the Boylston Street frontage. Substantial additional shadows on adjacent residences shall be unacceptable.
- ~~At the rear of the existing Volkswagen dealership, where the commercial lot is surrounded on three sides by residential uses, every effort shall be made to minimize the height of any future building on this portion of the lot. Height shall not exceed 25' in this area. If building heights above 45 ft. are requested for the Boylston Street frontage of the property under the public benefit incentive provision of the Zoning By-Law, these shall only be granted on condition that building heights at the rear of the property do not exceed 25'.~~
- Facades facing residential neighborhoods shall be sensitive to the character of nearby houses; for example, large expanses of blank wall shall be avoided, when appropriate, and building materials shall include masonry, wood, and/or other materials which respect the character of nearby residential buildings.
- Special attention shall be given to any visual impacts on the Pill Hill Historic District and the White Place National Register District from new development. Where public benefit incentives are required for increased height or floor area, design review by the Preservation Commission related to visual impacts on these historic districts shall be part of the approval process.
- Shadow and wind impacts shall be evaluated through appropriate studies and minimized and shall not unreasonably affect adjacent properties.

Parking:

- Parking impacts on nearby residential streets shall be minimized.
- Parking should be accommodated behind buildings away from the street edge but should minimize any impacts on abutting residences.
- Landscape the edges of any parking areas facing a public street.

Site Vehicular Access:

- Minimize any increase in traffic on nearby residential streets.
- Access to new commercial development shall not be provided from streets such as Walnut Street or any other predominantly residential streets.
- Minimize access from Cypress Street and Cameron Street. As much as possible, access shall be from Boylston Street and Boylston Place.
- Nonresidential properties that abut Cameron Street but are accessible from Boylston Street and/or Boylston Place shall have no curb cut on Cameron Street.
- Nonresidential properties that are accessible only from Cameron Street shall have no increase in the number of curb cuts on Cameron Street.
- The existing Volkswagen property shall have no curb cut on East Milton Road.

Boylston Street Frontage:

Height:

- Maximum height of five stories (70') at the Boylston Street frontage (in many instances provisions of the Zoning By-Law with regard to buffers and setback requirements result in lower allowable building heights).
- Minimum building heights of three stories in G-2.0 districts shall be encouraged, except in circumstances where it isn't warranted.

Street Level Uses and Design

- Locate active retail and office uses along the frontage of buildings facing Boylston Street and Cypress Street; each separately leased ground floor space should be directly accessible from the sidewalk.
- Provide generous transparent glazed storefront type windows along the building façade in a manner consistent with existing attractive retail businesses in the immediate area.

Front Yard Setbacks:

- Use of a 20-foot setback is encouraged along parts of the Boylston Street frontage to permit the creation of an enhanced pedestrian environment along the street for new development between the Lincoln School and Cypress Street on the south side of the street, and between Smythe Street and Cypress Street on the north side of the street.
- For property with frontage on Cypress Street, the setback from Cypress Street should be considered in the context of and transition to other buildings on Cypress Street, both on the same side of the street and on the opposite side. A canyon effect shall be avoided. As required in Section 5.32(b)(2), any additional height above that permitted by right shall be set back from the street lot line one-half the width of the street right-of-way, up to a maximum of 50 feet.
- Street trees and an expanded and improved sidewalk area should be accommodated within the setback area. The setback area shall not be used to provide off-street parking.

Side Yard Setbacks:

- Where a side lot line abuts an S, SC, T, or M district, the side yard requirement of the applicable district shall apply. (See Section 5.64 of the Zoning By-Law.)

Rear Yard Setbacks:

- Where a rear lot line in an L, G, or I District abuts an S, SC, T, or M District, the rear yard requirements as specified in Section 5.00 shall be increased by 10 feet, but need be no greater than 20 feet. (See Section 5.73 of the Zoning By-Law.)

Streetscape Character:

- Enhance the character of the pedestrian environment.

- Provide additional large street trees along Boylston Street; where front yard setbacks are provided, trees shall be accommodated in the setback area.
- Provide other streetscape improvements such as expanded sidewalk areas, benches, lighting, improved sidewalk materials, etc. as deemed appropriate by the Town.

Facade and Sign Character:

- Use masonry and other materials which respect the character of older adjacent neighborhood buildings, adjoining historic districts, and Brookline Village.

Attachment E
Spillane Shadow Study Memo

MEMORANDUM

To: Brookline Development Committee/Boylston Street Task Force
From: David Spillane
Subject: Worst Case Shadow Analysis for a G-2.0 Development at Red Cab Site.
Date: August 10, 1993

The attached pages contain a review of the potential shadow impacts of a new development project on the Red Cab site, assuming zoning is changed to G-2.0.

This analysis demonstrates that a rezoning of the Red Cab site to G-2.0 would result in very limited additional shadow on the White Place area. However, a future building design should be carefully reviewed under Section 5.09 to ensure that all potential concerns are understood and addressed.

The analysis represents a "worst case scenario", as requested by the Task Force at a Development Committee meeting on June 22, 1993. The time of the year examined (December 21) is the worst day of the year for shadows as the sun is at its lowest in the sky and shadows are longest. The potential development on the site is also the "worst case" condition for shadows. It assumes that maximum allowable building heights occur on the entire area of the parcel (in reality this is seldom, if ever, achieved). No attempt has been made to modify the building design to reduce shadows. Therefore the case illustrated represents the worst shadow impact of any building that could potentially be accommodated on the parcel. In reality, as building heights would likely be lower in some parts of the parcel, any possible shadow impacts could be reduced through careful design and design review by the Planning Board under Section 5.09.

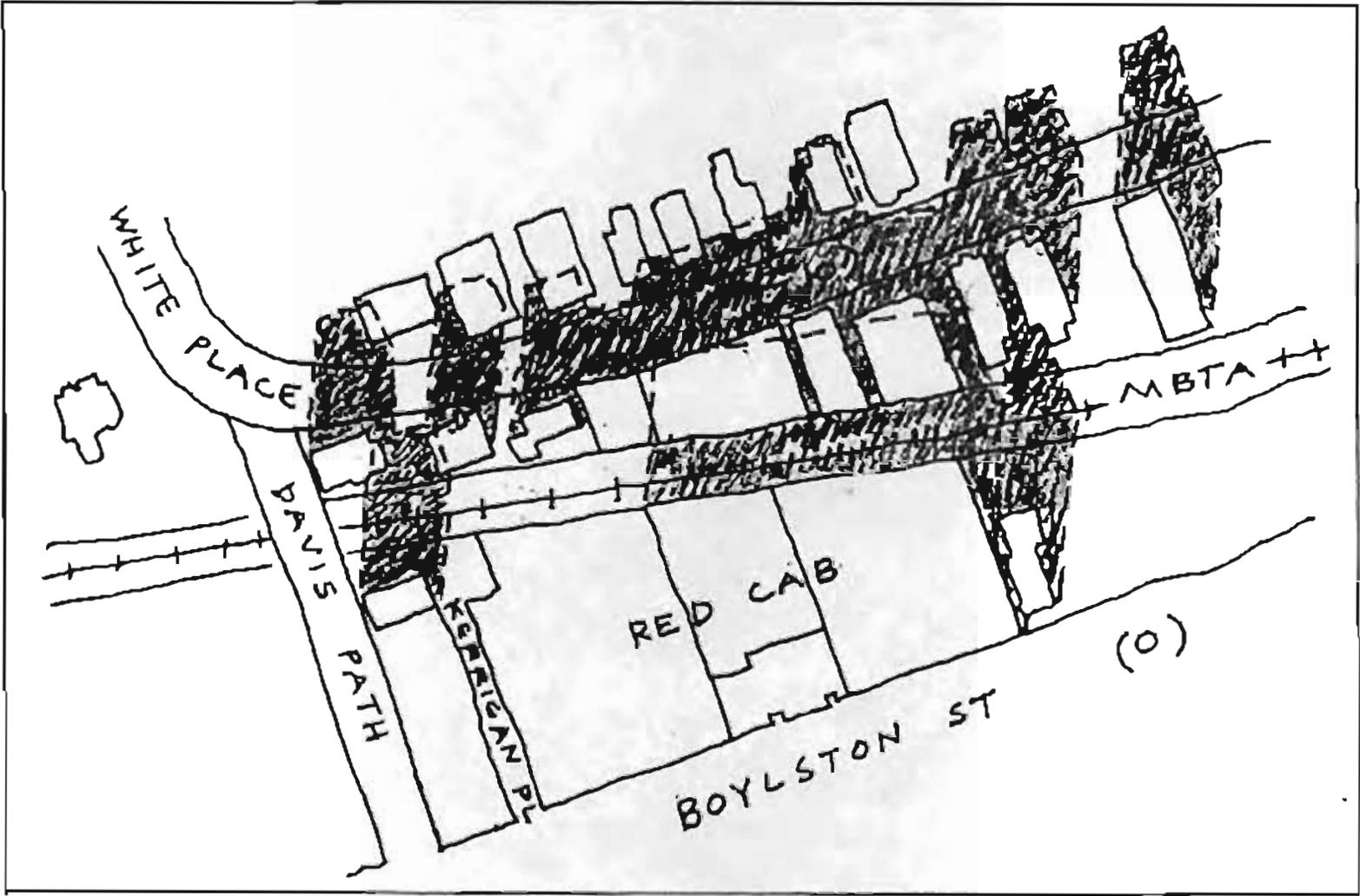
Despite these extreme assumptions, the diagrams indicate that very limited additional shadow will result from a building of the size examined. The areas where the shadows would fall are almost entirely already shadowed by existing buildings, mostly residential buildings on the south side of White Place.

The attached diagrams indicate the following:

A-1	Existing Shadows	12:00 Noon	December 21
A-2	Existing Shadows	2:00 PM	December 21
B-1	Shadows cast by G-2.0 Development	12:00 Noon	December 21
B-2	Shadows cast by G-2.0 Development	2:00 PM	December 21
C-1	New shadows due to Development	12:00 Noon	December 21
C-2	New shadows due to Development	2:00 PM	December 21

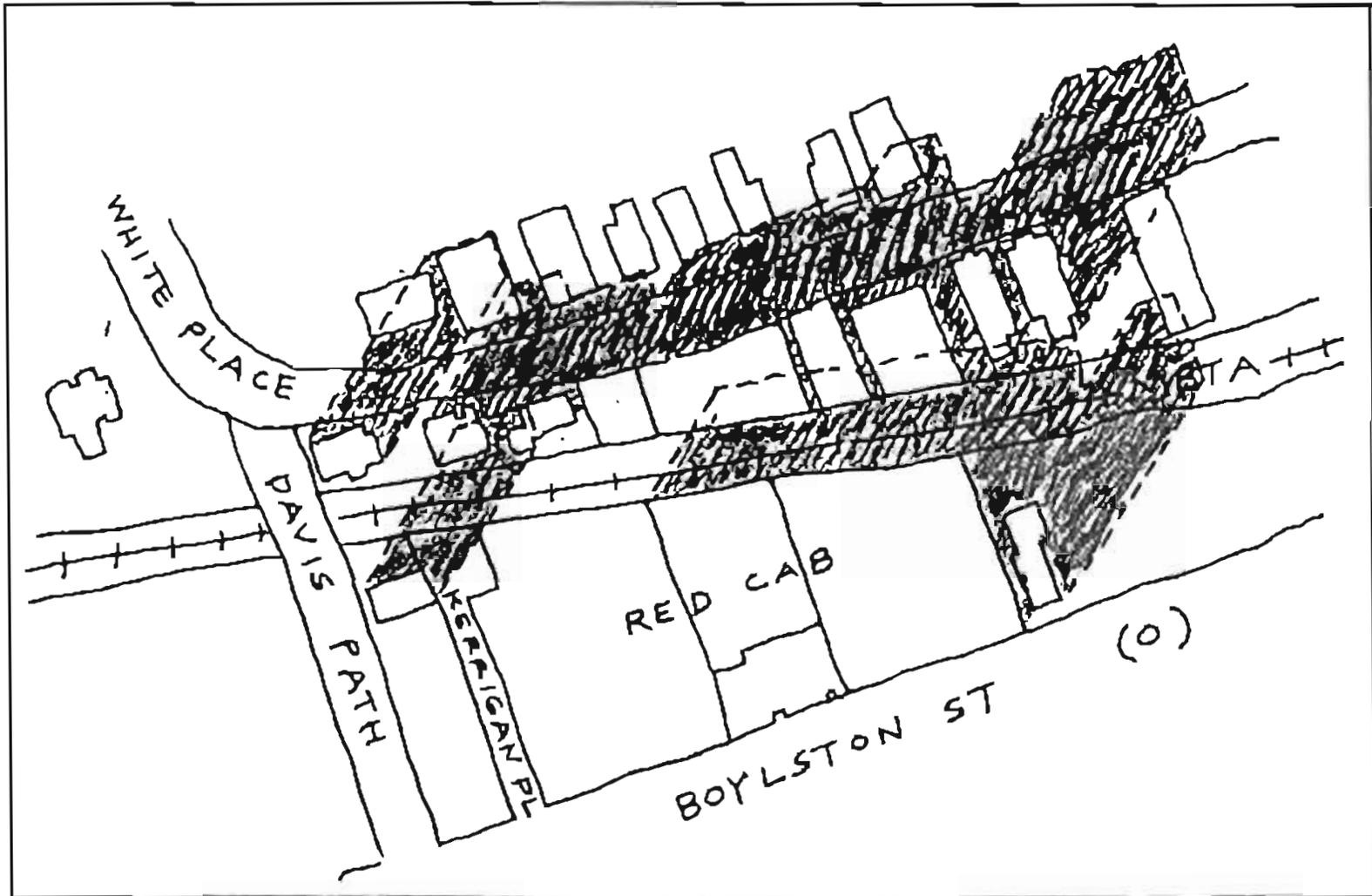
Note 1: Diagrams are based on the following assumptions for December 21: 1) 12:00 noon: sun altitude, 27 degrees; azimuth, due south 2) 2:00pm: sun altitude, 21 degrees; azimuth, 30 degrees W of south.

Note 2: Times noted are solar time. In Brookline during December, solar noon (the time when the sun is at its highest) occurs approximately 17 minutes before noon local time (11:43AM).



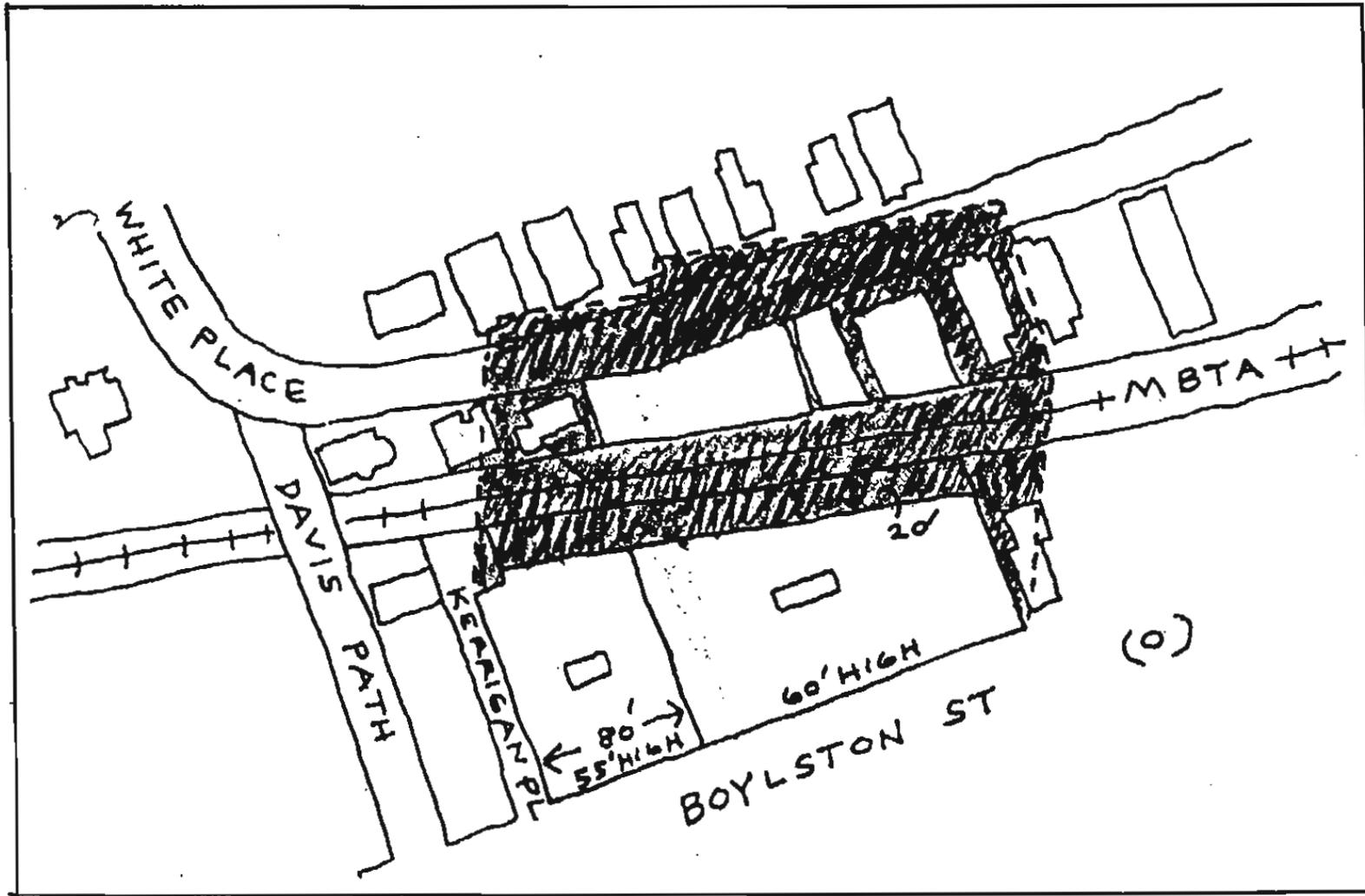
EXISTING SHADOWS 12:00 NOON, DECEMBER 21

A-1



EXISTING SHADOWS 2:00 P.M., DECEMBER 21

A-2

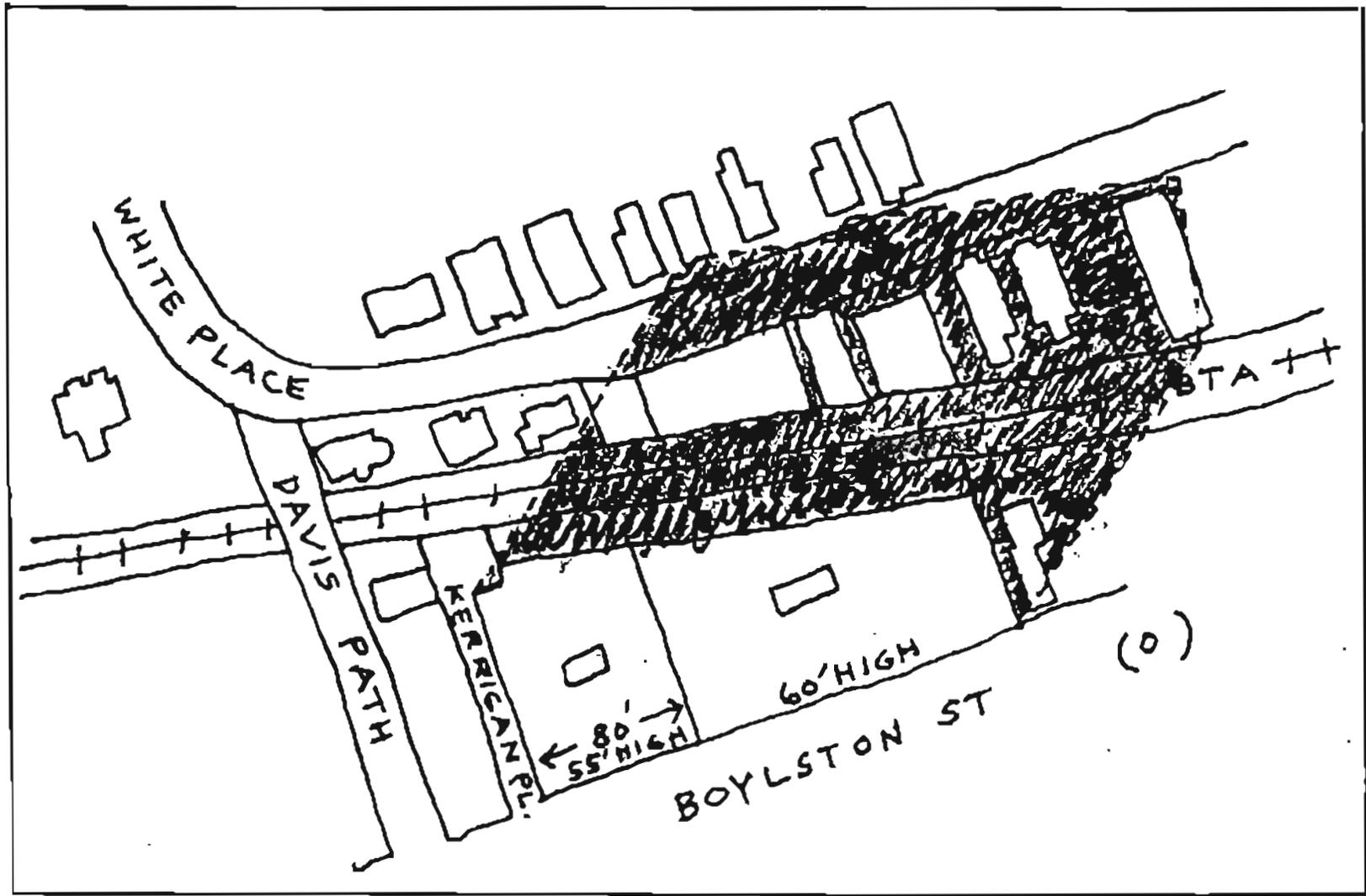


NEW DEVELOPMENT
(WORST CASE)

12:00 NOON, DECEMBER 21

THEORETICAL SHADOW (= SHADOW CAST IF NO OTHER BUILDINGS EXISTED)

B-1

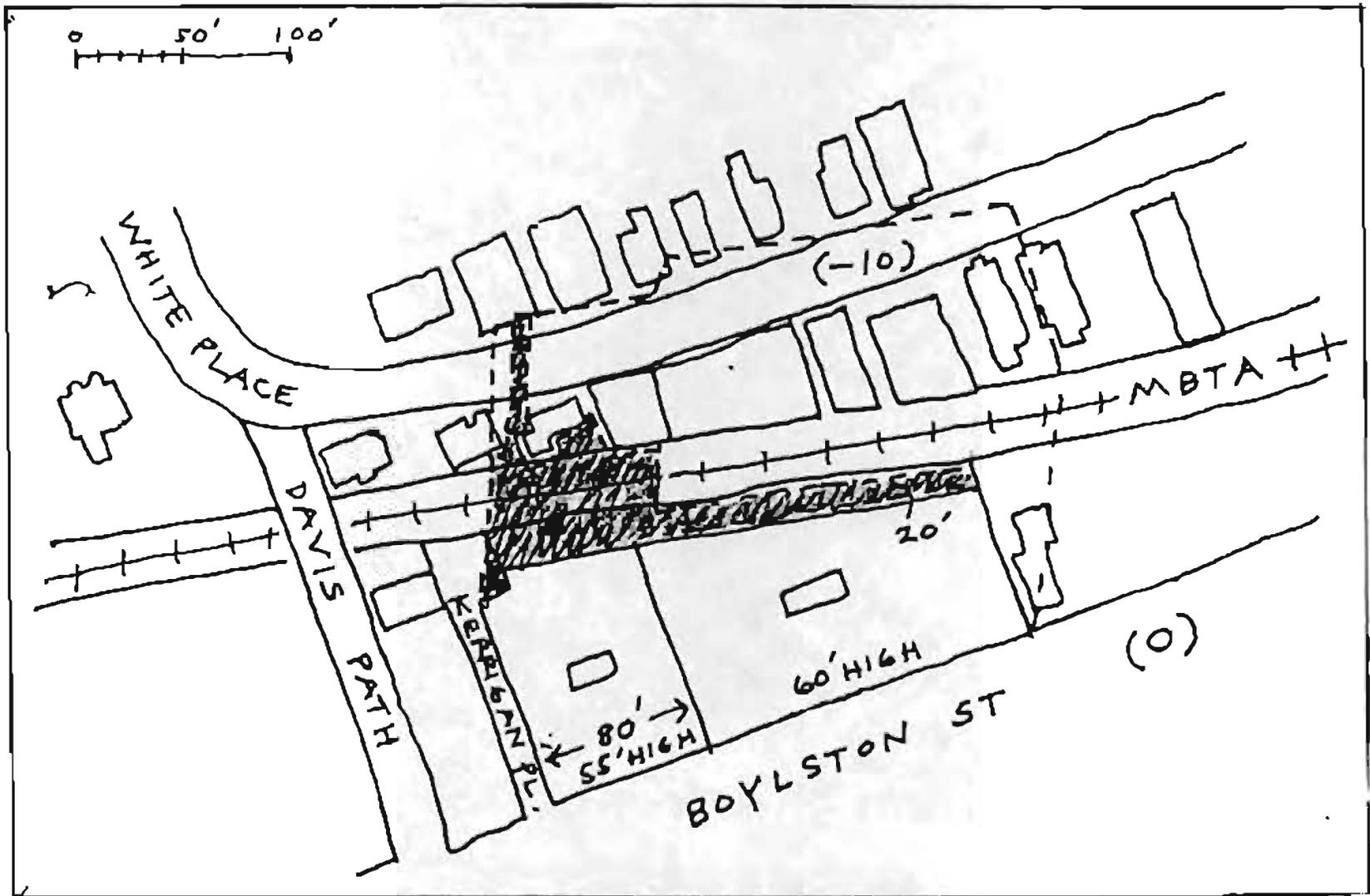


NEW DEVELOPMENT
(WORST CASE)

2.00 P.M., DECEMBER 21

THEORETICAL SHADOW (= SHADOW CAST IF NO OTHER BUILDINGS EXISTED)

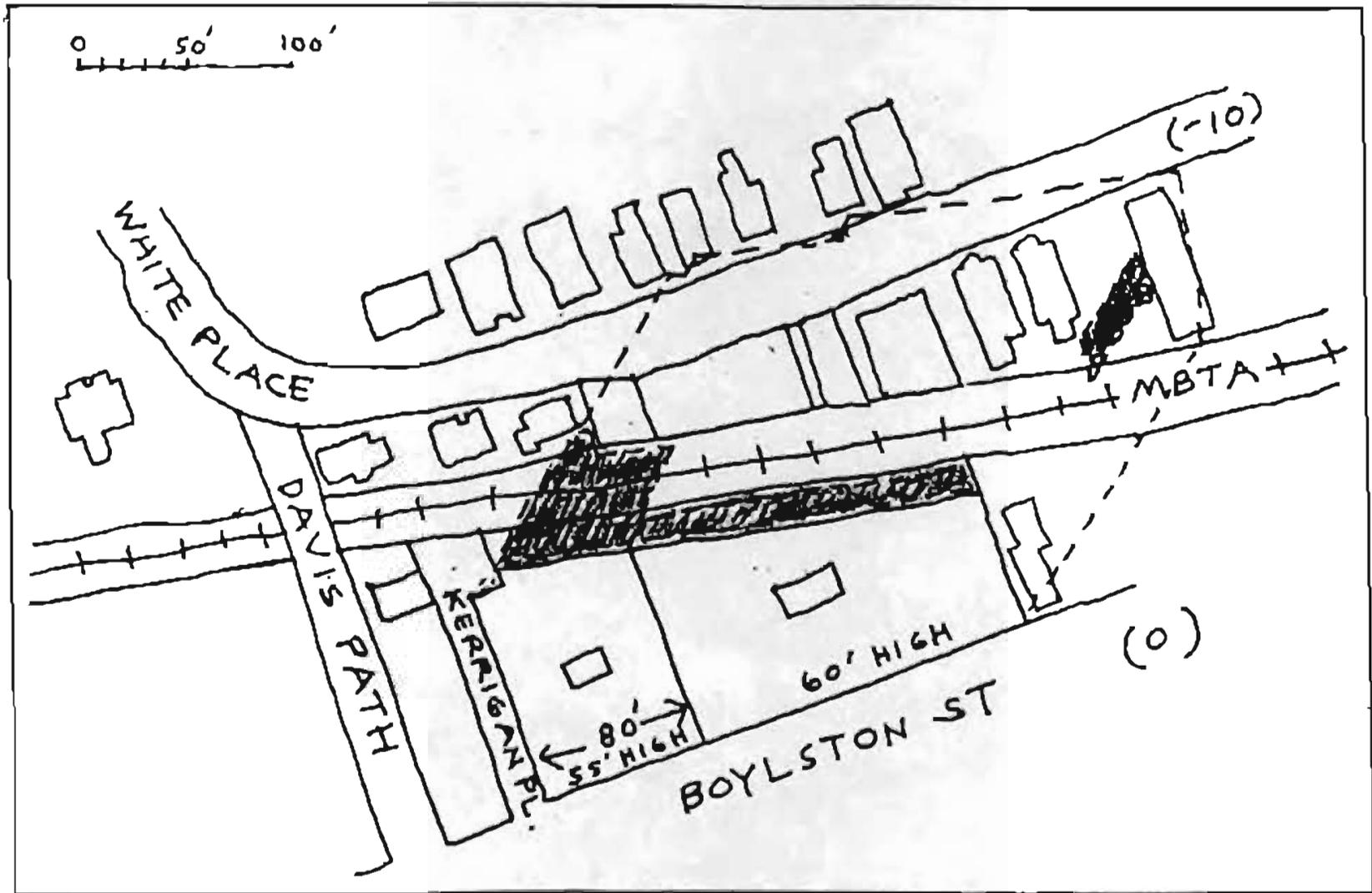
B-2



NEW SHADOW
(WORST CASE)

12:00 NOON, DECEMBER 21

C-1

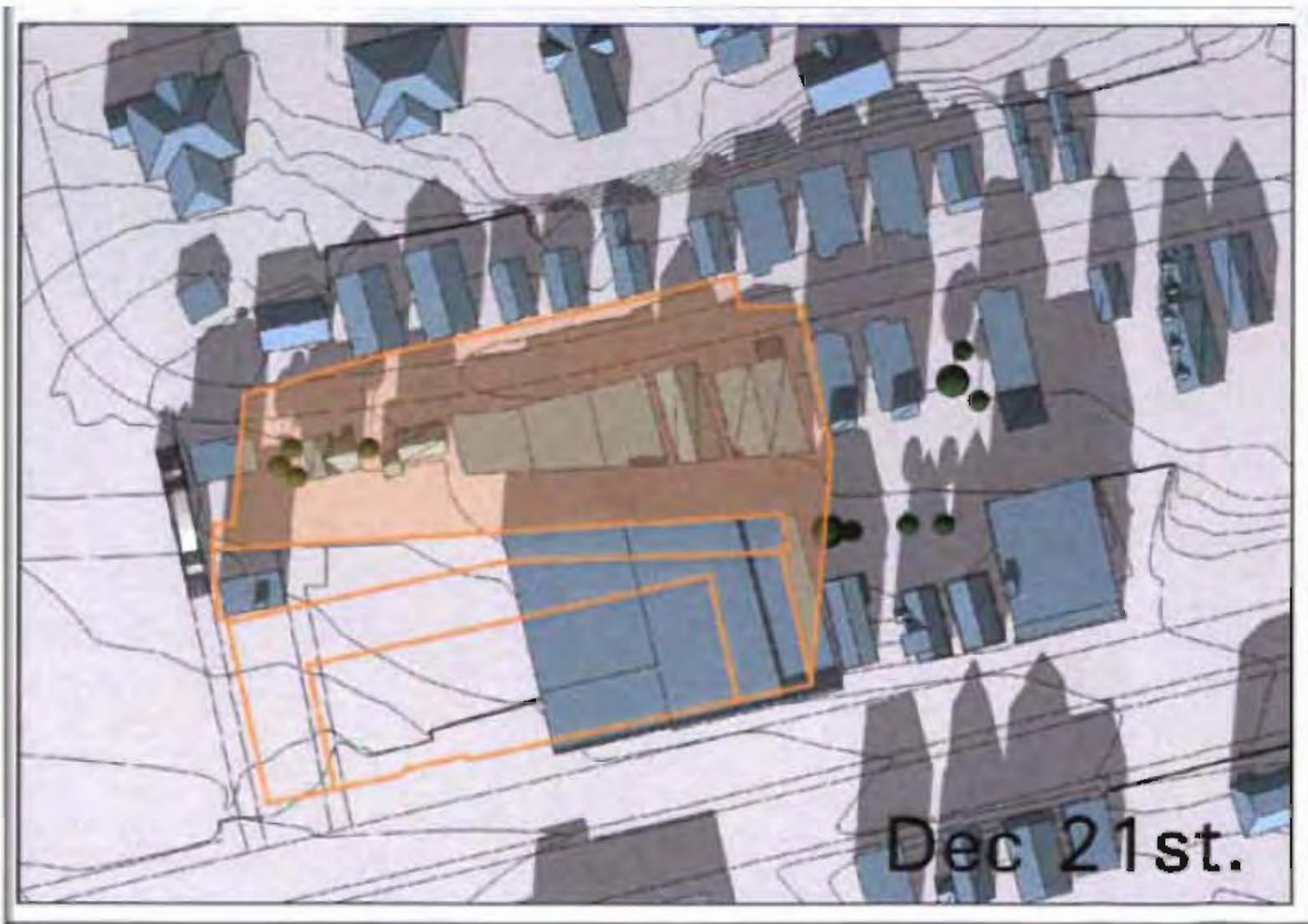


NEW SHADOW
(WORST CASE)

2:00 PM., DECEMBER 21

C-2

Attachment F
Leggat McCall Shadow Studies



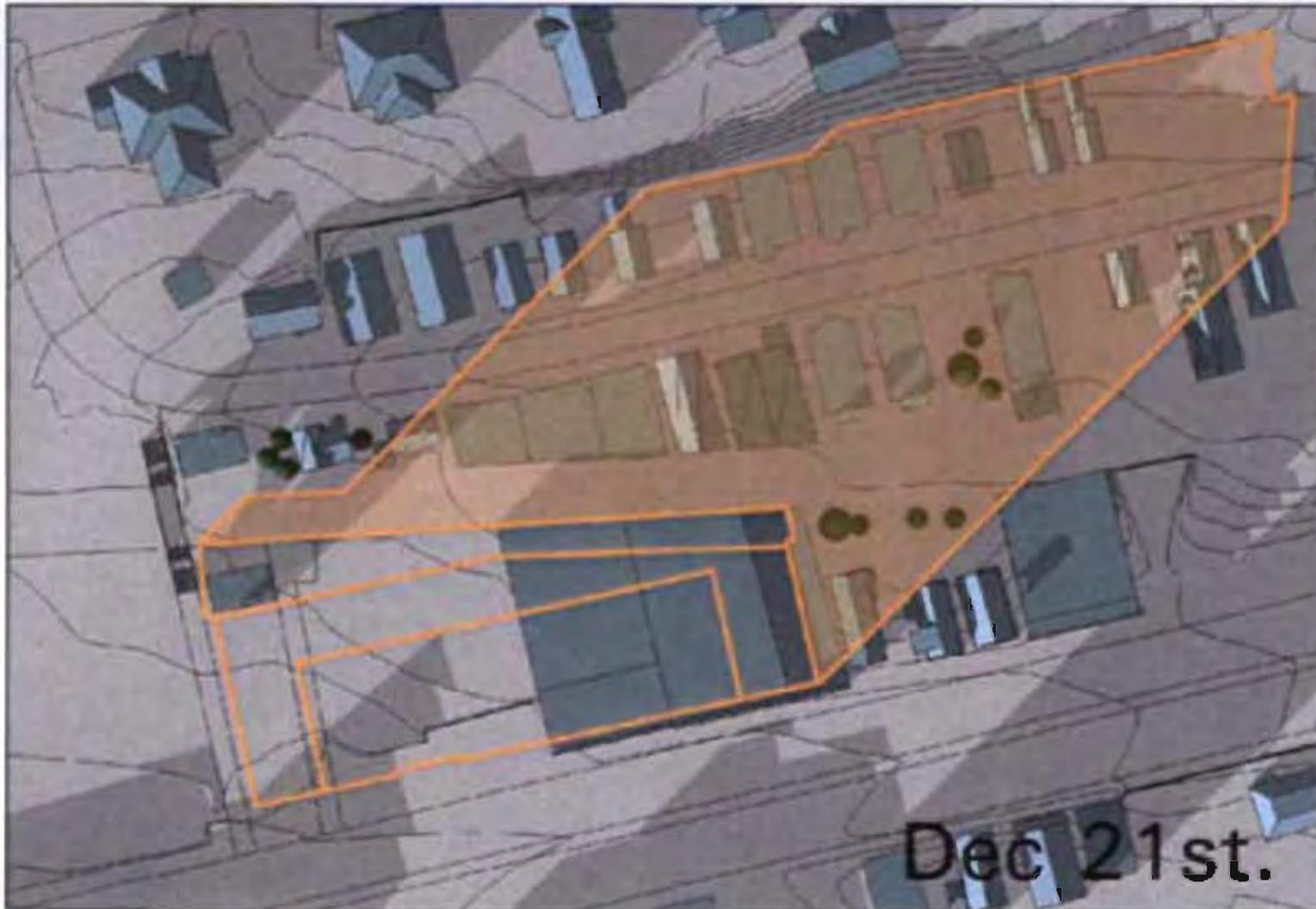
12:00pm

existing



proposed





3:00pm

existing

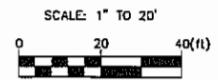
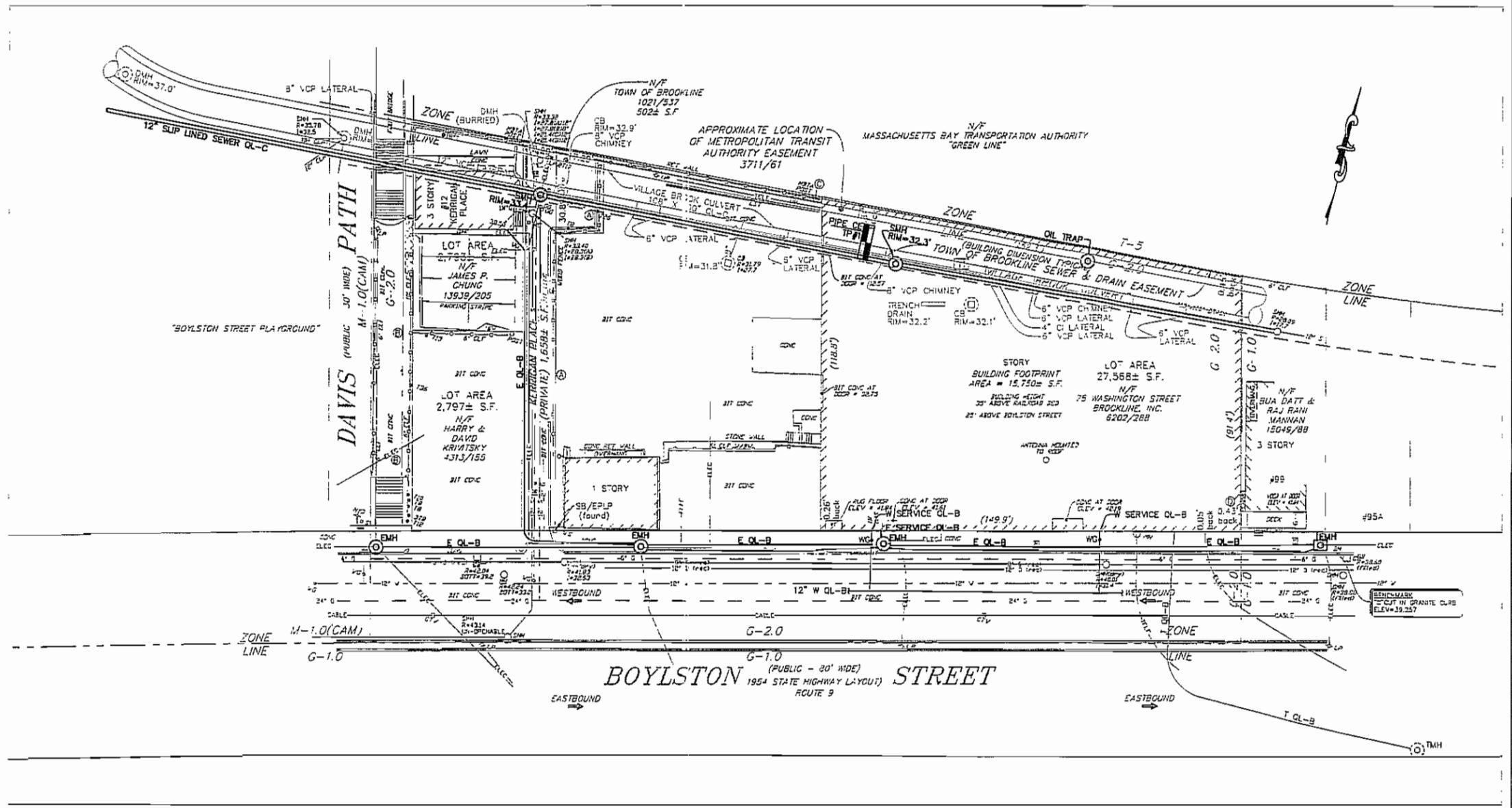
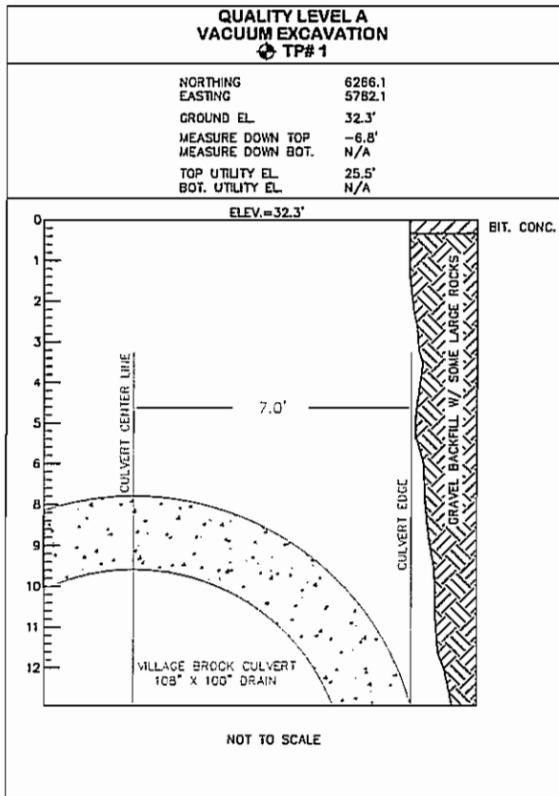


proposed



Dec 21st.

Attachment G
Subsurface Utility Plan



REV. NO.	DATE	DESCRIPTION	MADE BY	CHK. BY	APPD. BY
BSI Engineering, Inc.					
66 Pleasant Street, Pembroke, MA, 02359-2320 Telephone (617) 265 4200 Fax (617) 209 1297 www.bsien.com					
SUBSURFACE UTILITY ENGINEERING					
111 BOYLSTON STREET VILLAGE BROOK CULVERT INVESTIGATION BROOKLINE, MA					
PREPARED FOR LEGGAT McCALL PROPERTIES 10 POST OFFICE SQUARE BOSTON, MA 02109					
OWNER: 75 WASHINGTON STREET BROOKLINE, INC. 6202/288					
BSIE PLAN NO.: 07-2081		FILE: 07-2081UTL01.DWG			
SUE BY: BAL, JFM, IS, & PM		DRAWN BY: BAL		CHKD.: JFM	
APPROVED:		DATE: 11/2/2007		SCALE: 1"=20'	
CONTRACT NO.:		SHEET NO.: 3 OF 3			

Attachment H
Leggat McCall Special Permit and Approved Plans



111
Boylston
Street

Brookline,
Massachusetts

111 Boylston Street LLC

Loggia McCall Properties LLC

Boylston
Street
View

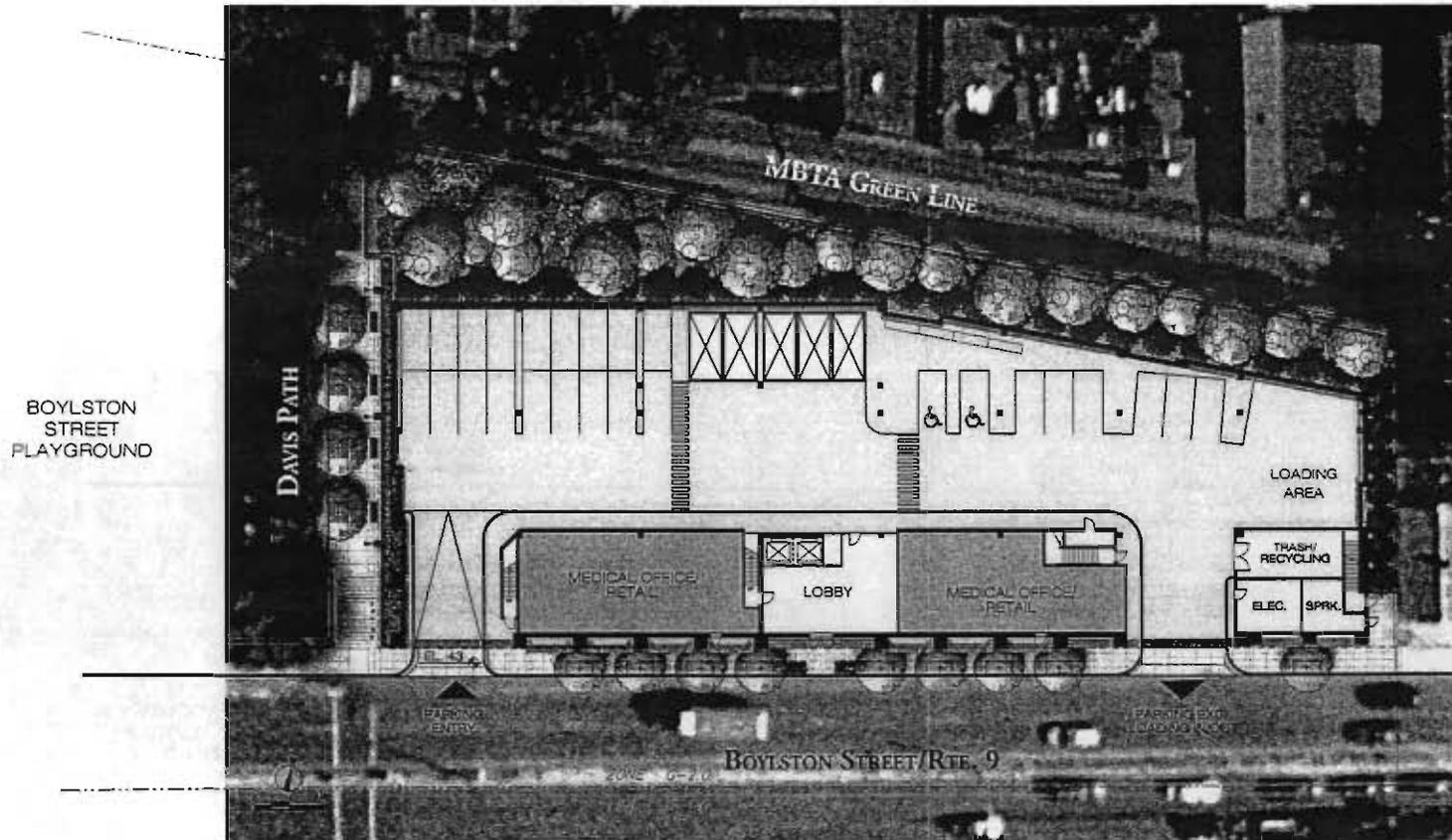
1

111
Boylston
Street

Brookline,
Massachusetts

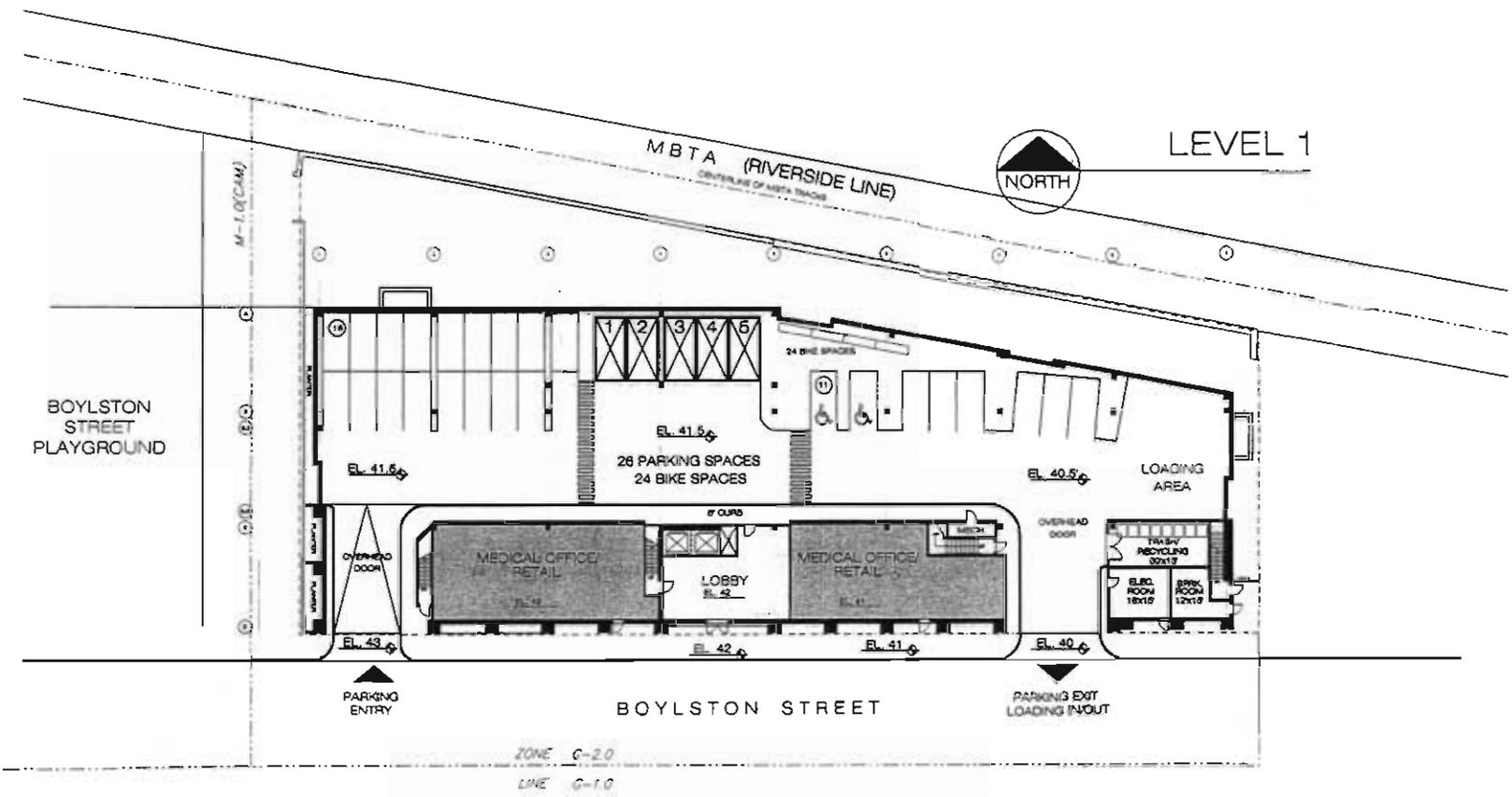
111 Boylston Street LLC

Leggier McCall Properties LLC



Level 1
Floor Plan/
Site Plan
(Street Level)

2



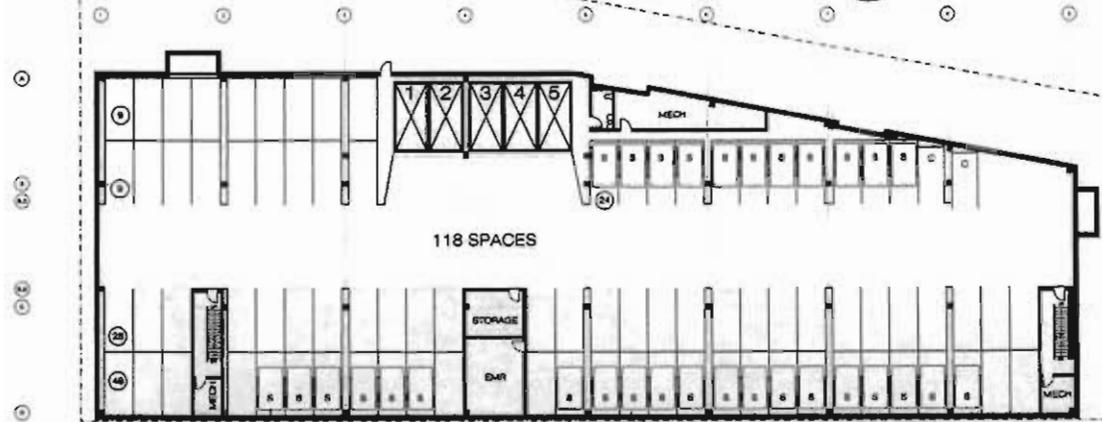
LEVEL 1



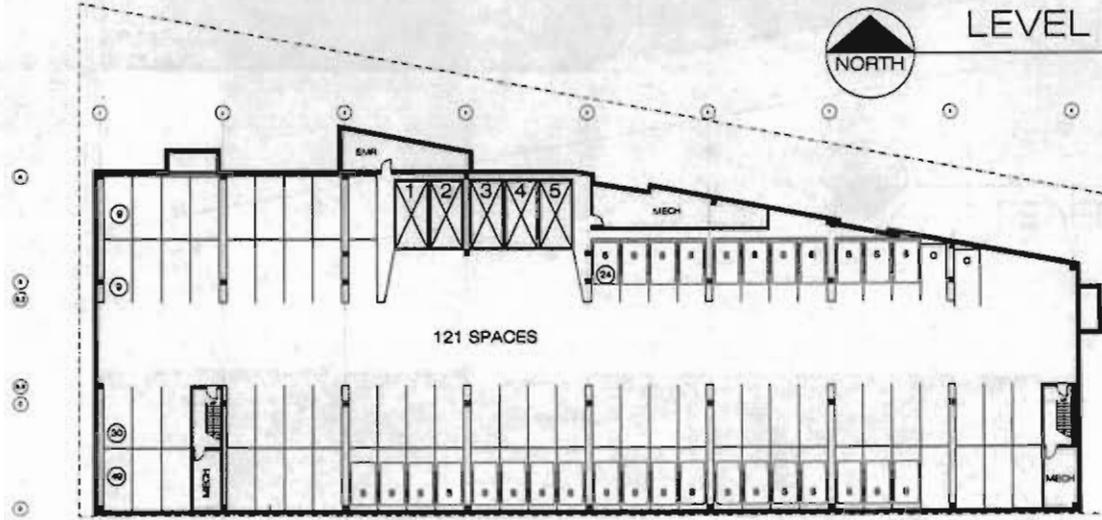
Level 1
Floor Plan
(Street Level)
3



LEVEL P-1



LEVEL P-2



111
Boylston
Street

Brookline,
Massachusetts

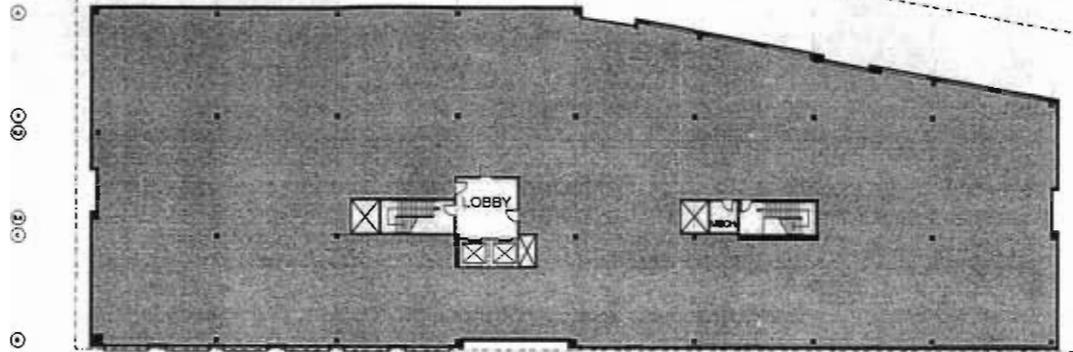
111 Boylston Street LLC

Legg Mason Properties LLC

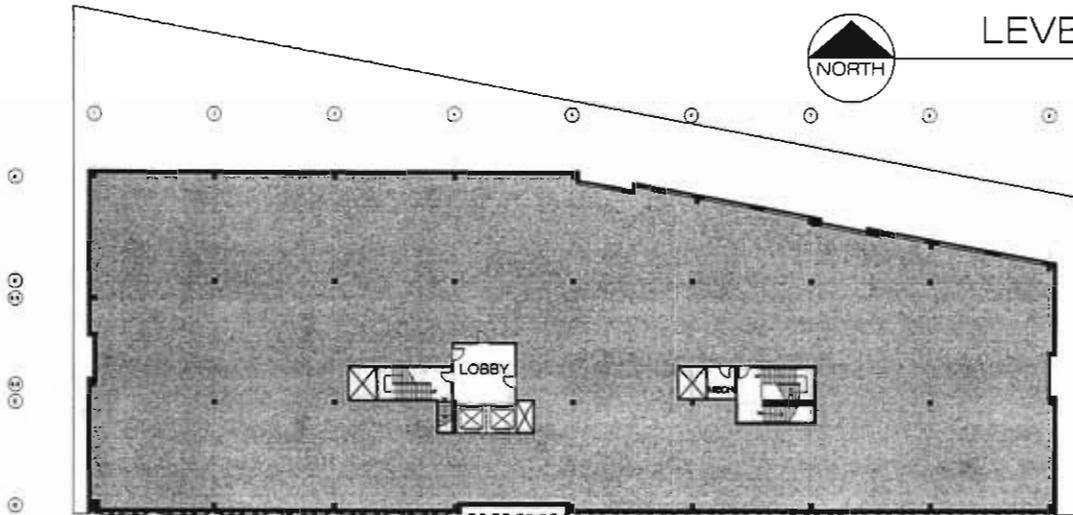
Level 3
Level 2
Floor Plans
5

SA SPAGNOLO
CORREIA &
Associates, Inc.
300 High Street | Boston, MA 02119
617.451.0900 | 617.451.0900

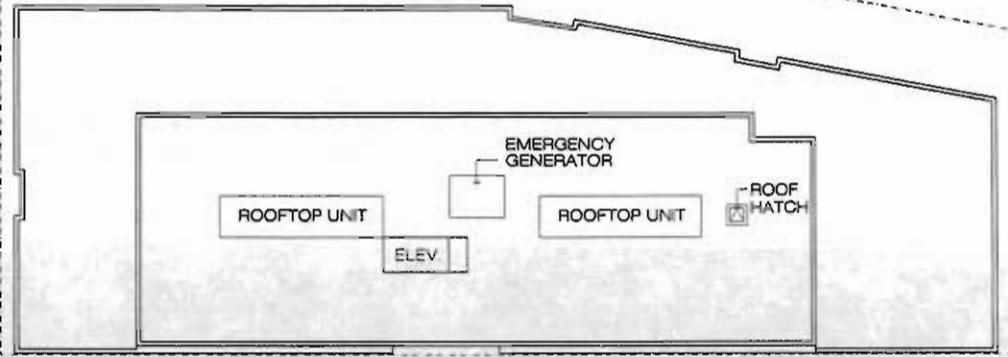
LEVEL 3



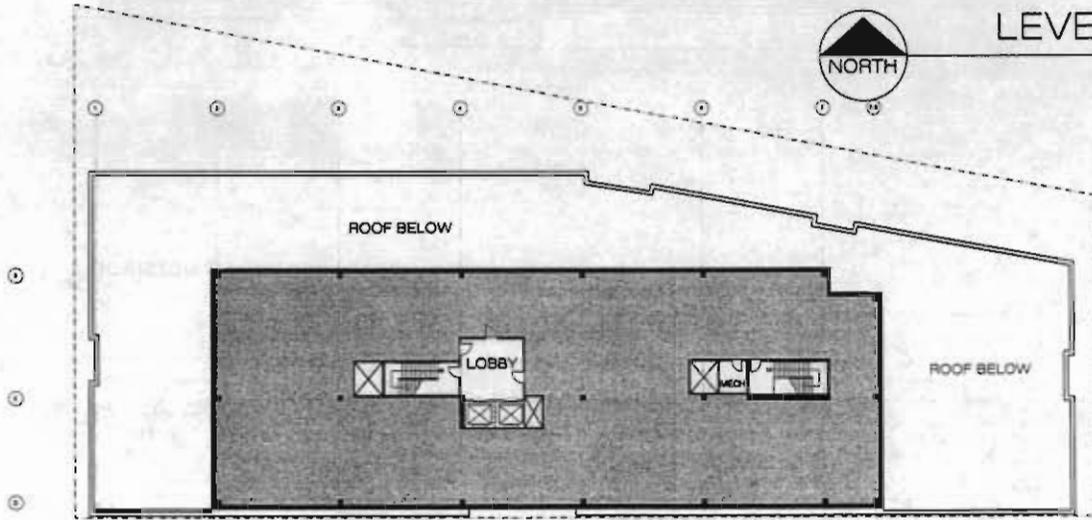
LEVEL 2

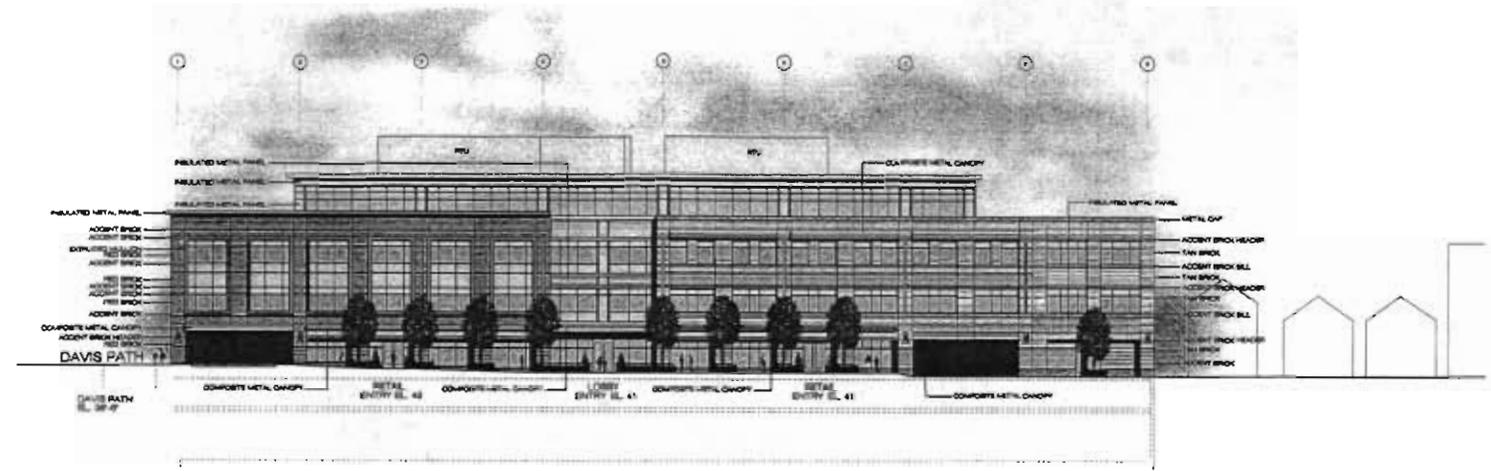


ROOF

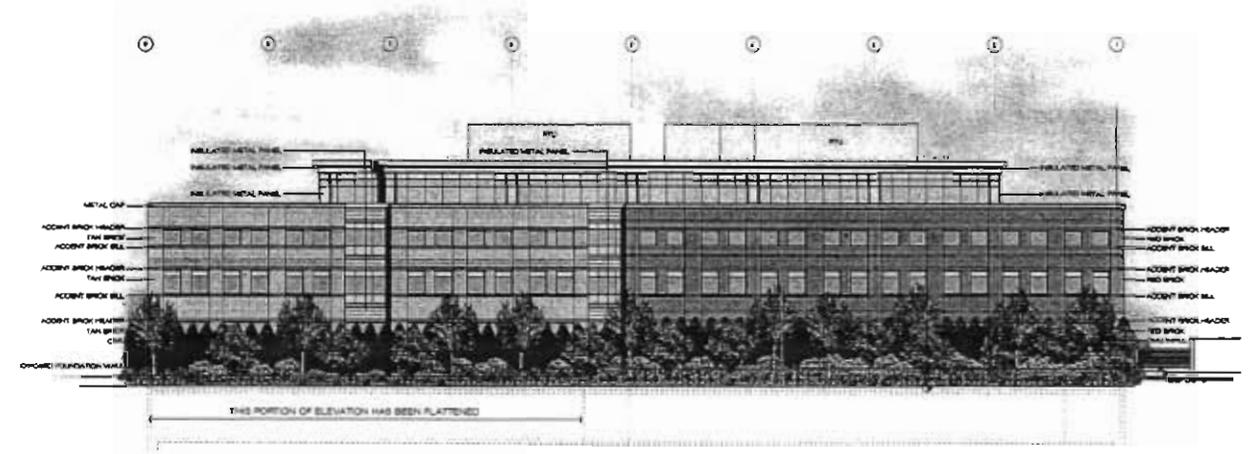


LEVEL 4

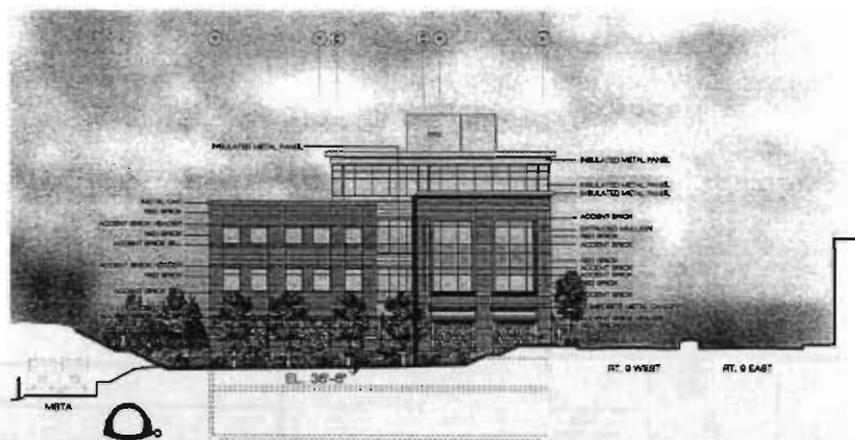




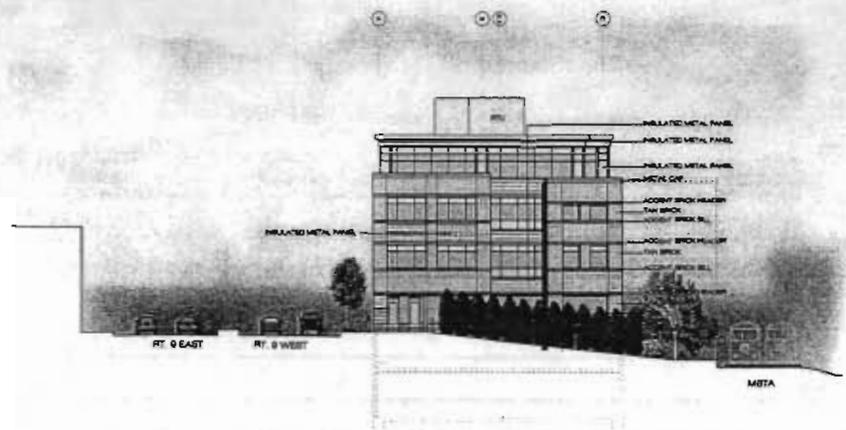
Boylston Street Elevation (South Elevation)



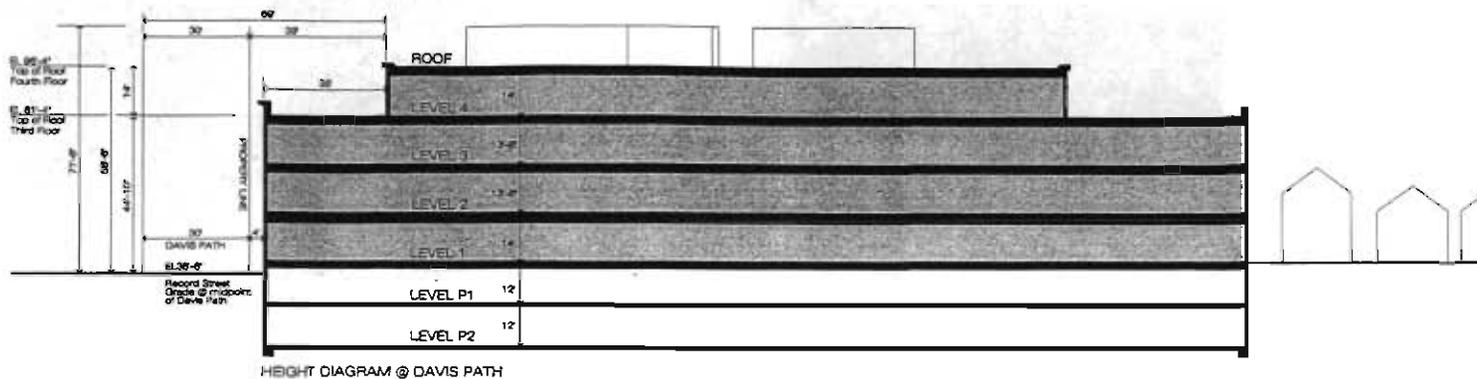
MBTA-White Place Elevation (North Elevation)
(note: angled portion of facade has been flattened)



Davis Path Elevation (West Elevation)

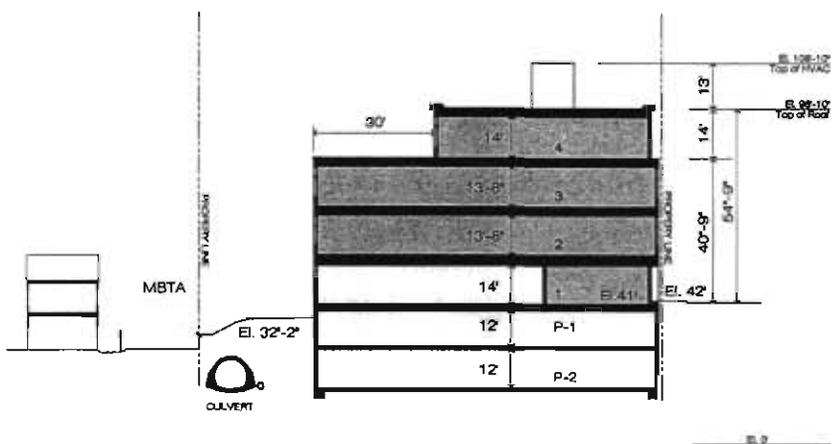


East Elevation

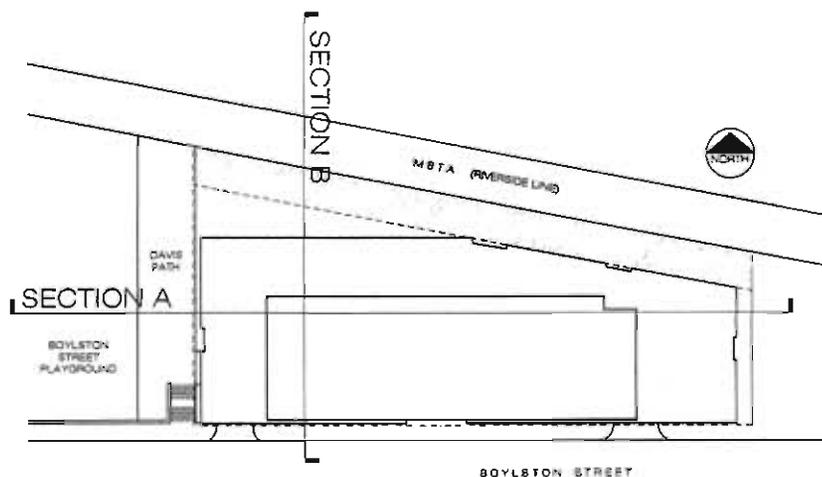


HEIGHT DIAGRAM @ DAVIS PATH

CROSS SECTION A



CROSS SECTION B



KEY PLAN



Town of Brookline

Massachusetts

BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080009

Petitioner, 111 Boylston Street LLC, applied to the Building Commissioner for permission to construct a mixed use office/medical and retail development together with an onsite parking garage as per plans. The application was denied and an appeal was taken to this Board.

On March 21, 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and, after continuances, fixed August 7, 2008 at 7:15 P.M. in the Main Library, 2nd floor, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, to its attorney, to the owners of 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 hearings was published on July 7 and July 24, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

PETITIONER: **111 Boylston Street LLC**

LOCATION OF PREMISES: **111 Boylston Street, Brookline**

DATE AND PLACE OF HEARING: Thursday, August 7, 2008 at 7:15 PM in the Main Library, 2nd floor

A public hearing will be held for a variance and/or special permit from

5.31.2 Exceptions to Maximum Height Regulations, Special Permit Required.

5.01 (Table of Dimensional Requirements); Footnote 1,

Setback of entrance to Garage/Covered Parking, Variance Required.

5.01 (Table of Dimensional Requirements);

Footnote 7, Minimum side yard, Variance Required

5.09; Design Review, Special Permit Required

5.30: Maximum Height of Buildings, Variance Required

5.32; Exceptions to Maximum Height Regulations (Public Benefit Incentives); Special Permit Required.

5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.

5.64; Side Yards for Non-Dwelling Units in Business

Districts; Variance Required

5.73; Rear yards in Business of Industrial Districts

Variance Required

6.02; Off-Street Parking Space Regulations.

6.02.1.b; Special Permit Required

6.04; Design of All Off-Street Parking Facilities

6.04.3; Special Permit Required

5.44; Modification to Height of Accessory Underground Structure, Special Permit Required

5.31 Height of Mechanical Equipment Above the Roof and

Such other special permits and relief as the Board of Appeals

shall determine, including modification of previous Board decisions

in Case Nos. 1197, m 1477 and 2552, as necessary

Case #1197 dated 21 November 1962, Modification Required

Case #1477 dated 24 November 1967, Modification Required

Case #2552 dated 10 November 1982, Modification Required

Of the Zoning By-Law to construct a mixed use office/medical and retail development together with an onsite parking garage at **111 BOYLSTON ST BRKL**. Said premises located in a D district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 the effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Enid Starr
Jesse Geller
Robert DeVries

On August 7, 2008 at the time and place specified in the notice a public hearing was held by this Board. Present were Chairperson Enid M. Starr and Members Jesse Geller and Jonathan E. Book.

The Petitioner's proposal was presented through its attorney, Kenneth B. Hoffman of Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116.

The proposed development consists of an office building with retail space on the first floor and inside parking to be located at 111 Boylston Street on a collection of four lots and a private way located next to Davis Path and the Boylston Street Playground. The MBTA railroad tracks for the Green "D" line run along the northerly property line. The buildings currently on the property include a three-decker residential dwelling, a warehouse building, and an accessory structure with a street-level platform, all of which would be demolished. Almost all of the rest of

the property is paved and used for parking. The site slopes down from Boylston Street to the tracks approximately 10 feet. The surrounding area includes residential and commercial properties along Boylston Street and residential dwellings along White Place to the north of the MBTA tracks. The project site is located in a G.2.0 zoning district. The parcel immediately east of the site is in a G.1.0 zoning district. The southerly half of the MBTA parcel abutting the project site is in the G.2.0 District. The northerly half of the MBTA parcel is in a T District. Davis Path lies to the west. The easterly half of Davis Path abutting the project site is in a G.2.0 zoning district and the westerly half of Davis Path is in an M 1.0 zoning district.

The Petitioner initially proposed to demolish the structures on the site and construct a four-story building with one level of underground parking. This proposal has been modified to a full three-story building with a partial fourth floor and two levels of underground parking. The building would contain retail, general or medical office use or any other allowable use in the G district. The first floor would also have a drop off/pick up area and loading area. A vehicle queuing area would be located behind the first floor office/retail space and center lobby. The vehicular entrance would be located to the west of the building lobby. The egress drive would be located toward the east end of the building between the office/retail area and the building's service areas.

Since both Boylston Street and Davis Path are considered streets under the Zoning By-law, the site is a corner lot. This results in the lot having two front yards. The Petitioner has the right to select which lot line will be the side lot line and which will be the rear lot line. In this case, the Petitioner has selected the lot line along the railroad tracks to be the side lot line and the east lot line to be the rear. With this arrangement, the proposed front yard setback along Boylston Street is approximately 1 foot, the front yard setback along Davis Path is approximately 4 feet,

the side yard setback along the railroad tracks ranges from 20 feet to 47 feet and the rear yard setback is 8 feet. The Zoning Bylaw requires only that the building be set back from the rear property line. There are no front and side yard setback requirements. Notwithstanding the absence of required front and side yards, the Petitioner is proposing a substantial setback to provide a landscape screen along the tracks. The rear yard setback would also be landscaped. The building's fourth story would be set back at least 50 feet from the "T" District to the north and 50 feet from the "M" District to the west. The below grade parking levels would be accessed by five car elevators and all parking would be managed by attendants. A number of parking spaces are tandem or stackers. The Petitioner is proposing 265 parking spaces: 26 spaces on the first level that are largely pick up/drop off spaces; 118 spaces on the first parking level and 121 spaces on the lowest parking level, including stacker spaces. The garage will not have windows.

The building would contain 70,636 s.f. and be 58 feet 6 inches high as measured from the midpoint of Davis Path. Because of the change in grade, the rear of the building appears higher. The Petitioner is proposing to berm the grade at the rear of the building to cover the underground garage wall. The materials for the building's exterior include two different colors of brick with accent brick, metal paneling and windows.

The Petitioner is proposing to make improvements to Davis Path as part of the proposal. This includes new paving, planting beds, trees and benches. The Petitioner is also proposing new landscaping along Boylston Street and along the east property line.

Mr. Hoffman observed that the redevelopment of 111 Boylston Street is in furtherance of the goals of the Town's Comprehensive Plan. The Comprehensive Plan was adopted by the Board of Selectmen in December, 2004 and by the Brookline Planning Board in January, 2005.

The design review section of the Zoning Bylaw, made applicable here because the property is on Boylston Street (Route 9), makes reference to the Comprehensive Plan as a touch stone in granting discretionary zoning relief under the design review special permit provisions of the Zoning Bylaw.

The Comprehensive Plan contains a section called "Route 9 Balancing Regional and Local Needs." The Plan states that "Route 9 has primarily been envisioned as offering an opportunity for commercial development that can help to expand the community's tax base." Further, the Plan says that the market for commercial and residential development within the Route 9 Corridor is strong, and represents a unique opportunity to support new commercial and residential growth within the Town."

In addition to being consistent with the Comprehensive Plan, the proposal has the endorsement of the Planning Board set forth in the Planning Board report to the Board of Appeals. The proposed redevelopment of the site also has the support of the Director of Planning and Community Development.

Mr. Hoffman said it is worth noting that the proposed development has been pending before the Town Planning Board since the fall of 2007. The Planning Board appointed a Design Advisory Team ("DAT") which met from November 28 through May 5, 2008 on five (5) separate occasions. The DAT process resulted in numerous changes to the project and addressed many of the concerns of the neighborhood. The DAT minutes from each of its meetings have been submitted to the Board and have been made part of the record. With respect to the existing buildings, the Brookline Preservation Commission has issued Certificates of Non-significance.

Mr. Hoffman noted that while the Building Commissioner's denial letter cited both variance and special permit relief for the project, all the relief sought and needed is by special

permit. The special permit sections that apply and from which relief is being sought are as follows:

Section 5.01 – Table of Dimensional Requirements, Footnote #1: If the entrance to a garage or covered vehicular passageway faces toward the street to which its driveway has access, said entrance shall be at least 20 feet from the street lot line.

Section 5.09(a, h) – Design Review: Any new structure which fronts on Boylston Street, or any new non-residential use in a non-residential district with more than 10,000 s.f. of gross floor area or with 20 or more parking spaces, requires a special permit subject to the design review standards listed under Section 5.09.4(a-1). The Petitioner has submitted an Impact Statement that addresses community and environmental standards.

Section 5.30 – Maximum Height of Buildings

Section 5.31.1 – Exceptions to Maximum Height Regulations

Section 5.32 – Exceptions to Maximum Height Regulations (Public Benefit Incentives): Public benefits may include but are not limited to public parking; public open space, either within public view or access; historically appropriate building materials; street improvements such as paving, wider sidewalks, underground wiring, lighting, landscaping, and pedestrian walkways and benches; maintenance of Town open spaces; and preservation of historic structures significant to the Town. Any additional height allowed under this section shall be set back 50 feet from any surrounding land not in a public way in an S, SC, T, or M District. The Petitioner is proposing to provide the following public benefits: improvements to Davis Path; installation of Boylston Street pedestrian improvements including a wider sidewalk, underground wiring, and landscaping; maintenance of Davis Path; and increased on-site landscaping. *Special permit required.*

HEIGHT

	Maximum/Required	Proposed	Finding
Davis Path (from mid-point elevation)	45 feet / 60 feet*	58 feet 6 inches	Special Permit*
Setback from Centerline of Railroad Tracks for Height Above 45 feet	50 feet	50 feet	Complies
Setback from Boylston Street Playground for Height Above 45 feet	50 feet	69 feet	Complies
Height of Mechanical Units	10 feet	11.5 feet	Special Permit**

* Under Section 5.32, Exceptions to Maximum Height Regulations (Public Benefit Incentives), the Board of Appeals may allow by special permit a maximum height greater than is normally permitted, up to 60 feet for G-2.0 zoned properties in a buffer zone, provided substantial public benefits are provided by the Petitioner and the additional height is set back 50 feet from any surrounding land not in a public way in an S, SC, T, or M District.

** Under Section 5.31.1, Exceptions to Maximum Height Regulations, substantial rooftop structures such as mechanical equipment shall not exceed the height limit by more than 10 feet unless a special permit is granted by the Board of Appeals.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.44.2 – Accessory Underground Structures: Any part of a required side or rear yard may be occupied by part of a main building for accessory garage use that is not located entirely beneath the surface of the ground provided the height of any such structure shall not exceed three feet above the grade of the natural ground contiguous to the structure.

Section 5.44.4 – Accessory Underground Structures: The Board of Appeals may by special permit modify the setback requirements and height limitations in Section 5.44 provided that such modification is counterbalanced by appropriate landscaping and screening. *The underground garage extends up to five feet above the grade of the natural ground in the rear yard, and therefore, a special permit is required.*

Section 5.01 – Table of Dimensional Requirements, Footnote #7: References Section 5.64, Side Yards for Non-Dwelling Uses in Business or Industrial Districts. See Section 5.64 below.

Section 5.64 – Side Yards for Non-Dwelling Units in Business Districts: When a side lot line in a G District abuts an S, SC, T, or M District, the side yard requirements of the S, SC, T, or M District shall apply. *The Petitioner has elected the lot line along the railroad tracks to be the side lot line, but the change in zoning districts actually occurs along the centerline of the railroad tracks, not along the lot line.*

Section 5.70 – Rear Yard Requirements

Section 5.73 – Rear Yards in Business or Industrial Districts

SETBACKS

	Required	Proposed	Finding
Front Yard Setback for Garage Entrance	20 feet	1 foot (estimate)	Special Permit †
Boylston Street Front Yard Setback	0 feet	1 foot	Complies
Davis Path Front Yard Setback	0 feet	4 feet	Complies
Rear Yard Setback (building)	17.2 feet	8 feet	Special Permit †
Rear Yard Setback (underground garage)	5 feet	8 feet	Complies
Underground Garage Height in Rear Yard Setback	Max 3 feet above ground	7 feet above ground	Special Permit ‡
Side Yard Setback (Railroad tracks)	0 feet	20 feet to 47 feet	Complies

† Under Section 5.43, Exceptions to Yard and Setback Regulations, the Board of Appeals may issue a special permit to substitute other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law, if counterbalancing amenities are provided.

‡ Under Section 5.44.4, the Board of Appeals may by special permit modify the setback requirements and height limitations of accessory underground structures provided that the modification is counterbalanced by appropriate landscaping and screening to assure the same standard of amenity to nearby properties.

Section 6.02.1.b – Off-street Parking Space Regulations: The initial proposal required some relief for parking. The revised proposal meets the requirement for provision of parking spaces.

Section 6.04.3 – Design of All Off-street Parking Facilities: Parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle. The Board of Appeals may by special permit modify this requirement when a parking facility is under full-time attendant supervision. The Petitioner has stated there will be valet parking. *Special permit required.*

PARKING

	Required	Proposed	Finding
Parking Spaces	265 spaces	265 spaces	Complies

Modification Required for Prior Board of Appeals Decisions:

- Case #1197, November 21, 1962
- Case #1477, November 24, 1967
- Case #2552, November 10, 1982

Mr. Hoffman made the follow comments as to the special permits.

While the building complies with the maximum height elevation for a G District, the Petitioner is applying for bonus height which requires a special permit. The portion of the building that requires the special permit for bonus height fully complies with the setback requirements to the nearest T District and to the M District to the west. These setbacks were established to create a buffer between the commercial zone and the nearest residential zone. The remaining special permits are relatively minor. They relate to the height of the mechanical units on the roof, the garage wall, the garage entrance set back and the rear yard setback. The proposed mechanical equipment would be a foot and a half higher than allowed to accommodate energy efficient units. A special permit is required for any part of the underground garage wall in a required setback that exceeds 3 feet above the natural grade. The height of the garage wall varies, but in certain sections is 7 feet above the natural grade within the setbacks on the west, north and east property boundaries. A special permit is also required for the rear yard setback. The required setback for the rear yard is 17.2 ft. Eight feet is being proposed. To counterbalance the shortage there is additional buffering and landscaping on the northerly and westerly side of the building and an evergreen screen in the available rear yard setback. Finally,

because parking facilities include stackers and tandem spaces, a special permit is required under Section 6.04.3.

As a housekeeping matter the Building Commissioner has provided for a modification of prior Board of Appeals decisions from 1962, 1967 and 1982 to the extent they are inconsistent with the Board's decision in this case. None of those decisions is material to the proposed development.

Karl Neubauer, Project Manager of Leggat McCall Properties, gave an overview of the project. He presented an aerial view of the existing site and the existing site plan showing the boundaries of the project and its location in the Village Gateway area of Route 9. He presented photographs of existing site conditions showing the slope and topography of the land and the abandoned buildings formerly used as a warehouse or a taxi cab operation. He presented views of the MBTA tracks that divide the property from White Place and also showed photographs of Kerrigan Place, a private way to be abandoned once the project is commenced, and also pictures of the Boylston Street Playground adjacent to Davis Path which will benefit from improvements to be provided by the Petitioner. Finally, Mr. Neubauer showed the Board the Boylston Street streetscape just east of the subject property and across Boylston Street. Mr. Neubauer described the Comprehensive Plan and the so-called Gateway East Vision Plan which was developed by the Town as part of the Comprehensive Plan adopted in 1992. Mr. Neubauer noted that the summary of the Comprehensive Plan begins with a statement about how Town residents want Brookline to look and feel in 2015. The plan "imagines" four primary initiatives, the first on the list being: "Commercial growth focused primarily in the Route 9 corridor." The body of the plan goes on to identify Route 9 as both an important civic space and an area that can support significant commercial and residential growth. Goals for this area of Route 9, the "Gateway East

Area” include creating an active and safe pedestrian and commercial frontage on Route 9; increasing the attractiveness of the area; improving the identity of the Gateway East Area; and seeking new commercial and mixed-use development opportunities. The plan goes on to say that appropriate redevelopment sites are limited. The project site was specifically identified as a mixed use redevelopment opportunity that would help the Town’s commercial tax base. Mr. Neubauer said that the Petitioner believes that the proposed building advances these goals and is the right response to this particular site.

A presentation was then made by Michael Tulipani with Spagnolo Gisness & Associates, Inc., the project architects. Mr. Tulipani described to the Board, using visual aides, a massing study showing early reiterations of the proposed building. These massing studies demonstrated that a three story building containing 2.0 floor area ratio deprived the site of the opportunity for landscaped open space including landscaping along the northerly property line adjacent to the MBTA tracks. The reiteration prior to the current plan described the building as having four stories with the fourth story being set back both from the MBTA right of way and from Davis Path. This scheme was determined by the Design Advisory Team and by the Planning Board to be the best arrangement for the building, moving it as close to Boylston Street as possible, thus leaving the maximum amount of open space and setback on the northerly property line and allowing for improvements to Davis Path. Mr. Tulipani then showed the Board the plans of the street level floor plan showing the office/retail space on the first floor along the Boylston Street corridor on either side of the lobby with the entrance and exit drives and the first floor parking facilities, including the automobile elevators to deliver the cars to the lower parking floors by the parking attendants. In addition to the Level P1 and P2 parking levels which contain both tandem and stacker parking spaces, Mr. Tulipani showed the second and third floor levels with the

setbacks on the northern property boundary as well as on Boylston Street, Davis Path and the eastern property line which is the rear property line. Mr. Tulipani noted that while no setbacks are required (except along the rear property line) under the Zoning Bylaw, the setbacks provided on the northern property line at the MBTA tracks are 20 ft. at the narrowest and 47 ft. at the widest. His diagram for Level 4 showed the reduced footprint of the fourth floor with setbacks from the T District on the northerly boundary of 50 ft. and a 50 ft. setback from the "M" District. The former is required by the public benefits section of the bonus height provisions of the Bylaw and the latter greater than required by the Zoning Bylaw. The roof plan with the mechanicals was presented to the Board showing the rooftop units in the center of the fourth floor roof. The rooftop equipment, which is permitted to be 10 ft. above the roof line, is an additional foot and a half above the roof line in order to accommodate high efficiency equipment. To illustrate the height compliance, Mr. Tulipani provided a partial section at Davis Path, which is the measuring point for height in accordance with the Bylaw. The three stories have a permitted height of 45 ft., with the proposed height of the three floors being 44 ft., 10 inches. The proposed height of the fourth floor having the benefit of the bonus height provision of the Bylaw is 58 ft., 6 inches where 60 ft. is authorized. Mr. Tulipani also showed the Board a section through the building on the Boylston Street façade, illustrating the relationship of the building and its setbacks to the culvert which passes through the property on the rear property line, to the MBTA tracks adjacent to the rear property line and to the buildings on White Place beyond the MBTA tracks.

With respect to design review, Mr. Tulipani showed the Board the elevations, north, south, east and west, with the varying façade details and historic brick materials with a great deal of fenestration and shadow relief with varied materials, including awnings and the lobby entrance at the center of the building on Boylston Street. The Board was shown a view looking

southeast on White Place to demonstrate the appearance of the building in relationship to the White Place homes, both looking southeast and southwest on White Place.

Joseph Geller, a senior principal of Stantec, Inc., landscape architects and planners then described the site and landscaping design for the project. Mr. Geller, reviewing the community and environmental impacts of the project, stated that one of the important elements of our landscape plan was to establish significant open space. Mr. Geller noted that 99% of the site is impervious and the plantings on site were either invasive or not in very good shape. Mr. Geller stated that the proposal provides for approximately 25% open space with a significant amount of pervious area and dense landscape. He stated that the relationship of the building to the environment is addressed because the design of the building is designed for occupancy to activate the street which is one of the goals of the Comprehensive Plan. He added that parking will be screened from view and the land will be bermed at the rear of the building in an effort to screen the parking garage and reduce the impact of the building profile. He stated that the Petitioner has minimized shadow impact by redistributing the permitted floor area. Mr. Geller noted that none of the roof surfaces are viewable from White Place. He added that there will be a reduction in the number of curb cuts from five to two which will make circulation safer and more efficient. He also added that the Petitioner has provided bicycle storage on-site. He stated that by increasing the amount of pervious area there will be a reduction in the amount of storm-water drainage coming from the site. The project will comply with the Town's Storm-Water Drainage By-Law and the state's new storm water regulations. Mr. Geller also pointed out that all utilities services will be provided underground and inside and, where they are not inside, will be properly screened. He stated that the Petitioner will comply with the Town's by-laws concerning signage and not detract from the surrounding properties. Mr. Geller, addressing safety and security,

stated that the Petitioner met a number of times with the Fire Department concerning safety and security and the design provides access for emergency personnel and equipment from both the front and the rear of the property. He also stated that lighting will be provided along Davis Path and Boylston Street and that the parking area will be closed at off-hours. Mr. Geller noted that there are no significant or historic structures being demolished, however, the Petitioner has committed to restoring the veteran memorial square and historic sign and the reconstruction of Davis Path. Davis Path has been characterized as "historic" by the Brookline Preservation Commission in its correspondence with the Planning Board. Mr. Geller, addressing energy efficiency, stated that the Petitioner is designing a LEED building and much thought has gone into the design to achieve that goal.

Mr. Tulipani then presented extensive shadow studies that were prepared by the Petitioner to determine shadow impacts, if any, of the various development schemes on nearby properties, including and in particular, White Place. Mr. Tulipani's studies were done based on solar conditions existing on September/March, October/February, November/January and on December 21st. The studies demonstrated that the shadow impacts were minimal as compared to the existing shadows from the current improvements on the site and from houses on White Place itself. Mr. Tulipani stated that a three story building using the permitted FAR of 2.0 casts greater shadows on the White Place neighborhood than the proposed four story building with the fourth story set back on the northerly side of the property.

The Petitioner then addressed the traffic issues.

Traffic Engineer Shaun Kelly, of Vanasse Associates, Inc., 10 New England Business Center Drive, Andover, Massachusetts, using a Power Point presentation, reviewed the traffic study that was conducted for 111 Boylston Street. Mr. Kelly described the site location for

traffic considerations. Mr. Kelly stated that Vanasse Associates, Inc. had considered a number of the streets and signaled intersections in the area including Washington Street, Boylston Street, High Street, School Street and Cypress Street. Mr. Kelly stated that the data that Vanasse Associates, Inc. collected was primarily utilized from Route 9 as directed by the Town's consultant. He noted that it was the same data that is being used for road design on Route 9 and also the same data that Children's Hospital would be using for its nearby development.

In discussing traffic volume, Mr. Kelly stated that Vanasse Associates, Inc. measured existing traffic volumes, cut-thru traffic and traffic volume for 850 Boylston Street, which is a similar medical office building located about one mile west of the site. Mr. Kelly stated that Vanasse Associates, Inc. had adjusted the traffic counts in two ways. He noted first that they adjusted them upwards of one per cent per year over five years which is the state standard for traffic analysis. Mr. Kelly stated that they also adjusted the volumes to include the traffic associated with the Children's Hospital project in full operation.

Mr. Kelly stated that in order to determine traffic that was unrelated to this project, they performed trip generation calculations. He stated that by using Institute of Transportation Engineers (ITE) trip generation formula for the medical office trips, the project generates 165 person trips in the morning peak hours and 216 trips at the evening peak hours. Mr. Kelly stated that it is worth noting that they looked at the empirical rates generated from 850 Boylston Street and they compared them to the ITE rates. Mr. Kelly stated that it was clear from this comparison that the ITE rates significantly overstate the amount of traffic based upon 850 Boylston Street. He noted that ITE traffic rates were 50% greater in the morning peak hours and more than double in the evening peak hours. Mr. Kelly stated that the second component of the trip calculations is the retail trips. Mr. Kelly noted that it is a small number of trips in the morning

and 30 trips in the evening. He added that it is not a huge increase on Route 9 which, today, carries approximately 2,200 autos per hour at peak hours. Mr. Kelly stated that he added the total sum of the trips together and adjusted them in two ways. Mr. Kelly stated that he first looked at non-auto trips. He noted that 40% of the people in the area use alternative modes of transportation. Mr. Kelly further noted that he used a worse case scenario of 15% rather than 40%. Mr. Kelly stated that the retail trips were also adjusted by using pass-by trips. These are trips, while new to the site, are not new to the Route 9 corridor. He stated then when all is taken into account he calculated approximately 140 trips in the morning and 200 trips in the evening. He added that in the morning the majority of the traffic will be inbound while in the evening the majority of the traffic will be outbound.

Mr. Kelly, in reviewing traffic distribution, stated, when studying 850 Boylston Street, Vanasse Associates, Inc. discovered that 65% of the morning entering traffic in the morning will be coming from the west of Cypress Street, while 35% of the morning traffic will be coming from the east, north or south of the project site. He noted that this calculation is based on existing traffic patterns. Mr. Kelly stated that the projected traffic is very similar. He stated that 65% will be headed westbound, while 35% will be headed elsewhere, primarily using Cypress Street.

Mr. Kelly noted that at the Planning Board hearings there was some discussion about traffic traveling over residential streets, with Davis Avenue being a major concern. Mr. Kelly stated that he calculated approximately 14 trips during the busiest hour on Davis Avenue will be attributed to the project site. Mr. Kelly recognized that it is a major concern of the neighbors and stated that the Petitioner is willing to work with the Town and its consultant to develop traffic-calming measures to at least discourage traffic on Davis Avenue.

Mr. Kelly stated that another concern raised at the Planning Board hearings was how much traffic would be placed onto Walnut Street from the project site. Mr. Kelly noted that much of the traffic in the morning on Walnut Street comes not from the west on Route 9 but comes from the south on Warren Street. Mr. Kelly stated that while some traffic to the project site may use Walnut Street, he is confident that there will be no significant impact, particularly during morning peak hours.

Mr. Kelly stated that the Walnut Street jug handle, at High Street and Boylston Street, will be where the project site east bound traffic will be turned around. Mr. Kelly noted that, instead of re-timing the light, the Town's consultant recommended a monetary contribution. He stated that the Petitioner has agreed to a \$20,000 contribution for future signal upgrades. Mr. Kelly stated that they also have agreed to work with the Town's consultant to modify some of the signage along Route 9 in order to identify the reverse direction turn at the Walnut Street jug handle.

In summary, Mr. Kelly stated that the curb cuts on Route 9 will be reduced from 5 to 2 and will improve access management to the site; that the Petitioner will use a Transportation Demand Management plan (TDM) that will encourage the distribution of MBTA schedules, use an MBTA pass program, use the MASCO shuttle service where possible, encourage a ride-share program and build bicycle racks on site; the Petitioner will contribute \$20,000 for future signal upgrades at the jug handle at Walnut Street and another \$20,000 for overall traffic mitigation measures for the area; and the Petitioner will provide, if the Town and its consultant agree, traffic calming measures for Davis Avenue and/or White Place.

Mr. Neubauer then presented the parking plan for the building. In response to comments on earlier schemes regarding perceived noise, air quality, and light-spill, he said the Petitioner

consolidated parking under the footprint of the building and fully enclosed it. This benefited the building massing significantly but yielded a tough footprint for a parking garage. With not enough room for ramps to connect the floors, the only option was to use vehicle elevators as the basis for vertical circulation.

Mr. Neubauer then described the parking operation: vehicles enter at the west, exit at the east, and move through the building via a one-way loop. The east entrance also acts as an off-hours entrance and exit for the loading area. This is the drop-off area and the pick-up area in the lobby. Vertical circulation is via five vehicle elevators. Vertical capacity is 30-40 cars per elevator per hour (or a total of 150-200 cars per hour). Parking and vehicle circulation shares the floor with 24 bicycle racks. Both underground parking levels are similar via a combination of single, tandem and stacker spaces. A "stacker" is a mechanical device that raises one car so another can park below, in effect yielding 2 parked cars per space. These are becoming more common in the Boston Metro Area at places with constrained parking like MGH, Harvard Medical School, Fenway Park, and the new Battery Wharf Hotel.

Mr. Neubauer advised the Board that functionally, the parking operation is labor-intensive requiring 8-10 valet attendants at peak hours. A visitor enters the garage where he/she will be directed by (1) or (2) greeter/expeditors to a queuing spot either in front of an elevator, along side the drive aisle, or in a parking space. The greeter will give the driver a ticket and direct them to the building lobby. Inbound queuing capacity is approximately 40 cars (or close to 1/3 of the peak AM load), (which the traffic engineer says may be overstated by as much as 50%). Cars will be moved into the elevator by (1) or up to (4) valet "runners" who will either take the cars themselves, or send the car to the parking levels of the garage. At an average capacity of 35 cars/elevator hour, 5 elevators can clear 40 cars off ground in less than 14

minutes; or 175 cars per hour (125% of our peak AM trips, again, which we believe is overstated). (1) to (2) parking attendants will be assigned to each floor to take cars from the elevators to parking spaces, and shuttle cars between tandem spaces and on/off stackers. The public will not have access to the two underground levels. Departing trips are the reverse. The street level greeter calls for a car; an attendant at the parking level retrieves the car and puts it into the elevator; the car is brought to street level and runner brings the car to a pick-up space; visitor present a paid receipt to the greeter, the greeter hands-over the keys, and the visitor exits the garage. As the garage empties at the end of the day, cars will be brought to street level space and keys turned over to drivers. At the end of the day gates will be closed and exit by will be by access control card. Mr. Neubauer said these plans were developed in conjunction with a parking design consultant and a parking operations consultant, and have provided the Planning Department with letters from both attesting to the viability of this parking scheme.

Mr. Neubauer then addressed the relief sought for additional height. The project is eligible to exceed the actual height of 45 ft. by providing public benefits under Section 5.32 of the Bylaw. Section 5.32 provides in part,

“As required by the Board of Appeals, the developer of the lot shall provide substantial public benefits including but not limited to public parking; public open space, either within public view or access; historically appropriate building materials; street improvements such as paving, wider sidewalks, underground wiring, lighting, landscaping, and pedestrian walkways and benches; maintenance of the Town open spaces; and preservation of historic structures significant to the Town.”

Mr. Neubauer described this public benefits the project will provide to the Town.

The proposed benefits to support the public benefit incentives are: (1) ±25% of site is allocated to publicly visible open space (none is required). (2) historically appropriate building materials – predominantly red brick; (3) reconstructing Davis Path, an historic structure significant to the Town. (4) Street improvements to Boylston Street and Davis Path: (5) Wider

sidewalks; underground wiring; lighting; landscape; and benches and other street accessories. (6) maintenance of Davis Path (a pedestrian walkway) between the Boylston Street sidewalk and the footbridge; and (7) reconstruction of Pfc. William F. Kelly Square, which is currently collapsing into the park, (8) Traffic calming at Davis Avenue and/or White Place as directed by Town; (9) \$40,000 toward future traffic improvements at Gateway East and other nearby intersection, (10) Environmentally sustaining green buildings per LEED certification standards; (11) Increased daytime patronage of Brookline Village and Boylston Street businesses; (12) Financial Enhancements:

(i) +/- \$400,000 net increase in property tax revenues (per EDAB estimates);

(ii) +/- \$122,000,000 in long term tax certainty via our voluntary PILOT agreement, (assuming gross property tax revenues of +/- \$450,000, average growth at 3% per annum for 75 years). This is the potential value of the benefit to the Town should the project be sold to a not-for-profit institution. The cost of providing this benefit to the town is impairment of property value of +/- \$5,600,000, (assume \$450,000 gross property tax expense capitalized at 8.0%) again, only if the project were sold to a not-for-profit. In other words, if \$450K were to drop to the bottom line of a NFP buyer as an operating expense, then they would be willing to pay +/- \$5,600,000 less for the project; and

(iii) \$85,000 purchase of Town owned property putting that unused parcel back on the tax roles.

The Board then opened the hearing to those who wished to speak in support or in opposition to the project. Those addressing the Board were the following:

Attorney R. Jacob Walters, of Goldenberg, Walters & Lipson, 7 Harvard Street, Brookline, Massachusetts, representing a number of the residents of White Place, stated that the impact of this project falls primarily on White Place. He also pointed out, regarding the fourth floor, that it is being sought under the public benefits provision of the Zoning By-Law which states that the Petitioner of a lot shall provide substantial public benefits. Attorney Walters stated that some of the public benefits that have been described in the Planning Board Report, such as underground

wiring, lighting and landscaping, are actually already required under the Design Review provisions. Attorney Walters suggested that the landscaping, however well done, is not a public benefit but, in fact, falls under the requirements of Section 5.43 for counter-balancing amenities. Attorney Walters, concerning the tax benefits, stated that whatever development occurs at that site, there will be taxes generated. He stated that to ask to put an entire additional floor on the building, as a result of the fact that they will be paying taxes, is not a substantial public benefit. Attorney Walters again suggested that the public benefit that is being provided is essentially the improvement of that portion of Davis Path. He noted, however, that the Petitioner is asking for seventy-one feet. He argued that the improvement to Davis Path might sustain the increase in height for the mechanicals. He noted, however, that in addition to the mechanicals, what is before the Board is a request for an entire additional floor. Attorney Walters stated that additional floor will add to the impact of the shadows on White Place.

Attorney Walters stated that there is a significant impact on White Place. He noted that street in the winter is extremely narrow. It can be extremely difficult to maneuver because of the snow. He noted that the residents of that street rely heavily on the sun for melt. He argued that it will become less of a melt, for both sidewalk and street, because of the shadows. Attorney Walters suggested to the Board that Section 9.05.b of the Zoning By-Law requires that there be no adverse effect on the community. Attorney Walters suggested that this project runs afoul of this section as well.

Attorney Walters, reviewing parking concerns, stated that with staff and visitors arriving early in the morning to the site, traffic will inevitably back up. He voiced his concerns that visitors will look for parking on White Place to avoid the backup. He also stated that regular

visitors will figure out which route to take, what short-cuts they can use and on occasion, where they can park other than at the site. He noted that White Place will be a very obvious solution.

Attorney Walters stated that kind of parking and that kind of extra flow of traffic, coupled with the lack of melt on the streets and sidewalks will also trigger Section 9.05.c by creating a dangerous situation for pedestrians, as well as vehicles.

Attorney Walters ended by stating that the Board needs to consider carefully whether the fourth floor meets the requirements of both the public benefits provision, as well as the Section 9.05 provisions, of the Zoning By-Law. It is his contention that it does not. He noted that if we were talking about a three-story building at forty-five feet, with mechanicals, we would be in a completely different space and White Place would accept it.

Annette Born, a resident of 50-1 White Place, Brookline, Massachusetts, stated that she is representing six owners of her condominium association. Ms. Born stated that lighting is achieved, in most of these units, through the front door. She noted that some of the units have windows in the front. She added that the back of the units have glass block windows. She also noted that the units have skylights on the roofs. Ms. Born stated that these condominium units are located in the lowest part of White Place. She argues that these units probably go beyond the seventy-one feet because of seven to twelve foot depression where White place slopes downward. Ms. Born stated that they will have no light and that they will lose their solar heating because of this project. Ms. Born then described the narrowness of White Place, particularly in the winter. She also raised concerns over parking. She stated that currently there are people who park on the street who are not residents of the street.

Paul Gardner, a resident of 40 White Place, Brookline, Massachusetts, stated that he was disappointed in the lack of improvement from the initial proposition for the development. He

stated that he had expectations of more changes emerge from the process. Mr. Gardner stated that he opposes this process for three primary reasons. First, he stated that the massing and scale of the project is completely out of character with the neighborhood and he believes it should be reviewed. Second, he stated that 75% of the first floor is all parking. He believes that doesn't fit in with the neighborhood or with what the Town seems to want to do, which is to create a living space where people can walk to. He argued that this is an urban box which sits right on Route 9. His third concern was with the traffic study. Mr. Gardner stated that the first time neighbors saw the study was at a meeting in June. He believes that it vastly underestimates how people will travel to this site. He specifically noted that there is only one way into this site and that is heading in a westerly direction. He stated that both White Place and Davis Avenue will see significant amounts of traffic. He also stated that an additional 100 autos, put onto the intersection at rush hour, is pretty significant. He voiced concern over why the Town can't reduce the number of required parking spaces to mitigate this. Mr. Gardner ended by stating that while he would like to see the site developed, he is opposed to this particular project.

Jack Donigian, an owner of a multi-family building at 96 Boylston Street, across the street from the project, stated that he had several questions he wished to pose to the Petitioner. He asked how the auto headlights would affect the neighboring homes as cars exit the site. He also asked if there were any sounds or low-level noise emanating from the utility equipment and dumpster. He stated that he had concerns about people parking on Boylston Street, as they wait for the valet service and he asked if there were any proposals on how to keep some of the parking places on Boylston Street accessible to the existing buildings. His last question was an inquiry as to any possibility for overnight parking rentals at the site. Mr. Donigian stated that he generally welcomes this attractive development of a site that has been neglected for a long time.

Chair Enid Starr stated that perhaps Attorney Hoffman will address Mr. Donigian's questions in his rebuttal.

Merelice England, a resident of 22 White Place, Brookline, Massachusetts, stated that she believes the Town's thinking has moved way ahead of our current zoning requirements. As examples, Ms. England noted that the 2.0 FAR is out of scale for the site; that the Town's current parking requirements are far more generous than a Petitioner would receive in neighboring communities; the fact that parking is not included in the FAR calculations, which contributes to the added height of the building; and that in the future she hopes that green building will be a part of our zoning by-law and that talking about LEED certification will not be considered a public benefit but a requirement. Ms. England noted that the Petitioner did not reference what level of LEED certification they were looking for. Ms. England stated further, that given the current zoning, there are several things that can be controlled. She stated that one is the level of mixed use of this building. She noted that the Comprehensive Plan anticipated mixed use, but the level of mixed use at this site is a very low percentage. She noted that if there was more of a mixed use, the parking requirements would not be as stringent. She also stated that shower space should be provided for those who bike to the facility if they really wished to encourage alternative means of transportation. Ms. England believed that the list of public benefits that the Petitioner presented was cynical. She suggested that tax revenues should not be listed as a public benefit, however listing them as such, it should be offset by the knowledge that some of the value of the neighboring homes will go down.

Charles Osborne, a resident of 74 Davis Avenue, Brookline Massachusetts, stated that the developer's presentation is complete and impressive and acknowledged the Planning Department for their help in achieving this presentation at the request of the neighborhood. Mr. Osborne

stated that he does not believe that this proposal is the best project we can have, yet it has made tremendous strides from its original presentation. He believes the impact of the building is exacerbated by the 2.0 FAR and the slope of the site. He raised concerns about the first floor on Boylston Street that is largely used for parking and traffic circulation. He stated that as a result of these issues – you have a building that is too large and a floor that has very little occupied space. He stated that he would like to see improvements in these areas.

Lynn Johnson, a resident of 33 White Place, Brookline, Massachusetts, stated that she agreed with her neighbors' comments concerning massing, shadows, traffic impact and their skepticism about some of the public benefits. Ms. Johnson stated that she does not live in the shadow zone. She stated that her personal concern is about the impact this building will have on the neighborhood as a whole. She stated that the scale of the building is not in keeping with the historical quality of the neighborhood, which is mostly three story buildings. She also stated that, while three or four story buildings, on Boylston Street are not unreasonable, it is the extreme slope of this site that makes this building mammoth, as viewed from White Place and it will have a major impact on the community.

The Board adjourned the hearing and announced it would be continued on the 14th of August at 7 PM. The Board announced it would make a site visit on Tuesday, August 12th at 3 PM.

Chair Starr explained the procedure for the adjourned hearing, scheduled for 7:15 P.M., on Thursday August 14, 2008. She stated that hearing would be re-opened and that the public, in opposition to the application, will be heard. She stated that the Petitioner will then have an opportunity to rebut and then the Board will hear from the Planning Board and the Building

Department. Chair Starr stated that the Board will then deliberate aloud and vote on the application.

Chair Starr stated, that while the Board will not be receiving comments, she welcomed any members of the public to attend their site visit.

Upon motion made and duly seconded, it was UNANIMOUSLY

VOTED: To adjourn the hearing for 111 Boylston Street until Thursday, August 14, 2008 at 7:15 P.M.

The public hearing was adjourned at 9:00 P.M.

The hearing reconvened on the 14th of August at 7 PM and heard the following residents:

Linda Greenberg of 68 Davis Avenue spoke about the unique neighborhood of Davis Avenue and White Place and that the Town had to make a hard choice as to whether or not this neighborhood should develop the way Coolidge Corner has developed. She particularly noted a concern that Route 9 traffic would be overburdened and push some of the traffic onto local streets which would potentially risk the safety of school children, noting that there were three schools in the vicinity. She questioned the parking operation with the valet parking and finally made the suggestion that the Town have an independent traffic analysis so that the Town could determine whether the Petitioner's traffic proposals and mitigation were sufficient to address these concerns.

The Board then heard from George Vien of 60 Davis Avenue. He described that he grew up in the neighborhood and that his primary objection was that the building was too big for the site and for the neighborhood. He commented that he believed that public benefits were inadequate and were things that the developer would do on its own or would otherwise be required to do. He questioned the Petitioner's intentions towards the community. He questioned

the traffic impact and the fact that the retail space was inadequate to enliven the neighborhood after hours.

The Board then heard from Frances Shedd-Fisher, 139 Walnut Street. She remarked that she was generally in support of this development and believed that the Petitioner had tried to be responsive to neighborhood concerns. She commented that if the building is to be built and the current zoning is to be accepted, which she noted it must be, she thinks the building to be built would not be comfortable for at least two neighborhoods. She said the choice is whether or not to discourage development that is not perfect or encourage development that will contribute financially to the broader community, including the neighborhoods affected. She did express concern regarding traffic mitigation measures based upon her concern about the incremental effect these various projects will have on traffic, although she acknowledged that this project would have a minimal effect on traffic or as she described "it would be a drop in the bucket." She also stated her support for concerns regarding potential noise pollution from mechanical units and potential light pollution from the building.

Then Board then heard from Dan Salzman of 62 White Place. Mr. Salzman presented the Board with a few visual aids by power point presentation. He showed a slide of prior massing studies of the building developed by the Petitioner and complained that the massing study did not comply with zoning requirements. He also discussed shadow impacts and complained that the shadow impacts currently and from the proposed building are detrimental to White Place. He acknowledged that some houses on White Place currently block much of the sunlight to the street, but he noted that even small amounts of sunlight have a beneficial effect on snow melting. He suggested that the "guiding principles" of the Zoning Bylaw suggest that the extra height

should not be allowed. Citing Section 9.05 of the Bylaw, he also commented that he thought the use as developed would adversely affect “the neighborhood.”

The next person that addressed the Board was Annette Born of 50 White Place, speaking on behalf of Katherine Kirshner who was not available to attend the hearing. Ms. Born read a statement from Ms. Kirshner. In her statement Ms. Kirshner said she is a resident of 49 White Place and has attended most of the previous meetings. She supports appropriate development, but not this project because it does not provide benefits to the neighborhood. She said the massing hurts the neighborhood and the current design casts full shadows on the many of the residents of White Place. She further stated that the massing was overwhelming to White Place. She said the proposed development lacks architectural integrity as compared to the architectural significance of White Place.

Mr. Hoffman made the following concluding remarks:

“We appreciate the Board’s time in making a site visit last Tuesday and trust the Board gained a better appreciation of the need to develop this site as part of the Boylston Street corridor.

“I would like to take the opportunity to respond to some of the comments made last week by the public and by the Board, to ask the Board to hear from the Town’s traffic consultant who has reviewed our traffic analysis, to address the proposed Condition No. 4 in the Planning Board report relating to the Boylston Street playground and to make a closing statement.

“I would like to begin by refreshing the record regarding the zoning yard determinations and zoning setbacks. Because the lot is a corner lot, both Davis Path and Boylston Street are designated front yards and, given the right of the Petitioner to elect the other yards, the north side is designated the side yard and the easterly bound is designated the rear yard. The zone line

between the G District and the T District is a center line of the MBTA tracks. The northerly side yard setback requirement is zero. The Petitioner has proposed 20 to 47 ft. of setback to the northerly property line. Additional setback occurs by virtue of the almost thirty foot wide MBTA Green Line which adds to the distance between the proposed building and the nearest buildings on White Place. The rear property line is the only property line that requires a building setback under the Zoning Bylaw. The required rear setback is by formula based upon the length of the building. Applying the formula, the required rear yard is 17 ft. 2 inches. Eight feet is being provided. Currently, there is zero rear yard setback between the adjacent residential building and the warehouse building that occupies the site. The landscape plan creates a buffer where none now exists. Boylston Street is the front yard. The required setback is zero and provided is one foot. Davis Path, the other front yard, the required setback is zero and four feet is being provided.

“It was commented last week that a three story building was preferable because it would have less shadow impact on White Place than a four story building. This, in fact, is not the case. We have done a shadow study of the third and fourth story building as it is proposed and can report that the fourth story has virtually no greater shadow impact on White Place than a three story building in the location proposed.”

Mr. Tulipani then presented additional shadow studies to demonstrate Mr. Hoffman’s assertion. The studies illustrated that the fourth floor causes minimal or negligible additional shadow on White Place than three floors with the proposed setbacks. Thus, Mr. Hoffman said that, contrary to Mr. Walters’ suggestion, there is no benefit to those living on White Place to urge the Board to limit this development to three stories as a way to limit shadows.

Mr. Hoffman, in response to comments that people will park on White Place instead of parking in the building, said that White Place is a one-way street east to west and is therefore not easily reachable from Boylston Street. Moreover, for pedestrians to reach White Place, one must go down the steps from Davis Path, up the steps over the MBTA footbridge and down the other side of the footbridge to Davis Avenue as it turns into White Place. White Place is hardly a convenient parking spot for people using the building and there is no reason why it will serve as additional parking where the building provides ample parking for all of the uses proposed. To the extent anyone parks on White Place, the situation is a matter of enforcement of the two hour limit on street parking by the Police Department. It is also possible for the residents to request from the Transportation Committee a resident parking program for White Place.

Mr. Hoffman then responded to comments by Mr. Donigian who owns property on the other side of Boylston Street. Headlights coming out of the building will not shine into his building because the exit point is opposite the Midas Muffler property, not opposite his residential property. There is will no discernable noise emanating from the HVAC equipment or the dumpster. The dumpster is fully enclosed, and the HVAC is high efficiency equipment and is mounted on the roof. This project should also free up parking spaces on Boylston Street by providing ample inside parking in the building.

Mr. Hoffman clarified the issue of the height of the mechanicals. The Bylaw allows mechanicals to exist above the roof line to the extent of 10 ft. These mechanicals are in the middle of the roof. However, in order to make the mechanicals more energy efficient, the units themselves are 11½ feet high. They do not by definition make the “building” higher. For those who desire an energy efficient building, there is ample justification for exceeding the 10 ft. limitation by a foot and a half.

Referring to the Planning Board report, Mr. Hoffman stated that the Planning Board recommended a number of conditions to the grant of the special permits. Condition no. 4 requires a proposal to improve the Boylston Street Playground be submitted for review and approval by the Director of Parks and Open Space and by the Planning Board. Because that language is fairly broad as to what improvements are to be made to the Boylston Street Playground, the Petitioner has agreed, as part of the public benefits package, to make a payment to the Parks and Recreation Department in the amount of \$50,000 earmarked for improvements to the Boylston Street Playground.

The Town's traffic consultant, Kien Ho of the Beta Group, 395 Norwood Park South, Norwood, MA, addressed the Board regarding traffic. He presented the Board with a summary of the Beta Group's findings and how the issues identified were actually going to be resolved by the project applicants. Beta Group started its traffic review in October, 2007 and addressed a number of issues by memorandum and meetings. He noted that the petitioner's initial study did not include certain intersections and other pending projects. He requested that the Petitioner's traffic engineers incorporate additional intersections and data into its report. The Petitioner did as the Beta Group recommended, and the Beta Group then reviewed the results of the Petitioner's analysis. The Beta Group also focused on Route 9 and surrounding streets to determine the impact of this project on traffic. They reviewed all of the analysis provided by the Petitioner's traffic engineer regarding Route 9 and surrounding streets and intersections. Beta Group concluded that the project impacts complied with industry standards and that the measures in mitigation were adequate to address any significant or material impacts that the project might have on the surrounding streets and on Route 9. He also said that Beta Group looked at pedestrian safety in and around the site, given the entrance and exit sight distances. He noted

that the Petitioner has agreed to provide traffic control devices to protect pedestrians on the sidewalk walking in front of the proposed building. He noted that the proponent had agreed to avoid audio alerts to avoid noise pollution. Beta Group also examined the nature of the parking arrangements and operations that are proposed for the site. The chief concern with respect to the parking operation is to be comfortable that no queuing would occur on Route 9 by cars waiting to gain entrance to the building. He said the Beta Group's conclusion, based upon the analysis that he reviewed, was that there should be no queuing on Route 9 for cars waiting to enter the building and an adequate number of spaces were being provided to accommodate the parking needs of the proposed use. He also noted that the driveway as designed by the Petitioner presented no operational issues with respect to parking and traffic. The Beta Group recommended, in connection with its analysis, certain mitigation measures, including traffic calming devices on some of the residential streets. The Petitioner, he noted, has agreed to undertake such measures determined by the Town. He noted that Beta Group had recommended a \$20,000 contribution by the Petitioner towards improvements to the Gateway East traffic mitigation and the Petitioner has agreed to make such contribution as part of its public benefits package. Beta Group also recommended an additional \$20,000 contribution to address traffic calming mitigation within the study area surrounding the site, and the Petitioner has agreed to make that contribution as well. Other mitigation measures recommended by Beta and accepted by the Petitioner are a Transportation Demand Management program. The TDM program encourages occupants of the building to use accessible transit to reach the site. This includes tenant sponsorship of a T pass program given the close proximity to the Brookline Hills and the Brookline Village MBTA stations.

Finally, Beta recommended, and the Petitioner has agreed, to do a follow up study one year after the building is fully occupied to determine traffic impacts. The follow-up study would include a review of the number of parking attendants and the parking operation to determine that the systems in place are adequate to service the occupants of the building.

Mr. Hoffman made the following concluding statement.

“When I introduced the project on the 7th of August, I cited the Town’s Comprehensive Plan adopted by the Board of Selectmen in 2004 and the Planning Board in 2005. The reason I cited the Comprehensive Plan was to demonstrate to the Board the fact that this site has been specifically targeted for development by the Town.

“Each Town body with a responsibility for land use policy – the Town Meeting, the Selectmen, the Planning Board, the Planning Department and the Development Committee – addressed the desirability of developing this site and implemented a series of changes to the Zoning Bylaw that invited the development proposal before the Board.

“During the time since the first hearing last week, I went back and took a look at the Planning Board recommendations on the Zoning Bylaw Amendments which were adopted by the Town Meeting in November of 1992. The Planning Board recommendations to the changes in the Bylaw, which provided for a change in the use category under the Bylaw, residential to general business and provided for an increase in density for a floor area ration of 1.0 to 2.0 and implemented a 50 ft. setback from any proposed building to the T District, contained several relevant statements. The Planning Board quoted the Comprehensive Plan as follows:

‘To extent that selected development projects could contribute needed tax revenue to the Town, while remaining consistent with all other goals in this section, such development should be encouraged.’

“This comment speaks to the Petitioner’s agreement to make payments in lieu of taxes if the property becomes tax exempt, the so-called PILOT Agreement to which reference was made

by Karl Neubauer last week. Notwithstanding comments that the tax benefits generated by this project would not be of substantial benefit to the Town, such is not the case. While it is axiomatic that taxable property pays real estate taxes, the PILOT Agreement is a voluntary agreement which anticipates that if the property was to come off the tax rolls by being acquired and used by a non-profit institution, the building would nevertheless pay taxes or payments in lieu of taxes.

“Given the project’s potential as a medical office building operated by one of the non-profit hospitals, the PILOT Agreement becomes an important building block in the goal of the Comprehensive Plan to provide needed tax revenue to the Town. Thus, we believe the PILOT Agreement is an important aspect of the benefits that would accrue to the Town and was specifically identified as such in the Comprehensive Plan.

“Furthermore, the 1992 Planning Board recommendations to the Bylaw changes, which increased the floor area ratio, contained the following comment with respect to the Boylston Street corridor,

‘Recommended zoning changes include moderate increases in allowable density which will provide incentives for redevelopment of the street frontage. Zoning in many parts of the area would be amended from I-1.0 to G-2.0. New and existing setback requirements for taller building elements will provide effective protection for adjacent residential areas.’

“It is the last sentence that is noteworthy here. The Town Meeting adopted a Bylaw which afforded specific protection for the T District and that is the creation of a 50 ft. extraordinary buffer or setback between any building over 45 ft. and the nearest T District or, for that matter, the M District which is located to the west of the property.

The Development Committee, commenting on the text amendments, which appeared as part of the report to Town Meeting, made the following statement:

“The more stringent setback requirements provide protection for the surrounding residential neighborhoods and preserve and enhance the varied urban design character of the Town’s major thoroughfares.’

“I suggest that this is a signal from the Town Meeting, endorsed by the Development Committee, to recognize that this site is in need of revitalization and that a bonus height for a building above 45 ft., if designed with “stringent setback requirements,” in effect a 50 ft. setback to the T District, will provide effective protection for the adjacent residential areas.

“I would observe as a footnote here that the 50 ft. setback is to the T District which runs down the middle of the MBTA tracks. The actual distance between the nearest corner of the building and a house on White Place is at least an additional 26 feet. Thus, the setback on the northerly property line which according to the Bylaw is zero feet, is actually between 46 and 76 feet from the nearest house in the T District.

“If one looks at the language of the zoning by law provision for height incentives, the language speaks of “public benefits” which include such items as maintenance of Town open spaces and preservation of historic structures significant to the Town. The emphasis is on “public” which does not mean that the benefits from the bonus height must redound strictly to a particular neighborhood, but must inure to the benefit of the Town as a whole.

“I also believe that the landscaping buffers on the northerly sideline is a counterbalancing amenity required for relief under Section 5.43 and a public benefit under Section 5.32. Surely, the creation of a landscaping and bermed buffer anywhere from 20 ft. to 47 ft. wide along a zero setback property line meets the characterization as a public benefit as well as a counterbalancing amenity. Indeed, the improvements to the Davis Path boundary of the property also qualifies as a public benefit and as an offsetting or counterbalancing amenity in lieu of a smaller setback to the east.

“Looking at the standards for a special permit, the case has been made that the specific site is an appropriate location for the use structure and condition proposed. Certainly, the Town Meeting has specifically zoned the property for such purposes, the Comprehensive Plan targets this site for development in a way consistent with what is being proposed and the Development Committee in recommending Warrant Articles that permit the bonus height saw to it that the adjacent T District is protected by what they called “stringent” setback requirements

“Thus, the use as developed and in compliance with the Bylaw will not adversely affect the neighborhood. I suggest that the use of the building as zoned and allowed as a medical office, general office, or other uses permitted in the G District would not adversely affect the Boylston Street corridor or adjacent neighborhoods. In fact, the Boylston Street corridor or neighborhood will benefit, as will White Place, from the removal from their midst of derelict buildings.

“Section 9.05(c) to the effect that there will be no nuisances or serious hazard to vehicles or pedestrians has been demonstrated by the testimony of the traffic consultant and by the provision of parking attendants to make the parking operation safe and efficient.

“Finally, Section 9.05(d) with respect to adequate and appropriate facilities being provided for the proper operation of the proposed use, this will be a first-class office building designed by one of the best architectural teams in the city with parking facility operations designed by experience companies. Section 9.05(e) with respect to significant effects on the supply of housing is not applicable to this project.”

“I suggest to the Board that this is one project that has been designed by committee: the Town Meeting, the Development Committee, the Planning Board, the Design Advisory Team and by the petitioner’s architects and engineers. This site has been unused and derelict for many

years, at least since the Town Meeting rezoned this corridor for development, and I suggest to the Board that the time has come to grant the special permits consistent with proposal before you.

Thank you very much on behalf of myself, Leggat McCall Properties, the architects, the engineers, the landscape architects, the Planning Board and those members of the Design Advisory Team that gave significant amounts of their time to produce a superior project.

The Planning Board through Polly Selkoe, the Assistant Director for Regulatory Planning, presented the comments of the Planning Board as contained in its report dated July 17, 2008, which comments are as follows:

The Planning Board is supportive of this development proposal. The Board believes the redevelopment of this site will improve the general appearance of the Route 9 corridor, and the project will be an overall improvement for the Town. The site has been in a dilapidated state and underused for an extended period of time. The Design Advisory Team has worked with the Petitioner to determine an appropriate building massing for the site with the allowed floor area ratio of 2.0 in an effort to reduce the shadow impacts on White Place. The Petitioner has modified the building design to ensure any height above 45 feet is set back from residentially zoned land at least 50 feet. The proposed massing arrangement balances the desire to minimize the shadow impacts on White Place with the Petitioner's need to maximize the allowed floor area and the Town's goal to improve the Boylston Street environment and streetscape.

The Board is supportive of the proposed improvements to Davis Path, including the additional landscaping and pavement treatments. The Petitioner should ensure that the original Davis Path sign at its entrance will remain. The proposed landscaping along both the path and along Boylston Street will improve the immediate pedestrian environment around the building. Additionally, the landscape buffer along the railroad tracks should substantially screen the building from abutters and present an attractive façade.

The Town's traffic consultant has reviewed and found satisfactory the traffic impact report from Vanasse & Associates, the memo (6/25/08) on garage parking circulation/lay-out from Walker Parking Consultants, and the memo (7/7/08) on garage valet operations from Standard Parking. Suggested parking and traffic mitigation measures have been recommended as conditions below.

Therefore, the Planning Board recommends approval of the proposal and the submitted plans entitled "111 Boylston Street, Brookline, Massachusetts – Sheets 1-7" prepared by Spagnolo Gisness dated 7/10/08, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans for the building, indicating façade design, landscaping, wall heights, colors, materials, windows, rooftop details, and placement of utilities for HVAC and transformers, shall be submitted for the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, final site and landscaping plans for the development site and the portion of Boylston Street in front of the building, indicating site design; landscaping, including planting types and locations; fencing; exterior lighting; drainage details; and garage parking, shall be submitted for the review and approval of the Planning & Community Development Director (or his designee) and the Tree Warden, where applicable.
3. Prior to the issuance of a building permit, a drainage plan shall be submitted for review and approval of the Director of Traffic and Engineering.
4. Prior to issuance of a building permit, final site and landscaping plans for Davis Path, including railing or paving details, benches or other furniture, exterior lighting, or proposal involving Boylston Street Playground, shall be submitted for the review and approval of the Director of Parks and Open Space and the Planning Board.
5. All landscaping plantings, paving treatment, and fencing on site, on Davis Path and on the Boylston Street and MBTA tracks sides of the building shall be adequately maintained in perpetuity. Care shall be taken to ensure the landscape buffers around the building consist of healthy plantings and are kept free of trash and graffiti. Snow removal on the portion of Davis Path between the Boylston Street sidewalk and the toe of the footbridge shall be the responsibility of the owner of 111 Boylston Street.
6. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Transportation Director and Health Director, with a copy of the approved plan submitted to the Planning & Community Development Department and posted on the Planning & Community Development Department's website.
7. Prior to the issuance of the Certificate of Occupancy, the following traffic and parking mitigation measures shall be completed by the Petitioner, subject to the review and approval of the Director of Engineering and Transportation and the Planning & Community Development Director (or his designee):
 - a Transportation Demand Management program, including, but not limited to, encouraging the following measures: ride sharing, flex time, subsidizing public transit use by employees, and use of MASCO shuttle service if tenants are eligible for service.
 - appropriate signage and pedestrian safety devices at driveway and service vehicle entries and maintenance of optimal site lines at entries.

- appropriate signage on state highway Route 9 to indicate turnarounds and/or reversing direction, subject to the review and approval of the Massachusetts Highway Department.
 - installation of raised crosswalks or comparable traffic calming devices on Davis Avenue and possibly White Place, subject to the review and approval of the Transportation Board.
 - A \$20,000 contribution to the Town for the Gateway East/Village Square Project which will facilitate access to the site, and a \$20,000 contribution to the Town for other traffic mitigation measures in the affected area.
 - Maintaining an adequate number of valet attendants in the parking garage.
8. Twelve months after full occupancy of the building, the Petitioner shall commission a follow-up traffic study evaluating: the adequacy of the valet and elevator operations, trip generation from and to the project in the a.m. and p.m., traffic impacts on Walnut Street and Davis Avenue, parking impacts on White Place and Cameron Street, and the adequacy of the traffic signal timing at the intersection of School and Washington Streets, subject to the review and approval of the Director of Traffic and Engineering.
 9. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial leasing period, with the design subject to the review and approval of the Director of Planning & Community Development (or his designee).
 10. The location of the foundation shall be certified by a registered professional engineer or land surveyor to be in accordance with the approved site plan prior to issuance of a final building permit for the remainder of the buildings.
 11. Complete as-built plans certified by a registered architect shall be prepared and filed with the Building Commissioner, prior to the issuance of any occupancy permits.
 12. Prior to the issuance of a building permit, the Petitioner 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, including fencing, grading, and location of utilities; 2) final building elevations, stamped and signed by a registered architect; 3) final landscaping plans for the site, Davis Path, and the portion of Boylston Street in front of the building, stamped and signed by a registered landscape architect; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, the Building Commissioner, responded to the Board's request for Building Department comments as follows:

Mr. Shepard noted that there have been many iterations of the proposed development for this site over the last several years which would be typical of the evolution of a complex project. He noted that the Building Department does not usually get involved until the submission of an application for a building permit. In this case, however, he noted that there were many consultations with the Building Department prior to the denial letter being issued because of the complexity of the site and the various zoning districts impacting the project and the fact that the MBTA tracks bordered the project to the north. Many of the discussions addressed what was possible on the site and the interpretation by the Building Department of various sections of the Zoning Bylaw. He noted that the Planning Department also fielded many questions of Bylaw interpretation and reviewed many proposed development schemes for this site. However, the Building Department's denial letter was based upon the project as applied for, not based on the earlier iterations presented and discussed with the Planning Department and with the Building Department. Mr. Shepard advised the Board that the Building Department supported the project as proposed and further supported the conditions recommended in the Planning Board report which he believed provided protection for the neighborhoods in the vicinity of the site. In sum, Mr. Shepard said the Building Department supported approved of the project as proposed by the Petitioner.

The Board then closed the hearing and began deliberations.

Chair Enid Starr stated that the only plan the Board is concerned with is the plan before it currently. Chair Starr stated that there are only certain special permits that are under consideration concerning this project. She stated that a special permit is needed for height relief of about 13 feet. She stated that the applicant needs a special permit for height relief of the mechanicals which exceeds the permitted amount by about a foot and one half. She stated that

they need a special permit for Front Yard Setback for the garage entrance. She added that they also need a special permit for the rear yard setback – east side only for an additional nine feet. Chair Starr also stated that they need a special permit for height relief in the rear yard for the garage for four feet.

Chair Starr stated that the special permits are the only issues before the Board. She noted that for the Board to grant a special permit, as to height, there has to be sufficient public benefits. Chair Starr stated that the Board has to find a series of conditions before they can grant a special permit. Chair Starr stated that these conditions include: that this specific site is appropriate location for such a use; that the use will not adversely affect the neighborhood; that there will be no nuisance or serious hazard for vehicles or pedestrians; and that an adequate facility is provided for the proper operation of the proposed use. Chair Starr noted that the development's FAR issues are in conformance with the zoning and are not before the Board.

Zoning Board of Appeals Member Jesse Geller stated, in terms of the conditions of Section 9.05, the relevant conditions appear to be fine. He noted that that this is an appropriate use for Boylston Street. He added that it is his sense that this project does fall within what was anticipated from the Town's Comprehensive Plan. Board Member Geller did state that he did have concerns about the first floor but recognized that the small amount of retail was a direct result of the give and take with the neighborhood. Board Member Geller, in addressing that there will be no risk of serious hazards to vehicles or pedestrians stated that the Board has heard from the Town's traffic consultant that those concerns have been addressed. Board Member Geller, in addressing the appropriateness of the facility for its proposed use, stated that clearly has been met. He stated that the one condition of Section 9.05 that is in question is the one that requires that the use not adversely affect the neighborhood. Board Member Geller stated that the

use is appropriate to that district and that the use, in and of itself, will not adversely affect the neighborhood. He also stated that he believes the developer has made a great effort to try to satisfy lots of different constituencies. He stated that it seems to be a financially viable project and has tried to address the concerns of the neighborhood. Board Member Geller stated that what we see, as Attorney Hoffman noted, is a product of many committees.

Chair Enid Starr asked Board Member Geller how he felt about the public benefits that are being offered. He stated that he was concerned mostly with the caretaking of Davis Path. He added that he believes this building has the potential to really open up that area depending on what occupies the limited retail space. He added that by combining the cash donation for the caretaking of Davis Path that those are benefits.

Zoning Board Member Jonathan Book stated that it is important to consider the structure itself. He stated that there is no question that this is a large building. However, he noted that the zoning by-law allows for a large building. Board Member Book stated that after hearing the developer's presentation over these last hearings, as well as the site visit, he believes a lot of the impacts on White Place and Davis Avenue are due to the size of the building itself and not necessarily resulting from the additional relief that the developer is seeking. He does not believe that the addition of the fourth floor and the setbacks on Boylston Street and the east side of the property, contribute in a substantial way what the impact might be on the neighborhood, particularly the shadows. Board Member Book stated that he appreciated all of the testimony made before the Board but believes that the developer has made a significant attempt to work with the Town and the neighborhood through the design review process over these past two years. He believes that this is absolutely the best project the Town will get on that site according to what the zoning by-law allows. Board Member Book further stated that he believed the

counter-balancing amenities are significant. He added that their agreement to subject the property to an ongoing PILOT Agreement, should the building be sold to a non-profit – which will have a direct economic affect on the sale price of the building – should not be lost. He stated that the PILOT Agreement and all the other things they have offered up, are very significant.

Chair Enid Starr stated that the Board's job is to follow the by-law. She noted that this building is in compliance with the FAR. She stated that the Board does not have the power to change the FAR. Chair Starr added, however, that she was concerned about the height. Chair Starr noted that she had inquired of the developer, during the site visit, if they had done a comparison shadow study between three floors and four floors. She stated that she was satisfied this evening, looking at that new shadow study, that the fourth floor, which they are seeking a special permit for, does not significantly affect the shadow impact on the neighborhood. Chair Starr, in addressing the foot and one-half height differential for the mechanicals, stated that she wasn't so concerned about that so much since most people won't even see them. She did state that she was also concerned about the setback relief on the east side. She noted, however, that during the site visit she saw that the existing building is right on the lot line. She stated that what the developer is proposing on the east boundary is significantly better than what currently exists there. Chair Starr also stated that the additional height on the rear yard setback for the garage, is screened by a berm and significant landscaping and does not affect anyone. She stated that the front yard setback for the garage is an anomaly of the Building Code.

Chair Starr stated that she is satisfied that the areas where the developer has asked for special permits has been covered by the public benefits. Chair Starr stated that the additional \$50,000 to maintain Boylston Playground, the cleaning up and lighting of Davis Path and the \$40,000 for traffic mitigation are significant public benefits for the neighborhood. Chair Starr

also stated that she agreed with Board Member Book that the developer's willingness to burden his property with a PILOT Agreement with the Town, which will certainly affect the bottom-line on the sale of the building, is a substantial public benefit.

There was discussion concerning several amendments to the Planning Board's recommended conditions. The conditions agreed upon by the Board were as follows

The Board imposes the following conditions on the permits granted:

1. Prior to the issuance of a building permit, final plans for the building, indicating façade design, landscaping, wall heights, colors, materials, windows, rooftop details, and placement of utilities for HVAC and transformers, shall be submitted for the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, final site and landscaping plans for the development site and the portion of Boylston Street in front of the building, indicating site design; landscaping, including planting types and locations; fencing; exterior lighting; drainage details; and garage parking, shall be submitted for the review and approval of the Planning & Community Development Director (or his designee) and the Tree Warden, where applicable.
3. Prior to the issuance of a building permit, a drainage plan shall be submitted for review and approval of the Director of Traffic and Engineering.
4. Prior to issuance of a building permit, final site and landscaping plans for Davis Path, including railing or paving details, benches or other furniture, exterior lighting, shall be submitted for the review and approval of the Director of Parks and Open Space and the Planning Board.
5. All landscaping plantings, paving treatment, and fencing on site, on Davis Path and on the Boylston Street and MBTA track side of the building and the "historic sign" at the corner of Davis Path and Boylston Street identifying Davis Path shall be adequately maintained in perpetuity. Care shall be taken to ensure the landscape buffers around the building consist of healthy plantings and are kept free of trash and graffiti. Snow removal on the portion of Davis Path between the Boylston Street sidewalk and the toe of the footbridge shall be the responsibility of the owner of 111 Boylston Street.
6. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Transportation Director and Health Director, with a copy of the approved plan submitted to the Planning & Community Development Department and posted on the Planning & Community Development Department's website.

7. Prior to the issuance of the Certificate of Occupancy, the following traffic and parking mitigation measures shall be completed by the Petitioner, subject to the review and approval of the Director of Engineering and Transportation and the Planning & Community Development Director (or his designee):
 - a Transportation Demand Management program, including, but not limited to, encouraging the following measures: ride sharing, flex time, subsidizing public transit use by employees, and use of MASCO shuttle service if tenants are eligible for service.
 - appropriate signage and pedestrian safety devices at driveway and service vehicle entries and maintenance of optimal site lines at entries.
 - appropriate signage on state highway Route 9 to indicate turnarounds and/or reversing direction, subject to the review and approval of the Massachusetts Highway Department.
 - installation of raised crosswalks or comparable traffic calming devices on Davis Avenue and possibly White Place, subject to the review and approval of the Transportation Board.
 - maintaining an adequate number of valet attendants in the parking garage.
8. Prior to the issuance of a Certificate of Occupancy, the Petitioner shall make a contribution of \$50,000 to the Director of Parks and Open space for improvements to the Boylston Street Playground.
9. Prior to the issuance of a Certificate of Occupancy, the Petitioner shall issue a PILOT Agreement with the Town in a form satisfactory to Town Counsel.
10. Twelve months after occupancy of the building, the Petitioner shall commission a follow-up traffic study evaluating: the adequacy of the valet and elevator operations, trip generation from and to the project in the a.m. and p.m., traffic impacts on Walnut Street and Davis Avenue, parking impacts on White Place and Cameron Street, and the adequacy of the traffic signal mitigation measures undertaken by the Petitioner pursuant to these conditions, including the adequacy of signal timing at the intersection of School and Washington Streets, such study subject to the review and approval and/or appropriate remediation measures acceptable to the Director of Traffic and Engineering.
11. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial leasing period, with the design subject to the review and approval of the Director of Planning & Community Development (or his designee).
12. The location of the foundation shall be certified by a registered professional engineer or land surveyor to be in accordance with the approved site plan prior to issuance of a final building permit for the remainder of the buildings.

- 13. Complete as-built plans certified by a registered architect shall be prepared and filed with the Building Commissioner, prior to the issuance of any occupancy permits.
- 14. Prior to the issuance of a building permit, the Petitioner 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, including fencing, grading, and location of utilities; 2) final building elevations, stamped and signed by a registered architect; 3) final landscaping plans for the site, Davis Path, and the portion of Boylston Street in front of the building, stamped and signed by a registered landscape architect; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Upon motion made and duly seconded, it was unanimously

VOTED: To approve the relief requested for 111 Boylston Street, subject to the conditions determined by the Board and insofar as necessary, the Board will modify any previous decisions of the Zoning Board of Appeals in order to avoid any inconsistencies with this decision.

RECEIVED
 TOWN OF BROOKLINE
 REGISTRARS OF VOTERS
 08 SEP 11 35 AM

Unanimous Decision
Of the Board of Appeals



Enid M. Starr, Chairperson

Filing Date: September 4, 2008

A True Copy:

ATTEST:



5526993-04
 Patrick J. Ward
 Board of Appeals