

BOARD OF APPEALS

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0031
OWNER: NATIONAL AMUSEMENTS

Cleveland Circle Development Associates LLC (the "Petitioner"), an affiliate of National Development, applied to the Building Commissioner for permission to construct the portion to be located in Brookline of a larger project consisting of two buildings – a limited service hotel building partially located in Brookline and an age-restricted active adult residential building in Boston – with ground floor retail/restaurant space and both underground and surface parking (collectively, the "Project"). 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board and fixed 23 July 2015 at 7:15 PM in the Selectmen's Hearing Room, 6th Floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney, 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 2 and 9 of July 2015 in the *Brookline Tab*, a newspaper published in Brookline. 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:

375-399 CHESTNUT HILL AVE – CONSTRUCT A HOTEL BUILDING IN BROOKLINE AND AGE-RESTRICTED HOUSING IN BOSTON WITH GROUND FLOOR RETAIL/RESTAURANT AND BOTH UNDERGROUND AND SURFACE PARKING in an L-0.5(CL), Local Business, zoning district, on July 23, 2015, at 7:15 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: Cleveland Circle Development Associates LLC; Owner: National Amusements, Inc.) *Precinct 13*

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

- 1. Section 5.06.4.f.2: Cleveland Circle Local Business District L-0.5 (CL)**
- 2. Section 5.06.4.i: Special District Regulations (Cleveland Circle Hotel Overlay District)**
- 3. Section 5.06.4.i.4.b: Setbacks and Build-to Lines**
- 4. Section 5.06.4.i.4.c: Fences along MBTA right-of-way greater than 7 feet**
- 5. Section 5.06.4.i.5.c: Parking Requirements**
- 6. Section 5.09: Design Review**
- 7. Section 5.43: Exceptions to Yard and Setback Regulations**
- 8. Section 5.51: Projections into Front Yards**
- 9. Section 6.02.2.d: Off-Street Parking Regulations**
- 10. Section 7.00.1.b: Signs in all Districts**
- 11. Section 7.00.1.d: Signs in all Districts**
- 12. Section 7.03.1.d: Signs in L,G,I, and O Districts**

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.

*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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@brooklinema.gov.*

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: July 2, 2015 & July 9, 2015

On 23 July 2015 at the time and place specified in the notice a public hearing was held by this Board. Present at the hearing were Chairman Jonathan Book and Board Members Mark Zuroff and Avi Liss. The Chairman outlined the order to be followed in the proceeding.

Ted Tye, Managing Partner of National Development, waived a reading of public hearing notice for the record and introduced the project team. Mr. Tye then briefly reviewed the Project's history and described several comparable National Development projects in the greater Boston and Brookline areas. In general, National Development focuses on mixed-use development including retail, residential, and hotels.

Mr. Tye explained that the Project site includes a former Applebee's restaurant and the former Circle Cinema, which has been vacant since 2008. These structures front on Chestnut Hill Avenue and extend to the west along the MBTA Right of Way and Cassidy Playground. A small portion of the property is located in Brookline (approximately 18,176 s.f.) with the majority of the property located in Boston (approximately 92,849 s.f.).

Mr. Tye summarized that the Project would consist of two separate structures (the "Buildings"): 1) a limited service hotel building located partially in Brookline and partially in Boston including approximately 162 rooms (approximately 68 of which will be located in Brookline) (the "Hotel Building") and 2) a senior housing building located entirely in Boston including approximately 92 residences (the "Residential Building"). The Buildings will include ground floor commercial space totaling approximately 6,085 s.f. (approximately 2,635 s.f. in Brookline). The Project will also include 188 surface and underground parking spaces (approximately 20 spaces in Brookline), an interior piazza and circulation driveway, and open space and landscape elements. The existing "Circle" sign will also be restored and reused as part of the Project.

Mr. Tye stated that the Project had received extensive public input from both Boston and Brookline, including Brookline Town Meeting's adoption of the Cleveland Circle Hotel Overlay District in May of 2011, under which certain elements of the Project would be subject to review by the Town whether located in Brookline or Boston. As a result of the public input, the Project has been modified from the project as first proposed, including a reconfigured piazza, improved pedestrian access, two separate structures, a reduction in overall massing, greater setback from the MBTA right of way and a 42% decrease in average daily vehicle trips. The Petitioner has approached redevelopment of the site with the goal to create a transformative project that may "jumpstart" commercial improvement in the Cleveland Circle area.

Joe Geller of Stantec Consulting, site planner and landscape architect, highlighted the single site entry/exit point on Chestnut Hill Avenue, which will allow vehicles to enter a pedestrian-friendly piazza that includes varying styles of decorative paving and plantings. Vehicles for users other than some hotel guests and employees leaving the site will exit to Chestnut Hill Avenue from this same driveway. The vast majority of residential parking will be located in the underground garage, which is directly accessible from the interior piazza. Parking for hotel guests and employees will be located at surface level to the rear of the piazza. Plantings along Chestnut Hill Avenue will complement a 10-foot wide sidewalk, and active ground level retail will face Chestnut Hill Avenue.

Mr. Geller explained that the location of the Hotel Building facing Clinton Road was adjusted to increase the distance between the lot line and the southern façade of the Hotel Building. The increased buffer area will allow fencing (solid board or chain link) and substantial landscape planting to be installed to supplement existing 14-16 foot tall deciduous trees and enhance visual screening. The rear piazza, which will also serve as the vehicle circulation

driveway, will be enclosed by a 2 foot tall knee wall with board fencing above. The site lighting will include a variety of lighting types, ranging from lamp post lighting on Chestnut Hill Avenue, lower lighting between the Buildings, and low-light LED lighting for the rear surface parking area. The photometric plan demonstrates that the lighting will comply with the Town's "dark sky" requirements.

John Martin, project architect from Elkus Manfredi, described architectural details of the Buildings that promote a strong civic presence. The design follows the geometry of other buildings located within Cleveland Circle. A curved façade/cornice on the Residential Building faces Cleveland Circle in order to frame the layout of Cleveland Circle itself. Both Buildings will include brick masonry facades and metal clad stories at the upper levels with pronounced cornices. The Hotel Building partially located in Brookline will be 5 stories and approximately 54 feet in height, and will be lower in height than the Residential Building located in Boston. The southern façade facing Clinton Road has been designed in response to community input to be "quiet" with a simple architectural treatment of this façade. In addition, extensive landscaping and hardscaping further softens the visual impact of this façade. Both Buildings will include first floor retail and other active uses with transparent storefronts. A hotel pool and fitness area will be located in the ground floor of the Hotel Building located in Brookline. Final exterior materials will be subject to approval by the Planning Board.

Guy Busa, traffic engineer from Howard Stein Hudson Associates, discussed the Project's traffic impacts and vehicular circulation. Due to replacing the prior proposal's medical and office uses with an active adult community and making changes to the layout of the site, the Project is expected to have 42% fewer average daily vehicle trips than the prior proposal. An estimated 54 vehicle trips will be generated during peak morning hours and 84 during peak

evening hours. The existing four curb cuts will be consolidated into one. Sixty of the 81 rear surface parking spaces will be required to egress the site to Beacon Street via an easement over the adjacent Waterworks Condominium property driveway; accordingly these vehicles will not re-enter the circulation driveway or egress onto Chestnut Hill Avenue. A new traffic signal at the single curb cut will control egress into Chestnut Hill Avenue and will be coordinated with Cleveland Circle lights to avoid vehicle queuing; however, it will not be activated unless triggered by a pedestrian or vehicle waiting to exit the site. The Project will also include other traffic mitigation features to organize multi-modal traffic around the site including several other vehicle turn lanes around the Circle, pedestrian crosswalks, bicycle lanes and an ADA-compliant crosswalk over Chestnut Hill Avenue directly in front of the property. As the construction documents are developed, the Boston Transportation Department and the Brookline Department of Transportation and Engineering will be included in the development and approval of all final designs.

Mr. Busa then described the Project's transportation demand management practices, which will include off-site pedestrian amenities, on-site car sharing services, bicycle parking spaces, shower facilities for hotel employees who bike to work, electric charging stations, an on-site transportation manager, and the sponsorship of a new Hubway bike-share station in Cleveland Circle.

Mr. Tye presented the additional public benefits offered by the Project: replacement of a vacant building that presents a safety hazard, enhancement of the pedestrian experience throughout the immediate area, creation of new public spaces, funding for Cassidy Playground improvements, creation of 13 new affordable housing units in close proximity to Brookline, provision of community meeting room space, and restoration of the iconic "Circle" sign. Mr.

Tye also noted that \$84,000 will be provided in an escrow account to be used for landscaping improvements at seven properties along Clinton Road.

Petitioner's attorney, Marilyn L. Sticklor of Goulston & Storrs PC, reviewed the compliance with all requirements for the grant of special permit relief and the specific zoning relief requested for the Project.

Ms. Sticklor explained that the Project is located in the Cleveland Circle Local Business District and therefore subject to the requirements of **Section 5.06.4.f** of the Brookline Zoning By-Law (the "**Zoning By-Law**") relating to issuance of a Special Permit, with which the Project complies as follows: (i) as required by **Section 5.06.4.f.3**, a traffic impact and access study has been submitted, and (ii) as required by **Section 5.06.4.f.4**, the length of the entire façade of the Hotel Building facing the MBTA Right of Way and exterior lighting has been designed and will be constructed with care and quality of finishes equivalent to the northern façade of the Hotel Building. Ms. Sticklor noted that pursuant to **Section 5.06.4.f.4**, the Project is reviewed as a single lot across municipal lines in connection with parking and setback requirements.

Ms. Sticklor further explained that the Project was also located within the Cleveland Circle Hotel Overlay District and therefore subject to the requirements of **Section 5.06.4.i** of the Zoning By-Law relating to issuance of a Special Permit for certain programmatic and dimensional matters, parking and loading, traffic mitigation, and noise.

With respect to programmatic and dimensional requirements, Ms. Sticklor indicated that the Project complied as follows: (i) a minimum of 40 hotel rooms in Brookline is required by **Section 5.06.4.i.2.a**, and the Project provides approximately 68 hotel rooms in Brookline; (ii) the required floor area ratio within Brookline under **Section 5.06.4.i.2.b** is between 2.2 and 2.5, which calculation may include up to 10,000 s.f. of ground floor space facing Chestnut Hill

Avenue with a ceiling height of greater than 12 feet but not exceeding 18 feet without application of the “increase” formula of Section 2.07(1), and the Project has a floor area ratio of 2.28 within Brookline including 6,250 s.f. of ground floor space facing Chestnut Hill Avenue with a ceiling height greater than 12 feet but not exceeding 18 feet; (iii) a setback between 5 and 15 feet from Chestnut Hill Avenue is required by **Section 5.06.4.i.4.b.1**, and the Project provides such a setback of between 7 and 15 feet; (iv) any portion of a Building within 50 feet of Chestnut Hill Avenue and above three stories is required by **Section 5.06.4.i.4.b.2** to have a setback of not less than 5 feet from lower floors, and the Project provides such a setback except with respect to a zero upper floor setback on the Residential Building and cornice and bay projections on the Hotel Building, for which relief is being sought hereunder; (v) the setback of not less than 5 feet from the side lot line bordering the MBTA Right of Way is required by **Section 5.06.4.i.4.b.3**, and the Project provides such a setback; (vi) a maximum building height of 56 feet within Brookline is allowed by Section **5.06.4.i.4.c**, and the Project has a maximum building height within Brookline of 53 feet, 10½ inches measured in accordance with **Section 5.30.1.b** ; and (vii) Section **5.06.4.i.4.d** prohibits substantial rooftop structures within 15 feet of the side lot line bordering the MBTA Right of Way, and the Project includes no such structures. Using visual aids, Ms. Sticklor explained how the Project complied with these dimensional requirements.

With respect to parking and loading requirements, Ms. Sticklor indicated that the Project complied, as follows: (i) **Section 5.06.4.i.5.a** requires .5 parking spaces per hotel room across 162 hotel rooms, and the Project provides 81 parking spaces for hotel use; (ii) **Section 5.06.4.i.5.a** requires 75 parking spaces per 1,000 s.f. of retail and 1.0 parking space per 1,000 s.f. of restaurant use for 6,197 s.f. of potential retail and restaurant use, and the Project provides 11 parking spaces for retail and restaurant use, and (iii) **Section 5.06.4.i.5.b** provides that the

Director of Transportation may approve 2 loading bays (rather than the 3 loading bays otherwise required), and the Director of Transportation and Engineering has approved the provision of 2 loading bays for the Project.

With respect to traffic mitigation requirements, Ms. Sticklor indicated that the Project complied as follows: (i) as required by Section 5.06.4.i.6.a.1, the Project provides access and egress to Chestnut Hill Avenue by one curb cut of no more than 2 lanes in width and controlled by a traffic signal equipped with demand-actuated technology; (ii) as required by Section 5.06.4.i.6.a.2, the Project contains a physically segregated parking area for hotel guests, visitors and employees containing not less than 60 spaces, from which the only available egress is to Beacon Street; (iii) as required by Section 5.06.4.i.6.a.3, the Project provides egress only to Chestnut Hill Avenue by all other Project guests, residents and employees; (iv) as required by Section 5.06.4.i.6.a.4, the Project provides separate taxi stands in the Boston and Brookline portions of the Project site; (v) as required by Section 5.06.4.i.6.b, the traffic design and mitigation considered the impacts of the portion of the Project in Boston, and the Project as a whole does not exceed the maximums of 110,000 s.f. of hotel use, 48,000 s.f. of office or medical office, and 18,000 s.f. of restaurant or retail use, imposed by Section 5.06.4.i.6.b; (vi) as required by Section 5.06.4.i.6.c.1, the Project will provide improvements to two pedestrian crossings across Chestnut Hill Avenue, including at Cleveland Circle as well as the crossing aligned with vehicular turn-around at the MBTA station south of the MBTA Right of Way, and, subject to approval by the Brookline Director of Transportation and Engineering as well as the Boston Transportation Department, a third pedestrian crossing where the signal for the Chestnut Hill Avenue entrance will be located, near the Boston/Brookline boundary; and (vii) as required by Section 5.06.4.i.6.c.2, the Project will provide sidewalk improvements including a

minimum 10-foot wide sidewalk on the western side of Chestnut Hill Avenue from the Brookline municipal line to the MBTA bridge and replacement of sidewalk on the western side of Chestnut Hill Avenue from the MBTA bridge to Clinton Road. Using visual aids, Ms. Sticklor explained how the Project complies with these traffic mitigation requirements.

With respect to noise mitigation requirements, Ms. Sticklor indicated that the Project would be subject to a condition that it comply with all state noise regulation and local noise ordinances of both Brookline and Boston, without regard to municipal boundaries, in satisfaction with the requirements of **Section 5.06.4.i.7.**

Ms. Sticklor then reviewed the sections of the Zoning By-Law that apply to the Project from which relief is being sought:

Section 5.06.4.f.2 – Special Permit for Major Impact Project in the Cleveland Circle Local Business District: All applications for new structures in the Cleveland Circle Local Business District shall be subject to the requirements of **Section 5.09, Design Review,** and shall require a special permit. *A special permit for a major impact project (non-residential development containing more than 25,000 SF) for new structures in the Cleveland Circle Local Business District is required.*

Section 5.06.4.i - Special Permit for a Project in the Cleveland Circle Hotel Overlay District: All applications for new structures in the Cleveland Circle Hotel Overlay District shall be subject to the requirements of **Section 5.06.4.i** of the Zoning By-Law, and shall require a special permit. *A special permit for a project for new structures in the Cleveland Circle Hotel Overlay District is required.*

Sections 5.06.4.i.4.b.2, and 5.43 – Special Permit for Granting Relief from Minimum Setback and Front Yard Requirements: The Board of Appeals may by special permit modify the yard and setback requirements provided that such modification assures the same standard of amenity to nearby properties as would have been provided by compliance with the Zoning By-Law, as measured by off-setting a reduction in the depth or area of a required yard or setback by an increase in the depth or area of another yard or setback or by the provision or preservation of a condition or a facility not otherwise required that will counterbalance such a reduction. A Special Permit is required for any setback of less than 5 feet above three stories within 50 feet of Chestnut Hill Avenue, and for any encroachment into the minimum 5-foot setback from the front building line along Chestnut Hill Avenue, applicable to portions of the site without regard to municipal boundaries. *Special permits are required for (i) a setback of zero feet above three stories on the Residential Building located in Boston within 50 feet of Chestnut Hill Avenue, and (ii) encroachment by bays and cornice of the portion of the Hotel Building located in Brookline*

into the 5 foot upper-floor setback from the front building line along Chestnut Hill Avenue. The Project will counterbalance this upper-floor lack of setback by maintaining a greater-than-required setback along the MBTA Right of Way for significant sections of that setback and locating a generous amount of landscaping, public seating and open space within the interior piazza.

Section 5.06.4.i.4.e – Special Permit Granting Relief for a Fence in Excess of 7 Feet in Height: A Special Permit is required for any fence along the MBTA Right of Way in excess of 7 feet in height. *Special Permit is required for a fence of 8 feet in height along the MBTA Right of Way, which fence will help to better screen the Project from residents of Clinton Road.*

Section 5.06.4.i.5.c and Section 6.02.2.d - Special Permit for Minimum Off-Street Parking for Senior Housing: A Special Permit may be granted for age-restricted housing as long as parking provided is not less than 1/5 of the parking otherwise required, and reduced need for parking is demonstrated. *The Project will provide 96 parking spaces for Senior Housing, which would otherwise require 185 parking spaces. A Special Permit is required. 96 parking spaces are more than 1/5 of the 185 parking spaces that would otherwise be required. Lower parking use for age-restricted housing reflected in ITE trip generation rates.*

Section 5.09 - Design Review: A major impact project for a new structure in the Cleveland Circle Limited Business District or the Cleveland Circle Hotel Overlay District shall be subject to the requirements of **Section 5.09** of the Zoning By-Law. *Petitioner has submitted an Impact Statement that addresses community and environmental standards.*

Section 7.00.1.b - Signs in all Districts: No sign or other advertising device, or part thereof, shall be more than 25 feet above ground level, except the Board of Appeals by Special Permit may allow signs announcing the name of an individual building to be higher than 25 feet. *The Project will include one building identification sign in Brookline reaching maximum height of 52'10" above ground level displaying the name of the hotel operator. This sign will face the interior piazza. A Special Permit is required.*

Section 5.51 – Projections Into Front Yards: Cornices may not project into a required front yard by more than two feet. *Although the Denial Letter cited violation of **Section 5.51**, Ms. Sticklor had consulted with the Building Commissioner who confirmed that there was no encroachment of the cornice onto the front yard as defined in **Section 2.25.1**, but rather that relief was available under **Section 5.43** for encroachment of the cornice and bays onto the 5 foot setback requirement of **Section 5.06.4.i.4.b.2**.*

Ms. Sticklor then summarized the manner in which the Project meets the requirements of **Section 9.05** for the issuance of a special permit: (a) The Project site is an appropriate location for the use and structure. The Project site is located in a local business district and a hotel overlay district that specifically contemplated the Project. The Project's uses and dimensions are

similar to and compatible with other existing properties in Cleveland Circle. The Property is exceptionally well-served by public transportation; (b) The Project will not adversely affect the neighborhood. Rather, the Project will improve the neighborhood by creating an attractive new development that will activate the neighborhood and streetscape, enhance safety in the neighborhood, upgrade traffic signals, and provide substantial landscape and public amenities; (c) The Project will not create a nuisance or serious hazard to vehicles or pedestrians. The Project will include adequate off-street parking, with a safe means of ingress and egress, so that the surrounding streets will be unaffected and unobstructed. Traffic impacts will be mitigated through a comprehensive transportation demand management plan, and construction impacts will be mitigated through a construction management plan. The Project will be operated to comply with local noise ordinances of Brookline and Boston, without regard to municipal boundaries; (d) Adequate and appropriate facilities will be provided for the proper operation of the Project. The Project will be provided with parking, sanitary, stormwater management, life-safety and other facilities of high quality in compliance with applicable building and health codes; and (e) The Project will not have a significant adverse effect on the supply of housing available for low and moderate income people. The Project does not propose any housing in Brookline, and the age-restricted senior housing proposed in Boston will include housing consistent with Boston inclusionary zoning requirements.

The following Brookline residents then spoke in support of the Project:

Ken Lewis, of 232 Summit Avenue and a member of the Economic Development Advisory Board, stated that the Project represented a positive addition to the Town. A principal concern of the Economic Development Advisory Board was to avoid negative impact of a project on the border of Brookline and Boston without also benefiting from it. The proposed

hotel rooms will contribute to Town tax revenue while limiting public school impact. Traffic concerns have been alleviated by mitigation strategies including employee egress to Beacon Street at the rear. Mr. Lewis noted that the Town, including Precinct 13 Town Meeting Members, supported the “up zoning” of this area to allow for projects such as this. Extensive design review has also resulted in an improved project by reducing the Project scale and including more extensive traffic improvements.

George Cole, of 57 Reservoir Lane and a member of the Waterworks Preservation Trust Board, worked with National Development representatives to establish the egress easement for hotel guests and employees. As a member of the Waterworks Preservation Trust Board, Mr. Cole fully supported the Project and commends the Petitioner for engaging in constructive conversations. As a Town resident, Mr. Cole felt that thoughtful architecture and thorough public process has resulted in a relatively low impact and appropriate program. Mr. Cole urged the Board to support the Project.

Thomas Nally, of 17 Cushing Road and a member of the Economic Development Advisory Board, noted that the Petitioner had been responsive to a wide range of public concerns and had complied with a variety of complex regulations. The resulting proposal met requirements for special permit relief and provides appropriate buffers to minimize impact.

Jerry Kampler, of 60 Gardner Road, believed that the Project would create a positive impact on Cleveland Circle. He was also thankful that the proposed uses would have no impact on the school system and would provide adequate facilities for residents to “age in place.” Mr. Kampler also noted the positive tax impact of the hotel rooms in Brookline and believed that the standards for zoning relief were clearly met. Mr. Kampler reminded the Board that evaluation of counterbalancing amenities should include the impact of this proposed project on the general

public not just immediate abutters.

Steve Heiken, of 57 Harris Street and a member of the Planning Board, stated that he was the Chairman of the Design Advisory Team for the Project. Mr. Heiken believed that the Project represented a great improvement from prior iterations in both program and design. The decision to include two unattached structures opens up the piazza area for pedestrians and vehicles. Mr. Heiken reiterated the fact that the Planning Board unanimously recommended approval but noted that financial support for abutter landscaping was atypical and potentially an unwelcome precedent. Mr. Heiken believed that escrowed funds of \$12,000 for each of the Clinton Road abutters was generous.

The following Brookline residents then spoke in opposition to the Project:

John Doggett, of 8 Penniman Road and a Precinct 13 Town Meeting Member, stated that he represented Clinton Road abutters who had been following the Project for almost 5 years. Mr. Doggett acknowledged that positive changes had been made but that the issue of visual screening remained. Presenting a sample photo of a Clinton Road abutter's view of the Hotel Building, in which the brick walls of the Hotel Building were visible, Mr. Doggett suggested that landscape screening would take nearly 40 years to mature and effectively obscure views. Mr. Doggett further emphasized concern regarding the loss of privacy for Clinton Road residents due to the fact that five stories of hotel windows would provide direct views into rear yards along Clinton Road. Mr. Doggett indicated that landscaping estimates were submitted to the Board ranging from \$61,000 to \$68,000, and did not believe that \$12,000 was sufficient to install landscape features of the necessary height and density to substantially improve the privacy issue. Mr. Doggett concluded his comments by stating that the burden for adequate counterbalancing

amenities, landscape screening in this case, should fall on the developer rather than abutting residents.

Mark Gruber, of 405 Clinton Road, stated that his home is located directly behind the proposed piazza turnaround. According to Mr. Gruber, the Project will result in a loss of privacy and significant increase in artificial light. Mr. Gruber also believed that this counterbalancing amenity evaluation is unique due to the narrow buffer between a general business district and a single-family residential district. Mr. Gruber suggested that the budget for landscaped screening should be increased and up-front costs should not be the responsibility of abutters.

Rony Sellam, of 385 Clinton Road, stated that he has resided on Clinton Road for 9 years and was facing a complete loss of privacy and property value. Mr. Sellman believed that the request for increased funds was not unreasonable when considering the scope of the Project. According to Mr. Sellam, the properties along Clinton Road each required unique planting strategies and would need to account for existing vegetation. All landscaping estimates exceeded \$12,000 and Mr. Sellman reiterated the unique relationship between large commercial development and the single-family residential neighborhood.

Nic Choumenkovitch, of 375 Clinton Road, expressed concern that the burden for adequate visual screening was being placed on Clinton Road abutters who purchased their homes with the idea that large-scale development of this type would not be constructed near their rear yards. Mr. Choumenkovitch expressed similar concerns as other individuals speaking in opposition to the Project.

Andrew Fischer, a Precinct 13 Town Meeting Member, was pleased by Project improvements and was generally in favor of the Project. Mr. Fischer believed that the Project was nearly correct aside from the screening issue, and that, since it was a large-scale project, it

should be relatively easy to protect abutting residents through adequate landscaping. Mr. Fischer felt that this work would be insignificant for the Petitioner but would be impactful for some abutters. Mr. Fischer stated that it was of critical importance to maintain the interface between commercial/social activity and residential activity. Mr. Fischer urged the Board to condition additional funds for abutter screening.

John Van Scoyoc, of 307 Reservoir Road and a Precinct 13 Town Meeting Member, agreed that there was general neighborhood support for the Project. In his view, the question before the Board was whether there was an adequate amount of screening on the Petitioner's property, and this determination was the responsibility of the Board.

Jonathan Fine, of 57 Willow Crescent and Precinct 13 Town Meeting Member, noted overall improvement to the Project but expressed concern that restaurant parking in particular was not adequate for the site. Mr. Fine believed that overflow parking might result in vehicles parking in adjacent neighborhoods. Mr. Fine urged the Board to consider options for additional restaurant parking.

John Freeman, of 530 Clinton Road and a Precinct 13 Town Meeting Member, expressed general support for the Project but emphasized that a significant impact would be placed on seven individual property owners. Mr. Freeman likened the visual impact to a cruise ship docking in a single-family back yard and indicated that current mitigation was not satisfactory.

Joanna Baker, of 1824 Beacon Street and a Precinct 13 Town Meeting Member, offered that redevelopment of the Project site had been a long process that would not be complete until abutter privacy was maintained.

Lara Curtis Hayes presented the findings of the Planning Board as contained in its report dated June 25, 2015, as well as proposed conditions recommended by the Planning Board, both

of which are set out below. Ms. Curtis Hayes indicated that the Planning Board was supportive of the proposed development at the former Circle Cinema site. The Project has undergone an extensive planning process involving both the City of Boston and the Town of Brookline, and its overall design has improved with time and citizen input. The proposed buildings will improve the streetscape and facilitate pedestrian and bicycle circulation in the difficult Cleveland Circle area. The Buildings are attractively designed, well-suited for the region, and are expected to become an amenity to the neighborhood.

Plans still needed to be further developed and refined, and certain aspects of the plans and elevations will need to be approved by the Planning Board and the Project's Design Advisory Team prior to issuance of a building permit for the construction of the building partially in Brookline. The Planning Board would appreciate as much screening as possible for the transformers located at the sidewalk and a more detailed plan showing bicycle parking both outside the building and within the garage. Fencing details need to be further refined, such as whether the fence along the MBTA Right of Way will be solid or open. It was recognized that, although a solid fence would provide better protection from noise in the surface parking lot, it would screen much of the attractive landscaping that is also proposed.

The Petitioner is proposing extensive and attractive public improvements in the immediate neighborhood. Plans for the improvements along Chestnut Hill Avenue have been reviewed by the Director of Engineering/Transportation and Brookline's Tree Warden and will be submitted for their approval. To ensure the buildings operate in compliance with the Town's By-laws for solid waste disposal, a trash and recycling plan will be submitted to the Department of Public Health and DPW's Solid Waste Division, and bins for trash and recycling should be shown on a floor plan or site plan. Additionally, a detailed and responsive construction

management plan is also required.

Finally, any and all off-site improvements need to be more fully detailed and shown on a plan. The current plans identified as “Clinton Road Intersection Improvement Plan;” “Crosswalk Concept Plan;” and “Conceptual Design of Cleveland Circle Improvements” will be further refined in consultation with the appropriate municipal authorities, including a plan that shows the replacement of sidewalks along Chestnut Hill Avenue up to Clinton Road (not including the MBTA bridge), landscaping and maintenance of the curb area at the Clinton Road intersection.

Therefore, the Planning Board recommends approval of plans by Elkus Manfredi Architects and Stantec Consulting, dated 6/12/2015 and 5/26/2015, as modified by those plans dated 6/12/2015, subject to the following conditions.

Ms. Curtis Hayes informed the Board that the Brookline Planning Department was recommending several modifications to the special permit conditions included in the Planning Board’s Report. Board members confirmed that they had reviewed proposed modifications and requested that all conditions be read for the record, including proposed modifications:

1. Prior to the issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit final plans and elevations, indicating materials, dimensions, and locations and details of all rooftop mechanicals, subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit a final site plan, indicating all parking, 106 bicycle parking spaces, 20 bicycle storage spaces, two car sharing spaces, electric car charging stations, paving details, fencing, HVAC equipment, transformers, other mechanical equipment, dumpsters and/or trash and recycling bins, and other site elements, subject to the review and approval of the Planning Board.
3. Prior to the issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit a final landscape plan indicating all counterbalancing amenities, including planting types and sizes, hardscape details, walls and fencing, and lighting, subject to the review and approval of the Planning Board. This plan shall include screening details for the transformers at the front of the site and the at-grade mechanical equipment by the parking area.

4. In addition to the landscaping shown on the project site, the applicant shall provide off-site landscaping and/or any type of screening as follows: with respect to the residences known and numbered as 375, 381, 385, 393, 401, 405, and 411 Clinton Road, (i) the Applicant has agreed to escrow (in an interest bearing account), prior to the issuance of the building permit for the construction of the building partially in Brookline, a total of \$84,000 with the Building Commissioner solely for the purpose of funding the planting of plants and/or installation of screening; (ii) upon submission to the Building Commissioner by the property owners of invoices and/or receipts evidencing the purchase of plants and/or screening for installation at 375, 381, 385, 393, 401, 405, and 411 Clinton Road, or a signed contract requiring a deposit prior to the start of work, the Building Commissioner and/or Finance Department shall release the escrowed funds to the property owners to reimburse them for the cost of said landscaping and/or screening and/or contract deposit for the same up to the amount of \$12,000 per lot; (iii) in the event that there are any funds left in the escrow account one year after the date of the final Certificate of Occupancy for the building partially in Brookline, said funds shall be forthwith returned to the applicant upon written request to the Building Commissioner; (iv) in addition to the \$84,000 in landscaping/screening mitigation, the Applicant shall provide up to two hours of landscaping consulting services, the provider of such services to be selected by the Applicant, for each of the properties at 375, 381, 385, 393, 401, 405, and 411 Clinton Road to assist individual property owners in developing personal landscaping and/or fencing plans.
5. Prior to the issuance of a building permit for the construction of the building partially in Brookline, a final drainage plan shall be submitted subject to the review and approval of the Director of Transportation/Engineering.
6. Prior to the issuance of a building permit for the construction of the building partially in Brookline, except for item 6 (c) noted below, a final Transportation Demand Management and Parking plan shall be approved by the Director of Transportation/Engineering and the Director of Planning and Community Development, or their designees. The plan shall include, but is not limited to, the following:
 - a. Bicycle lane connection on Beacon Street through Cleveland Circle as shown on the submitted plan labeled "Figure 7" and prepared by Howard/Stein-Hudson Associates.
 - b. Significant off-site pedestrian amenities, including sidewalks, landscaping, and new street lights, throughout Cleveland Circle, and along the western side of Chestnut Hill Avenue up to Clinton Road.
 - c. Provision of a signalized Chestnut Hill Avenue crosswalk at the site entrance prior to the issuance of a certificate of occupancy for the hotel.
 - d. Provision of two shared-car parking spaces (such as Zipcar).

- e. Agreement that all hotel employees who bike to/from work may use on-site showers within the hotel.
 - f. Provision of at least 106 bicycle parking spaces for residents and employees.
 - g. Provision of at least two bicycle racks located near retail/restaurant and hotel entrances to accommodate at least 20 covered bicycle parking spaces.
 - h. On-site coordinator to provide information and alternative transportation materials to residents, employees, hotel guests and visitors.
 - i. Sponsoring one Hubway bicycle sharing station for Cleveland Circle off-site, as coordinated through Boston Bikes and subject to applicable approvals from the City of Boston.
7. Prior to the issuance of a building permit for any signage installation, final signage plans, including all wording, lettering heights, lighting details, colors and materials for the building partially in Brookline, as well as details/colors/materials for the entire façade length facing Clinton Road, shall be submitted to the Planning Board for review and approval. Any free-standing signage shall also be reviewed and approved by the Director of Engineering/Transportation to ensure adequate pedestrian access around the sign.
 8. No deliveries or dumpster services shall occur before 6:00 a.m. or after 10 p.m. All deliveries shall be transported by single-unit vehicles, not by tractor trailers, and all loading and unloading activities shall only occur on site.
 9. The Developer, under the terms of an Assignment and Assumption Agreement dated November 26, 2014, was assigned all the right, title and interest of the former Developer, First General Realty Corp. in a certain Payment in Lieu of Taxes and Development Agreement dated May 24, 2011, as amended on July 22, 2014 (the "Developer's Agreement"), and has thereby accepted and assumed all of the obligations set forth in the Developer's Agreement, the terms and conditions of which are incorporated herein by reference. The Voluntary Special Permit Conditions listed in the Developer's Agreement are modified by conditions of this Special Permit.
 10. Hotel parking will be accommodated by a surface lot of 81 contiguous spaces. No more than 60 of the parking spaces shall have egress to Beacon Street via the one-way rear exit roadway (the "Waterworks Roadway"). The 60 surface spaces at the rear of the site shall be separated from other parking by a traffic gate and used only by overnight hotel guests and hotel employees. Vehicles utilizing these 60 spaces shall exit the site via the Waterworks Roadway to Beacon Street, except for as outlined in condition #11 below; all other vehicles, including taxicabs, shuttles and delivery vehicles, shall exit the site directly via Chestnut Hill Avenue. Documentation demonstrating ability to utilize the Roadway onto Beacon Street must be submitted prior to the issuance of a building permit for the construction of the building partially in Brookline.

11. In the event of required closures of the Waterworks Roadway to Beacon Street due to maintenance and repairs of the roadway, adjacent landscape, and/or adjacent building façade, and notwithstanding the provision of the Town of Brookline Zoning By-law Section 5.06.4.i.6.a.2, the applicant may on a temporary basis under limited circumstances and with prior notice to the Town of Brookline Building Commissioner or his/her designee allow vehicles located in the segregated parking facility to exit onto Chestnut Hill Avenue. For the purposes of this condition, “temporary basis under limited circumstances” includes closure of the exit roadway easement of no more than 100 hours a year, except for emergencies. The Building Commissioner should be notified as soon as practical in the event of any emergency situation requiring closure of the exit roadway.
12. Prior to issuance of a Certificate of Occupancy for the building partially located in Brookline, a repair, maintenance and mitigation agreement with the rear abutting property owner(s) for the Waterworks Roadway, including traffic-calming measures, shall be submitted, for record purposes only, to the Assistant Director of Regulatory Planning.
13. Prior to the issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit to the Director of Transportation/Engineering for review and approval a final traffic study and mitigation plan indicating the traffic queuing on Chestnut Hill Avenue will be less than or equal to that shown in the originally-reviewed traffic study prepared by Howard/Stein-Hudson Associates and dated April 5, 2013.
14. Prior to the issuance of a building permit for the construction of the building partially in Brookline, final plans for all off-site improvements within the Town’s right-of-way shall be reviewed and approved by the Director of Engineering/Transportation and the Director of Parks and Open Space. This includes the new crosswalk and signal across Chestnut Hill Avenue; the replacement of sidewalk along the western side of Chestnut Hill Avenue up to Clinton Road, excepting the MBTA bridge; the installation of landscaping and an accompanying maintenance agreement for public open space areas at the Chestnut Hill Avenue and Clinton Road intersection; the location of proposed catenary lines; and installation of street signage and street lighting. All planting details along the public way shall be reviewed and approved also by the Town’s Tree Warden. All work in the public right-of-way shall be completed to the satisfaction of the Director of Engineering/Transportation prior to issuance of a final Certificate of Occupancy for the building partially located in Brookline.
15. Prior to issuance of any Certificate of Occupancy for the building partially in Brookline, signage shall be installed indicating “No Right Turn On Red” for vehicles exiting onto Chestnut Hill Avenue.
16. Prior to the issuance of a building permit for the construction of the building partially in Brookline, a final plan permitting public access and defining maintenance responsibilities for the portion of the sidewalk in front of the hotel that is located on

private property shall be reviewed and approved by the Director of Engineering/Transportation.

17. Prior to the issuance of a building permit for demolition of any structures or buildings located partially in Brookline, a construction management plan, detailing parking locations for construction vehicles, hours of construction and materials delivery, noise mitigation, staging areas, security fencing, location of portable toilets, rodent control, erosion and sediment control, protocols to insure protection of persons in the vicinity of the construction work, emergency contact information, and the name and contact information for a project liaison provided by the applicant, shall be submitted for review and approval by the Director of Engineering/Transportation, after input from the Building Commissioner and Health Director. A copy of the approved plan shall be submitted in paper and electronic form to the Planning and Community Development Department such that it can be posted on the Planning and Community Development Department's website.
18. Prior to the issuance of a demolition permit for the building partially in Brookline, sufficient evidence to the satisfaction of the Building Commissioner and the Director of Planning and Community Development shall be submitted that demonstrates the Applicant's ability and intent to move forward with the entire proposed development in a timely manner. Such evidence shall include related financing and permits to proceed.
19. Prior to issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit a copy of all documents recorded at the Registry of Deeds relating to the abandonment, in place, of existing sewer(s), the extinguishment of easements for the common sewer, and the release of the Town's rights, duties and responsibilities in the 18-inch sewer running through Boston for any part of the development site that is controlled by the Town of Brookline, in accordance with, and subject to the vote of Town Meeting on November 18, 2014, under Articles 4 and 5.
20. The length of the building partially in Brookline and facing and nearest to Clinton Road shall be a maximum of 285 feet in length.
21. The Project shall include a minimum of 60 hotel rooms in the Town of Brookline.
22. The primary vehicular access for the Project, whether the Project is located at the Premises in Brookline or solely within the City of Boston, shall be partially located within the Town of Brookline.
23. The entire development shall comply with both Brookline and Boston noise control regulations, without regard to municipal boundaries.
24. The hotel meeting room shall be available for community use periodically and on a reservation basis, subject to scheduling availability.

25. Prior to the issuance of a building permit for the construction of the building partially in Brookline, 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 floor plans and building elevations stamped and signed by a registered architect; 3) evidence of an easement agreement allowing use of the rear driveway to Beacon Street; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Book requested clarification of the Condition 6.c requirement. Ms. Curtis Hayes clarified that a signalized Chestnut Hill Avenue crosswalk is required prior to the issuance of a Certificate of Occupancy rather than a building permit. This provision is intended to maintain a reasonable construction timeline that incorporates signalized pedestrian crossing prior to opening the site for general use.

Mr. Michael Yanovitch, Chief Building Inspector for the Town, expressed support for the Project. Mr. Yanovitch stated that the Petitioner was deliberate in design and scale in order to comply with zoning requirements. Despite the overall scope of the Project, required zoning relief was fairly minimal and available by special permit. With respect to the referenced setback relief related to the cornice and the bays that encroach within the 5 foot upper-floor setback within 50 feet of Chestnut Hill Avenue, Mr. Yanovitch confirmed that special permit relief for these elements was provided by **Section 5.43**. The Town of Brookline essentially dictated the allowed maximum Hotel Building height (56 feet) in an effort to protect abutting residential neighborhoods. Mr. Yanovitch agreed that financial support for abutter landscaping was a problematic precedent and noted that the proposal before the Board has been scrutinized thoroughly by two separate municipalities. The Building Department has no objection to the requested relief and will work with the Petitioner to ensure compliance with all imposed conditions and state building codes if approved by the Board.

In the deliberations of the Board, Board Member Zuroff stated that landscaped screening

between the Project site and abutting residents on Clinton Road was obviously the primary focus of project opposition. Mr. Zuroff commended the Petitioner for establishing the escrow account condition and questioned if there were any construction/material-related strategy, such as window materials, that could effectively prevent hotel guest intrusion on the level of privacy for abutting yards

Mr. Tye responded by reiterating that the Project largely complied with zoning regulations, that the new structure was set back from the side lot lines, that the Petitioner intends to install landscaped screening along the southern façade, and that the Petitioner has proposed a wide variety of impact mitigation strategies. The hotel windows are required to be energy efficient and will include a noticeable tint. Additionally, hotel guests typically utilize hotel rooms for night use and do not spend a large amount of time in rooms. Individual lighting in rooms will consist of small lamps and the overall site lighting plan is intended to be low impact. Mr. Tye confirmed that it is atypical to provide funds to direct abutters but believed that \$12,000 per abutter and landscaping assistance is generous in this instance and that the submitted abutter landscaping estimates are not reasonable.

Chairman Book inquired how the \$12,000 amount was established. Petitioner's project manager Michael Crowley indicated that the Petitioner based estimates upon the level of screening required to effectively soften the visual experience of abutters. Although various lots will require unique landscaping schemes, Mr. Crowley noted that, in general, the Petitioner feels that \$12,000 was sufficient. Mr. Crowley also noted that the distance between the Clinton Road properties and the proposed Hotel Building ranges from 100 to 200 feet and that the MBTA Right of Way also passes between the respective lot lines.

Board Member Liss cautioned the Board against imposing financial obligations on a

developer related to installing counterbalancing amenities on neighboring private properties. Mr. Liss agreed that abutter privacy concerns were valid but expressed concern that such a condition could establish a precedent that could deter future development in the Town. In general, Mr. Liss believed that the Project was “thoughtful” and satisfied the required standards for the grant of special permit relief, but remained uncertain regarding the appropriateness of the condition for escrowed funds.

Board Member Zuroff indicated that he was impressed by the Petitioner’s ability to satisfy various town, resident, and zoning concerns. Mr. Zuroff believed that the Project is worthy of requested relief as it satisfies necessary requirements and will provide a much needed upgrade to the Cleveland Circle area. Abutting neighbors and the wider community will benefit from the revitalization of the vacant parcel. The developer has also been cognizant of both historic significance and current public use of the surrounding space. Mr. Zuroff believed that the Project’s counterbalancing amenities include property improvements in addition to visual screening. Mr. Zuroff indicated that he is comfortable with the level of off-street parking provided and cited the abundance of metered parking and public transportation in the area.

Mr. Zuroff offered that the escrowed funds were a voluntary offer from the Petitioner and would not set an unwanted precedent. Mr. Zuroff agreed with the desire of the Clinton Road neighbors to protect a beautiful residential neighborhood, but believed that \$60,000 landscaping estimates seemed excessive. For these reasons, Mr. Zuroff was in favor of granting requested relief, subject to revised conditions stated for the record.

Chairman Book indicated that he had not encountered the issue of escrowed funds with other special permit/variance applications before the Board. Mr. Book concurred with Board Member comments and further stated that Town Meeting had specifically endorsed a project of

this scope including hotel use through the adoption of the 2011 zoning district amendment. Mr. Book believed that required setback relief was largely unrelated to the Clinton Road screening issue and that, therefore, it would be unreasonable to place additional financial responsibility on the Petitioner beyond the voluntary \$12,000 amount. Mr. Book noted that the proposed hotel use was less intrusive than an apartment building use that could also be proposed for the Project site. The Project itself was attractive and represents appropriate reuse of the site. Proposed landscape screening will grow over time, and more immediate positive impact to the neighborhood was evident.

For these reasons, Mr. Book agreed that the Petitioner's proposal was worthy of the modest special permit relief requested, in accordance with By-Law Sections **Section 5.06.4.f.2** (Major Impact Project in the Cleveland Circle Local Business District), **Section 5.06.4.i** (Project in the Cleveland Circle Hotel Overlay District), **Sections 5.06.4.i.4.b** (Yard and Setback Regulations) and **5.43** (modification of setbacks), **Section 5.06.4.i.4.e** (Fence height along the MBTA Right of Way), **Sections 5.06.4.i.5.c** and **6.02.2.d** (off-street parking requirements for age-restricted housing), **Section 5.09** (Design Review), **Section 7.00.1.b** (sign dimensions and location), and **Section 9.05** (standards for issuance of a special permit).

The Board, having considered the foregoing information, having reviewed the plans and the relief required, fully supports the Project, and approves the Project subject to the conditions set out below.

With respect to a Special Permit under **Section 5.51**, the Board finds that the cornice does not create a violation of **Section 5.51** since it does not project into a front yard, but rather relief from **Section 5.06.4.i.4.b** should be granted pursuant to **Section 5.43** because the violation cited by the Building Department relates to the upper-level setback requirement rather than to a front

yard requirement, and that the proposed counterbalancing amenities are more than adequate.

With respect to the required special permits under Section 5.06.4.f.2, Section 5.06.4.i, Section 5.06.4.i.4.b, Section 5.06.4.i.4.e, Section 5.06.4.i.5.c, Section 5.09, Section 5.43, Section 5.51, Section 6.02.2.d and Section 7.00.1.b, the Board makes the findings pursuant to Section 9.05, and other relevant provisions, of the Zoning By-Law for the reasons stated by Ms. Sticklor during her presentation. Specifically:

1. The property is an appropriate location for the Project.

The Property is located in a local business district and a hotel overlay district that specifically contemplated the Project. The Project's uses and dimensions are similar to and compatible with other existing properties in Cleveland Circle. The Property is exceptionally well-served by public transportation.

2. The Project will not adversely affect the neighborhood.

The Project will improve the neighborhood by creating an attractive new development that will activate the neighborhood and streetscape, enhance safety in the neighborhood, upgrade traffic signals, and provide substantial landscape and public amenities.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

The Project will include adequate off-street parking, with a safe means of ingress and egress, so that the surrounding streets will be unaffected and unobstructed. Traffic impacts will be mitigated through a comprehensive transportation demand management plan, and construction impacts will be mitigated through a construction management plan. The Project will be operated to comply with and local noise ordinances of Brookline and Boston, without regard to municipal boundaries.

4. Adequate and appropriate facilities will be provided for the proper operation of the Project.

The Project will be provided with parking, sanitary, stormwater management, life-safety and other facilities of high quality in compliance with applicable building and health codes.

5. The Project will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Project does not propose any housing on the Brookline portion of the Project Site, and the age-restricted senior housing proposed in Boston will include housing consistent with Boston inclusionary zoning requirements.

6. Additional conditions and reasons related to construction of a project within the Cleveland Circle Local Business District L-0.5

As required by **Section 5.06.4.f**, (1) Petitioner has submitted a traffic impact and access study that clearly outlines the strategy for providing access to and from the Project and the impacts of that access on the transportation system of Brookline, the area's mass transit systems, pedestrian and bicycle circulation, and public safety in the area, and (2) the length of the entire façade of the Hotel Building has been designed and will be constructed with care and quality of finishes equivalent to that of the northern façade of the Hotel Building.

7. Additional conditions and reasons related to construction of a project within the Cleveland Circle Hotel Overlay District

(1) as required by **Section 5.06.4.i.4.b.1**, the Project is set back from Chestnut Hill Avenue not more than 15 feet and not less than 5 feet; (2) as required by **Section 5.06.4.i.4.b.3**, the Project is set back not less than 5 feet from the MBTA right of way; (3) as required by **Section 5.06.4.i.4.c**, the Hotel Building does not exceed 56 feet in height; (4) as required by **Section 5.06.4.i.4.d**, the Hotel Building does not contain substantial rooftop structures within 15 feet of the MBTA right of way; (5) as required by **Section 5.06.4.i.6.a.1**, the Project has access and egress to Chestnut Hill Avenue by one curb cut of no more than 2 lanes in width and

controlled by a traffic signal equipped with activated demand technology; (6) as required by **Section 5.06.4.i.6.a.2**, the Project contains a physically segregated parking area for hotel guests and employees, from which the only available egress from the Property is to Beacon Street; (7) as required by **Section 5.06.4.i.6.a.3**, the Project provides for egress only to Chestnut Hill Avenue by all other Project guests, residents and employees; (8) as required by **Section 5.06.4.i.5.a**, the Project complies with the minimum parking requirements applicable to hotel and restaurant/retail uses; (9) as required by **Section 5.06.4.i.5.b**, the Brookline Director of Transportation and Engineering has approved the provision of two loading bays at the Project; (10) as required by **Section 5.06.4.i.6.a.4**, the Project provides separate taxi stands on the Boston and Brookline portions of the Project site; (11) as required by **Section 5.06.4.i.6.b**, final traffic design and mitigation for the Project includes the potential impact of the redevelopment of any directly abutting parcels, regardless of municipal boundaries, and the Project is smaller both in square footage for each use and projected total traffic generation than 110,000 SF of Limited Service Hotel use, 48,000 SF of office or medical office, and 18,000 SF of restaurant or retail use; (12) as required by **Section 5.06.4.i.6.c.1**, the Project will provide improvements to two pedestrian crossings across Chestnut Hill Avenue, including at Cleveland Circle as well as the crossing aligned with vehicular turn-around at the MBTA station south of the MBTA Right of Way, and, subject to approval by the Brookline Director of Transportation and Engineering as well as the Boston Transportation Department, a third pedestrian crossing where the signal for the Chestnut Hill Avenue entrance will be located, near the Boston/Brookline boundary; (13) as required by **Section 5.06.4.i.6.c.2**, the Project will provide sidewalk improvements including minimum 10-foot wide sidewalk on the western side of Chestnut Hill Avenue from the Brookline boundary to the MBTA bridge and replacement of sidewalk on the western side of Chestnut Hill

Avenue from the MBTA bridge to Clinton Road; and (14) as required by Section 5.06.4.i.7, the Project will comply with all state noise regulation and local noise ordinances of both Brookline and Boston, without regard to municipal boundaries.

8. Additional conditions and reasons related to yard and setback regulations

As required by Section 5.43, the Project will provide such counterbalance by maintaining a landscaped setback along the MBTA Right of Way greater than the required 5 feet for significant sections of the setback, a landscaped and hardscaped setback facing Cassidy Playground greater than the required 5 feet and as large as 11 feet in some places, landscaped elements along the length of the rear parking lot and Clinton Road elevation along the hotel, and an interior piazza containing a generous amount of landscaping, public seating and open space. The design also incorporates a sidewalk that extends from the rear parking area through the site to facilitate safe pedestrian passage to Chestnut Hill Avenue. Similarly, the height of the hotel is approximately 51 feet 10 inches which is less than the permitted height of 56 feet.

9. Additional conditions and reasons related to parking for age restricted units

Residential use at the Project will be age-restricted to seniors pursuant to the City of Boston's Planned Development Area Development Plan applicable to the Boston portion of the Project site. Petitioner has demonstrated that the parking required for such age-restricted residents is less than what would otherwise be generated by residential use without such age restriction. Appellant anticipates providing 188 off-street parking spaces at the Project, of which up to 96 may be used by age-restricted occupants and their visitors. This total exceeds one-fifth of the minimum of 185 that would otherwise be required.

10. Additional conditions and reasons relating to Community Impact and Design Review

The Project meets the community impact and design review standards set forth in **Section 5.09(4)**. Specifically, as noted in the Project's Impact Statement, the Project's design incorporates each of **Section 5.09(4)**'s standards regarding the preservation of trees and landscape, the relation of buildings to the environment, open space, circulation, stormwater drainage, utility service, advertising features, safety and security, heritage, microclimate and energy efficiency.

11. **Additional conditions and reasons related to building identification signage**

The Project will include one building identification sign displaying the name of the hotel operator within the Project. This sign will face the interior piazza and provide building identification and way-finding for motorists and pedestrians in Cleveland Circle, and is located higher than the 25 feet above grade. This building identification sign is necessary to identify the hotel use at the Project and is consistent with identification signs employed on comparable first class commercial developments and buildings.

Therefore, the Board voted unanimously to grant the requested special permits under **Section 5.06.4.f.2, Section 5.06.4.i, Section 5.06.4.i.4.b, Section 5.06.4.i.4.e, Section 5.06.4.i.5.c, Section 5.09, Section 5.43, Section 5.51, Section 6.02.2.d and Section 7.00.1.b,** subject to the following conditions:

1. Prior to the issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit final plans and elevations, indicating materials, dimensions, and locations and details of all rooftop mechanicals, subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit a final site plan, indicating all parking, 106 bicycle parking spaces, 20 bicycle storage spaces, two car sharing spaces, electric car charging stations, paving details, fencing, HVAC equipment, transformers, other mechanical equipment, dumpsters and/or trash and recycling bins, and other site elements, subject to the review and approval of the Planning Board.

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4. In addition to the landscaping shown on the project site, the applicant shall provide off-site landscaping and/or any type of screening as follows: with respect to the residences known and numbered as 375, 381, 385, 393, 401, 405, and 411 Clinton Road, (i) the Applicant has agreed to escrow (in an interest bearing account), prior to the issuance of the building permit for the construction of the building partially in Brookline, a total of \$84,000 with the Building Commissioner solely for the purpose of funding the planting of plants and/or installation of screening; (ii) upon submission to the Building Commissioner by the property owners of invoices and/or receipts evidencing the purchase of plants and/or screening for installation at 375, 381, 385, 393, 401, 405, and 411 Clinton Road, or a signed contract requiring a deposit prior to the start of work, the Building Commissioner and/or Finance Department shall release the escrowed funds to the property owners to reimburse them for the cost of said landscaping and/or screening and/or contract deposit for the same up to the amount of \$12,000 per lot; (iii) in the event that there are any funds left in the escrow account one year after the date of the final Certificate of Occupancy for the building partially in Brookline, said funds shall be forthwith returned to the applicant upon written request to the Building Commissioner; (iv) in addition to the \$84,000 in landscaping/screening mitigation, the Applicant shall provide up to two hours of landscaping consulting services, the provider of such services to be selected by the Applicant, for each of the properties at 375, 381, 385, 393, 401, 405, and 411 Clinton Road to assist individual property owners in developing personal landscaping and/or fencing plans.
5. Prior to the issuance of a building permit for the construction of the building partially in Brookline, a final drainage plan shall be submitted subject to the review and approval of the Director of Transportation/Engineering.
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 - a. Bicycle lane connection on Beacon Street through Cleveland Circle as shown on the submitted plan labeled "Figure 7" and prepared by Howard/Stein-Hudson Associates.

- b. Significant off-site pedestrian amenities, including sidewalks, landscaping, and new street lights, throughout Cleveland Circle, and along the western side of Chestnut Hill Avenue up to Clinton Road.
 - c. Provision of a signalized Chestnut Hill Avenue crosswalk at the site entrance prior to the issuance of a certificate of occupancy for the hotel.
 - d. Provision of two shared-car parking spaces (such as Zipcar).
 - e. Agreement that all hotel employees who bike to/from work may use on-site showers within the hotel.
 - f. Provision of at least 106 bicycle parking spaces for residents and employees.
 - g. Provision of at least two bicycle racks located near retail/restaurant and hotel entrances to accommodate at least 20 covered bicycle parking spaces.
 - h. On-site coordinator to provide information and alternative transportation materials to residents, employees, hotel guests and visitors.
 - i. Sponsoring one Hubway bicycle sharing station for Cleveland Circle off-site, as coordinated through Boston Bikes and subject to applicable approvals from the City of Boston.
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 8. No deliveries or dumpster services on site shall occur before 6:00 a.m. or after 10 p.m. All deliveries shall be transported by single-unit vehicles, not by tractor trailers, and all loading and unloading activities shall only occur on site.
 9. The Developer, under the terms of an Assignment and Assumption Agreement dated November 26, 2014, was assigned all the right, title and interest of the former Developer, First General Realty Corp. in a certain Payment in Lieu of Taxes and Development Agreement dated May 24, 2011, as amended on July 22, 2014 (the "Developer's Agreement"), and has thereby accepted and assumed all of the obligations set forth in the Developer's Agreement, the terms and conditions of which are incorporated herein by reference. The Voluntary Special Permit Conditions listed in the Developer's Agreement are modified by conditions of this Special Permit.
 10. Hotel parking will be accommodated by a surface lot of 81 contiguous spaces. No more than 60 of the parking spaces shall have egress to Beacon Street via the one-way rear exit roadway (the "Waterworks Roadway"). The 60 surface spaces at the rear of the site shall be separated from other parking by a traffic gate and used only

by overnight hotel guests and hotel employees. Vehicles utilizing these 60 spaces shall exit the site via the Waterworks Roadway to Beacon Street, except for as outlined in condition #11 below; all other vehicles, including taxicabs, shuttles and delivery vehicles, shall exit the site directly via Chestnut Hill Avenue. Documentation demonstrating ability to utilize the Roadway onto Beacon Street must be submitted prior to the issuance of a building permit for the construction of the building partially in Brookline.

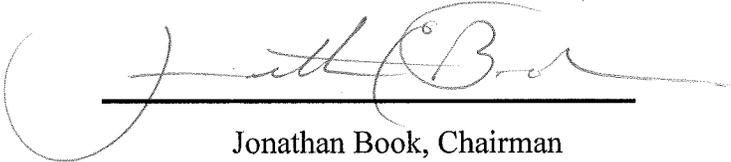
11. In the event of required closures of the Waterworks Roadway to Beacon Street due to maintenance and repairs of the roadway, adjacent landscape, and/or adjacent building façade, and notwithstanding the provision of the Town of Brookline Zoning By-law Section 5.06.4.i.6.a.2, the applicant may on a temporary basis under limited circumstances and with prior notice to the Town of Brookline Building Commissioner or his/her designee allow vehicles located in the segregated parking facility to exit onto Chestnut Hill Avenue. For the purposes of this condition, “temporary basis under limited circumstances” includes closure of the exit roadway easement of no more than 100 hours a year, except for emergencies. The Building Commissioner should be notified as soon as practical in the event of any emergency situation requiring closure of the exit roadway.
12. Prior to issuance of a Certificate of Occupancy for the building partially located in Brookline, a repair, maintenance and mitigation agreement with the rear abutting property owner(s) for the Waterworks Roadway, including traffic-calming measures, shall be submitted, for record purposes only, to the Assistant Director of Regulatory Planning.
13. Prior to the issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit to the Director of Transportation/Engineering for review and approval a final traffic study and mitigation plan indicating the traffic queuing on Chestnut Hill Avenue will be less than or equal to that shown in the originally-reviewed traffic study prepared by Howard/Stein-Hudson Associates and dated April 5, 2013.
14. Prior to the issuance of a building permit for the construction of the building partially in Brookline, final plans for all off-site improvements within the Town’s right-of-way shall be reviewed and approved by the Director of Engineering/Transportation and the Director of Parks and Open Space. This includes the new crosswalk and signal across Chestnut Hill Avenue; the replacement of sidewalk along the western side of Chestnut Hill Avenue up to Clinton Road, excepting the MBTA bridge; the installation of landscaping and an accompanying maintenance agreement for public open space areas at the Chestnut Hill Avenue and Clinton Road intersection; the location of proposed catenary lines; and installation of street signage and street lighting. All planting details along the public way shall be reviewed and approved also by the Town’s Tree Warden. All work in the public right-of-way shall be completed to the satisfaction of the Director of Engineering/Transportation prior to issuance of a final Certificate of Occupancy for the building partially located in Brookline.

15. Prior to issuance of any Certificate of Occupancy for the building partially in Brookline, signage shall be installed indicating "No Right Turn On Red" for vehicles exiting onto Chestnut Hill Avenue.
16. Prior to the issuance of a building permit for the construction of the building partially in Brookline, a final plan permitting public access and defining maintenance responsibilities for the portion of the sidewalk in front of the hotel that is located on private property shall be reviewed and approved by the Director of Engineering/Transportation.
17. Prior to the issuance of a building permit for demolition of any structures or buildings located partially in Brookline, a construction management plan, detailing parking locations for construction vehicles, hours of construction and materials delivery, noise mitigation, staging areas, security fencing, location of portable toilets, rodent control, erosion and sediment control, protocols to insure protection of persons in the vicinity of the construction work, emergency contact information, and the name and contact information for a project liaison provided by the applicant, shall be submitted for review and approval by the Director of Engineering/Transportation, after input from the Building Commissioner and Health Director. A copy of the approved plan shall be submitted in paper and electronic form to the Planning and Community Development Department such that it can be posted on the Planning and Community Development Department's website.
18. Prior to the issuance of a demolition permit for the building partially in Brookline, sufficient evidence to the satisfaction of the Building Commissioner and the Director of Planning and Community Development shall be submitted that demonstrates the Applicant's ability and intent to move forward with the entire proposed development in a timely manner. Such evidence shall include related financing and permits to proceed.
19. Prior to issuance of a building permit for the construction of the building partially in Brookline, the applicant shall submit a copy of all documents recorded at the Registry of Deeds relating to the abandonment, in place, of existing sewer(s), the extinguishment of easements for the common sewer, and the release of the Town's rights, duties and responsibilities in the 18-inch sewer running through Boston for any part of the development site that is controlled by the Town of Brookline, in accordance with, and subject to the vote of Town Meeting on November 18, 2014, under Articles 4 and 5.
20. The length of the building partially in Brookline and facing and nearest to Clinton Road shall be a maximum of 285 feet in length.
21. The Project shall include a minimum of 60 hotel rooms in the Town of Brookline.
22. The primary vehicular access for the Project, whether the Project is located at the Premises in Brookline or solely within the City of Boston, shall be partially located within the Town of Brookline.

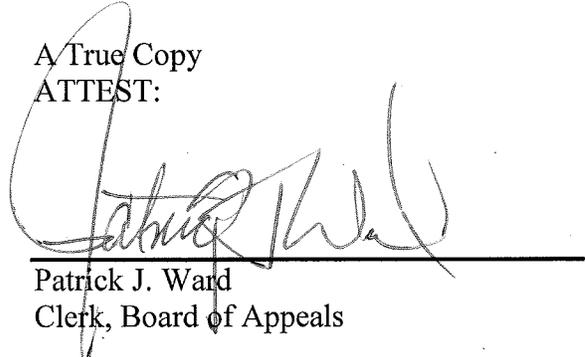
- 23. The entire development shall comply with both Brookline and Boston noise control regulations, without regard to municipal boundaries.
- 24. The hotel meeting room shall be available for community use periodically and on a reservation basis, subject to scheduling availability.
- 25. Prior to the issuance of a building permit for the construction of the building partially in Brookline, 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 floor plans and building elevations stamped and signed by a registered architect; 3) evidence of an easement agreement allowing use of the rear driveway to Beacon Street; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
the Board of Appeals

Filing Date: 8/25/15


Jonathan Book, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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