



BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> 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. 2015-0014  
OWNER: C&R REALTY TRUST

Petitioner Chestnut Hill Shopping Center, LLC applied to the Building Commissioner for permission to modify an existing commercial access driveway at 0 Boylston Street (Parcel 286-05-00). The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed at 7:00 PM March 26, 2015, in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on March 5 and March 12, 2015, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

### **Notice of Hearing**

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

**575-577 HAMMOND ST & 0 BOYLSTON ST – MODIFICATION OF SPECIAL PERMIT CONDITIONS REGARDING PROVIDED TRAFFIC MITIGATION**

**MEASURES, in a T-6, Two-Family and Attached Single-Family residential district, and a G-1.0, General Business district, on March 26, 2015, at 7:00 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioners and Owners: Chestnut Hill Shopping Center LLC, 575 Hammond Realty Trust, and 577 Hammond Realty Trust) *Precinct 13***

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

- 1. Modification, as needed, of BOA case # 2013-0065 April 2, 2014**
- 2. Modification, as needed, of BOA case # 2013-0066 April 2, 2014**
- 3. Modification, as needed, of BOA case # 2013-0067 April 2, 2014**

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

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

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

**Publish: March 5, 2015 & March 12, 2015**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Jonathan Book and Mark Zuroff. Attorney Franklin Stearns, having a business address at 1 Lincoln Street, Boston, Massachusetts presented the case for the petitioner. The case was presented in conjunction with cases for two adjacent properties, 575 Hammond Street (Parcel Id 286-03-00) and 577 Hammond Street (Parcel Id 286-04-00).

Chairman Geller asked Attorney Stearns if he had any objection to combining the three cases into one hearing. Attorney Stearns stated he had no objection.

Attorney Stearns reviewed case history for the Board. This case, in conjunction with companion case # 2013-0066 and 0067, was originally heard by the Board on September 12, 2013 at which hearing the special permit was granted with certain conditions regarding traffic mitigation, in particular Condition # 3 and a memorandum from the Director of Transportation dated September 11, 2013. The Petitioner did not exercise the special permit. Rather, the Petitioner agreed with the Town Planning Department and Director of Transportation on an alternative plan for mitigation of traffic impacts associated with the Project. That alternative plan for mitigation is reflected in a revision contained herein to Condition # 3 and a revised memorandum of the Director of Transportation, dated January 14, 2014, to be attached to and made a part of this modification of the special permit. The Petitioner informed the Board that the reason it did not exercise the special permit is because the mitigation provided for in Condition # 3 and in the September 11, 2013 memorandum was open ended. The purpose of the requested modification is to have the special permit obligate the Petitioner to specific and enumerated mitigation measures as reflected in the updated January 14, 2014 memorandum. The Petitioner indicated it accepts the mitigation required in the January 14, 2014 memorandum. Attorney Stearns further requested that the Board extend the effective period of the previously granted special permits (as modified per the above) indicating that the Petitioner intends to commence construction in the spring of 2015.

Board Member Book questioned if the Petitioner is proposing any alterations to previously approved project plans outlining commercial access driveway improvements.

Attorney Stearns confirmed that project plans have not been altered in any way since approval on September 12, 2013.

Chairman Geller clarified his understanding of Mr. Ditto's Memorandum and of the Petitioner's request is that notwithstanding provision for a post construction traffic study, the Petitioner will have no further obligations other than the specific mitigation noted in the Memorandum and the Town would have no further recourse under the Conditions if the Board approves this request for modification. Mr. Stearns in confirming Mr. Geller's understanding commented that memorandum items (listed below) 1-4 will be implemented and the applicant will agree to comply with item 5, but no actions following traffic study findings are imposed on the Petitioner.

The Mitigation recommended in Mr. Ditto's Memorandum is as follows:

1. Prior to the issuance of a building permit for the driveway reconfiguration, the applicant shall reimburse the Town of Brookline \$15,000 to replace lost revenue for the removal of eight meters on the east side of Hammond Street, north of Route 9 in proximity to the entrance to the shopping center, to provide for room for a left hand turn lane.
2. The applicant shall create a one cab taxi stand on the Brookline portion of the property, with appropriate signage, to replace the taxi stand that the Town will remove from Hammond Street to provide room for the left hand turn lane.
3. The applicant shall be responsible for restriping Hammond Street to provide for a left hand turn lane for traffic coming from the south and Rte. 9 and turning into the shopping center from Hammond Street.
4. The applicant shall ask CVS for permission to remove the small island to the left of the rear of the CVS building, at the applicant's expense, to provide a better location for CVS's delivery trucks, subject to the review and approval of the Brookline Director of Transportation and Engineering.
5. Prior to the issuance of a building permit, and again within one year from the completion of the driveway reconfiguration, the applicant shall commission a traffic study/analysis by a professional traffic engineer to conduct traffic counts of shopping center customers using the driveway at its intersection with Hammond Street and the traffic flow on Hammond Street between Rte. 9 and the Chestnut Hill School. The scope of the study

shall be subject to the review and approval of the Brookline Director of Transportation and Engineering.

Chairman Geller called for public comment in favor of, or in opposition to, the applicant's request for modification.

Janice Kahn, of 63 Craftsland Road, commended the Petitioner for attempting to improve pedestrian safety but cautioned that proposed fence materials may have a negative impact on pedestrian visibility. Ms. Kahn also expressed concern that the Town will waive further input regarding traffic mitigation measures if the requested modification of Condition # 3 is approved by the Board.

Chairman Geller requested that Jay Rosa (Zoning Coordinator) deliver the findings and recommendations of the Planning Board. Mr. Rosa stated that this modification request was not heard by the Planning Board so his comments reflect the opinions of both the Planning and Building Departments. These Departments have no objection to this request and defer to recommendations made by the Brookline Director of Engineering and Transportation regarding the appropriateness of suggested traffic mitigation measures. The intent of Condition # 3 has been fulfilled and this modification request is supported.

The Board deliberated on the merits of the modification as requested. Board Member Book noted that Director of Engineering and Transportation oversight was the intent of the original language included in Condition # 3. This oversight has been refined and Mr. Book believed that there is no reason to disagree with established traffic mitigation measures previously stated for the record. For this reason, Mr. Book supported the requested modification.

Board Member Zuroff concurred with these comments noting that the applicant has established a clear traffic mitigation plan and the Director of Engineering and Transportation has maintained input in pertinent impact mitigation measures.

Chairman Geller supported this modification request along with recommendations submitted by the Director of Engineering and Transportation. Mr. Geller commented that this commercial access driveway reconfiguration, in combination with stated traffic mitigation measures, significantly improves pedestrian and vehicular safety for the area. Mr. Geller stated that this modification request is worthy of approval and reiterated that the Board also grants extension of the effective period of the special permits previously issued in the original 2013 hearing.

Accordingly, the Board voted unanimously to grant modification of BOA Case # 2013-0065 as requested, to include the following revised conditions and the amended memorandum provided by the Brookline Director of Engineering and Transportation (Exhibit A):

1. Prior to the issuance of a building permit, the applicant shall submit final site and grading plans which will include a 10<sup>th</sup> parking space, indicating all vehicular and pedestrian improvements, subject to the review of the Planning Board and approval of the Director of Transportation and Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan and wall/fence plan, including elevations, details and a section, subject to the review and approval of the Planning Board.
3. Traffic mitigation measures shall be provided in accordance with the attached memorandum dated January 14, 2014 from the Director of Engineering and Transportation to the Board of Appeals Chairman. Prior to implementation of the traffic mitigation measures, the final plans shall be reviewed and approved by the Director of Traffic and Engineering.
4. Prior to the issuance of a building permit for demolition of the detached garage on 575 Hammond Street, the applicant shall submit proof of the structure's determination of non-significance, as determined by Preservation Staff, or evidence that a demolition delay has either expired or been lifted by the Preservation Commission.

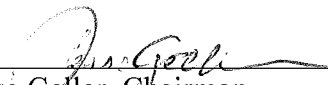
5. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final fence and wall stamped and signed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

Unanimous decision of the

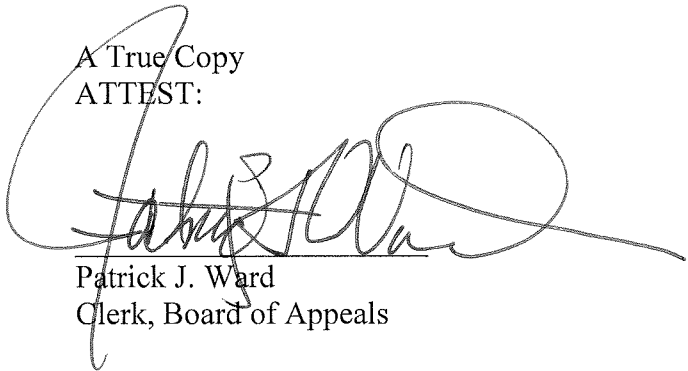
Board of Appeals

Filing Date:

5/4/15

  
\_\_\_\_\_  
Jesse Geller, Chairman

A True Copy  
ATTEST:

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

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RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK

**EXHIBIT A**





**TOWN OF BROOKLINE**  
*Massachusetts*  
**DEPARTMENT OF PUBLIC WORKS**  
Engineering & Transportation Division

*Andrew M. Pappastergion*  
Commissioner  
*Peter M. Ditto, PE*  
Director

**Memorandum**

To: Jesse Geller, Board of Appeals Chair

From: Peter Ditto, Director of Engineering/Transportation *PM*

Date: January 14, 2014

**RE: Reconfiguration of Hammond Street Driveway, 0 Boylston Street, ZBA Case # 2013-0065**

After meetings with officials from the City of Newton, MADOT and the Shopping Center owner, I would like to recommend the following five mitigation measures with respect to the driveway reconfiguration at "The Street" (O Boylston Street) at its intersection with Hammond Street. This memo supersedes my earlier memo of September 11, 2013 to Lara Curtis Hayes. I would suggest that this memo be filed at the Registry of Deeds with the ZBA decision to provide clarity on the scope of the mitigation measures required by condition #3 in the Board of Appeals decision and who has financial responsibility for implementing them. Once the conditions below are met, no further mitigation measures by the owner shall be required.

1. Prior to the issuance of a building permit for the driveway reconfiguration, the applicant shall reimburse the Town of Brookline \$15,000 to replace lost revenue for the removal of eight meters on the east side of Hammond Street, north of Route 9 in proximity to the entrance to the shopping center, to provide for room for a left hand turn lane.
2. The applicant shall create a one cab taxi stand on the Brookline portion of the property, with appropriate signage, to replace the taxi stand that the Town will remove from Hammond Street to provide room for the left hand turn lane.
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5. Prior to the issuance of a building permit, and again within one year from the completion of the driveway reconfiguration, the applicant shall commission a traffic study/analysis by a professional traffic engineer to conduct traffic counts of shopping center customers using the driveway at its intersection with Hammond Street and the traffic flow on Hammond Street between Rte. 9 and the Chestnut Hill School. The scope of the study shall be subject to the review and approval of the Brookline Director of Transportation and Engineering.

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