



Town of Brookline

Massachusetts

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

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0023

Petitioner, Children's Brookline Place LLC applied to the Board of Appeals to extend certain of the special permit relief granted in Case #090002 at 2 Brookline Place for an additional year.

On 3, June 2010, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 24, June 2010, at 7:30 p.m. in the Selectmen's conference 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 his 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 10 and 17, June 2010, 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Children's Brookline Place LLC
Location of Premises: 2 Brookline Place
Date of Hearing: June 24, 2010

Time of Hearing: 7:30p.m.

Place of Hearing: Selectmen's Hearing Room, 6th floor

A public hearing will be held on a request for a one year time extension of the following special permits granted in Board of Appeals decision, Case #090002 (6/25/09) to construct a new mixed use building at 2-4 Brookline Place: Sec. 5.09 Design Review; Sec. 5.31.1&2 Exceptions to Maximum Height Regulations; Sec. 5.43 Exceptions to Yard and Setback Regulations; Sec. 5.44.4 Accessory Underground Structures; Sec. 6.06.4 Off-Street Loading Regulations; and Sec. 7.00.1.b Signs in All Districts

of the Zoning By-Law to construct an eight story mixed five levels of below grade parking per plans at 2 Brookline Place Brookline

Said Premise located in a GMR-2.0 (General Business and Medical Research) district.

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

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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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 Christopher Hussey. In response to the Chairman's inquiry, the legal counsel for the Petitioner waived reading of the legal notice. The Chairman then outlined the order to be followed in the proceeding. Petitioner's proposal was presented by its attorney, Marilyn L. Sticklor of Goulston & Storrs, PC, 400 Atlantic Avenue, Boston, Massachusetts 02110.

Ms. Sticklor indicated that relief was granted for this new office/retail building under the zoning amendment passed by Spring Town Meeting, 2004, which created **Section 5.06.4**, a new

special district, called General Business and Medical Research (GMR). One of the provisions of this new section (d.3) allows a two year period for obtaining a building permit for special permits granted under Section 5.06.4. However, in the Board of Appeals' decision special permit relief was also granted under other sections of the zoning by-law. In order to preserve these special permits, the applicant is requesting a one year time extension of the special permits issued under other sections of the zoning by-law to run concurrently with the time allowed for the special permits issued under Section 5.06.4. They include Sec. 5.09 Design Review; Sec. 5.31.1 & 2 Exceptions to Maximum Height Regulations, Sec. 5.43 Exceptions to Yard and Setback Regulations; Sec. 5.44.4 Accessory Underground Structures; Sec. 6.06.4 Off-Street Loading Regulations; and Sec. 7.00.1.b Signs in All Districts.

The Chairman asked whether anyone wished to speak in opposition to the extension of time. Arlene Mattison of 209 Pond Avenue stated that the extension request provided an opportunity to revisit the sufficiency of the public benefits and mitigation provided by the petitioner in the original decision. Reference was made to the pending Muddy River project and recommended mitigation.

Courtney Synowiec, Planner, presented the comments of the Planning Board as contained in its report dated 10, June 2010, which is set out below.

PLANNING BOARD COMMENTS

The Planning Board supports the granting of this requested one year time extension for the special permits which are not part of Section 5.06.4.d. The Board believes that the intent was for all the special permits required for a building authorized under Section 5.06.4.d to be active for the same two year period as those granted under the special districts section. Given the difficulty of securing financing and finding tenants in the current economy, it is only reasonable to allow this request.

Therefore, the Planning Board recommends approval of a one year time extension for the following special permits: **Sec. 5.09 Design Review; Sec. 5.31.1 & 2 Exceptions to Maximum Height Regulations, Sec. 5.43 Exceptions to Yard and Setback Regulations; Sec. 5.44.4 Accessory Underground Structures; Sec. 6.06.4 Off-Street Loading Regulations; and Sec.**

7.00.1.b Signs in All Districts, subject to the same conditions as in the original Board of Appeals decision, Case #090002 (6/25/09): for the plans entitled "Children's Brookline Place, Brookline, Massachusetts, prepared by TKA Architects dated 4/10/08.

The Chairman then asked whether the Building Department had any recommendation regarding the requested extension of time. Michael Shepard, Building Commissioner commented that times are tough in this economic environment throughout the building industry and that it made sense that all the zoning relief run concurrently with the special permit under **Section 5.06.4(d)** which had a two (2) year period. He said that the Building Department enthusiastically supports the requested time extension.

The Board Members unanimously agreed that it was appropriate to extend the relief granted in Board of Appeals case #090002 for a period to run co-terminus with the special permit issued under **Section 5.06.4(d)** of the Zoning By-Law (nothing herein being an extension of the special permit under said **Section 5.06.4(d)**) not to exceed one year subject to the original conditions as follows:

1. Uses in this building are limited to retail, general office and medical office as such terms are used in **Section 5.06.4.d.2** and accessory uses. The Planning and Community Development Director (or his designee) shall initially be notified of and approve any significant modifications to the allocation of uses. If the proposed changes in use proportions increase the parking required for the building under Brookline Zoning By-Law by more than 15%, the Director of Transportation/Engineering and the Planning and Community Development Director (or his designee) shall review and approve such changes and may require a revision of the TDM plan in view of the changes in transportation demand brought about by any changes in use proportions. However, in no event shall more than 586 parking spaces be provided without modification of the permit by the Board of Appeals.
2. Prior to the issuance of a demolition permit, the Applicant shall designate a person or organization to serve as its community coordinator. That person or organization shall work with the Director of Planning & Community Development (or his designee) to assist existing retail tenants in identifying potential new locations within the Town of Brookline.
3. Prior to the issuance of a demolition permit, a final construction management plan, including identification of any specimen trees that will be dug and relocated offsite with the permission of the Tree Warden, parking locations for construction vehicles, hours of construction and materials delivery, noise mitigation, staging areas, security fencing,

pedestrian pathways, location of portable toilets, rodent control, erosion and sediment control, airborne particle control, air quality and other environmental monitoring, emergency contact information, and the name and contact information for a community coordinator provided by the Project proponent shall be submitted for review and approval by the Director of Transportation/Engineering, after input from the Health Director and Conservation Agent/Tree Warden. The construction management plan shall also include the manner of treatment of trees to be preserved or to be removed within the public way abutting the site. A copy of the approved plan shall be submitted in paper and electronic form to the Planning & Community Development Department such that it can be posted on the Planning & Community Development Department's website.

4. Prior to the issuance of a building permit, final elevations for the building, indicating façade design, colors, materials, windows, rooftop details, penthouse configuration and screening, signage, and placement of all mechanical, electrical and plumbing systems and components shall be submitted for review and approval of the Planning Board. An on-site mock-up shall be submitted for the review and approval of the Planning Board after the building permit is issued but before the materials are ordered.
5. Prior to the issuance of a building permit, floor plans indicating anticipated uses to the extent known shall be submitted for the review and approval of the Planning & Community Development Director (or his designee).
6. Prior to the issuance of a building permit, final site and landscaping plans, including plant types and sizes; fencing; exterior lighting; location of utilities and bicycle parking facilities, hardscape materials and furniture shall be submitted for the review and approval of the Planning & Community Development Director (or his designee). Landscaping plans for a portion of the adjacent lot at One Brookline Place shall also be submitted for review and approval of the Planning & Community Development Director (or his designee) with the recognition that these plans and landscaping not included within the site may be modified by the owner of One Brookline Place in the future in any manner permitted under the Zoning By-Law.
7. Prior to the issuance of a building permit, a drainage plan shall be submitted for review and approval of the Director of Traffic/Engineering.
8. At the completion of the perimeter foundation walls, an as-built foundation plan certified by a registered professional engineer or surveyor to be in accordance with the approved site plan shall be submitted for review and approval by the Building Commissioner. If the as-built foundation is found to be non-compliant with the approved site plan, the Building Commissioner shall stop above-grade construction activities until such time the foundation is brought into compliance with the approved site plan.
9. Up to two temporary construction and/or development sign(s), each no greater than 50 square feet, may be erected on site during the construction and initial leasing period, with the design subject to the review and approval of the Director of Planning & Community Development (or his designee), who shall also have the authority to determine that the initial leasing period has ended when 80% of the building is occupied.
10. 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, including fencing, grading, and location of utilities; 2) final building elevations including exterior signage generally as indicated on the application plans, stamped and signed by a registered architect; 3) final floor plans, stamped and signed by a registered architect; 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
11. Prior to the issuance of a building permit, the Applicant shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning & Community Development that the building is a LEED certifiable Silver Building or higher rating via the provision of a LEED scoring sheet. The construction of the building consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy for the main building lobby.
 12. The garage may be constructed as shown on the plans. However, no more than 586 parking spaces shall be available for vehicular use in the garage. No increase of the number of parking spaces to be used above 586 parking spaces shall be allowed unless the Board of Appeals amends this Decision after determination at a public hearing that such an increase is warranted and will not substantially increase the traffic impact.
 13. A minimum of twenty-five percent of parking spaces available for use shall be offered to residents for overnight parking at market-competitive rates. These spaces shall be available at a minimum from 8 p.m. to 8:30 a.m. week days and all day Saturdays and Sundays. If the Applicant chooses to provide more parking spaces for overnight use, these minimum hours of availability shall not apply to these additional spaces. Additionally, if the Applicant wishes to provide parking on weekends and holidays and during weekdays after 6 p.m. and before 1 a.m. for users of area businesses, such as restaurants, this shall be allowed subject to the review and approval of the Director of Transportation/Engineering.
 14. No satellite parking shall be allowed, except as indicated in condition #13 above. Satellite parking is defined as parking used by persons working a majority of their time at another location(s), who are not visiting the building.
 15. No less than thirty (30) days prior to the anticipated date of issuance of the building permit for the main building lobby, a Transportation Demand Management (TDM) plan shall be reviewed and approved by the Director of Transportation/Engineering and the Planning & Community Development Director (or his designee) and, no less than 30 days prior to the anticipated date of issuance of the Certificate of Occupancy for the main building lobby, shall be implemented. The TDM shall:
 - a. Include a parking garage lay-out plan showing no more than 586 parking spaces available for use and companion table showing locations, numbers, and users of different types of parking spaces, including, but not limited to: compact, full car, handicap, drop-off, van, car-sharing services such as Zip-Car and employee, visitor, resident overnight, loading and ambulance spaces.
 - b. Include a requirement for employee vehicle identification parking stickers or tags.
 - c. Outline parking rates for employees, visitors, and residential overnight parkers.
 - d. Indicate how and where information will be provided and displayed (including the lobby) on all public and other transit options to 2 Brookline Place, with an

explanation of which services are for employees only, which are open to the public in general, and the percentage of employees using different modes of transit.

- e. Provide a 50% public transit employee annual subsidy program and sale of MBTA transit passes on-site.
 - f. Provide shuttle service, at a minimum, to locations in the Longwood Medical Area so long as the building is operated by Children's Hospital Boston, any affiliate of Children's Hospital Boston, or any other member or participant in the Longwood Medical Area.
 - g. Provide other transit programs, such as MASCO's "Three for Free" (try public transit for three months for free), a "Guaranteed Ride Home" for employees who use alternative transportation modes. The Applicant will use best reasonable commercial efforts to include access to satellite parking facilities either currently operated by MASCO or to be established by MASCO.
 - h. Provide an employee tax benefit program through the Federal Transit Administration allowing employers to receive a tax deduction for providing transit subsidies and allowing employees to use pre-tax income to pay for transit expenses.
 - i. Provide for and maintain adequate bicycle parking facilities equivalent to not less than 10% of the parking spaces available for use (viz. not less than 59 bicycle parking facilities as long as not more than 586 parking spaces are available for use), sheltered from the weather, and shower facilities for all employees who may choose to bicycle to work.
 - j. Provide other tools as appropriate to reduce single-occupant vehicle travel to and from the site.
 - k. Encourage staggered work hours for employees of the building.
16. No less than 30 days prior to the anticipated date of issuance of the Certificate of Occupancy for the main building lobby, the Applicant shall designate a traffic and parking coordinator to work with the Director of Transportation/Engineering and the Planning & Community Development Director (or his designee) to ensure on-going implementation of all TDM-related efforts. The coordinator shall allow access to the parking garage by the Town for review of the TDM plan implementation, coordinate and publicize all TDM-related efforts to building tenants, and shall coordinate with the Town to mitigate any impacts during construction of the Gateway East plan. An Annual Report shall be provided by the Applicant's traffic and parking coordinator, subject to the review and approval of the Director of Engineering/Transportation and the Planning & Community Development Director (or his designee) by July 1st of every year for five years, and thereafter at the discretion of the Transportation Director and Planning & Community Development Director (or his designee). The annual report shall include updated information on all of the items in the approved TDM plan (see condition #15 above), traffic counts and analysis of traffic operations and queuing on affected intersections, if requested by the Town, and recommendations for improving the TDM plan and other mitigating measures. If deemed necessary by the Town, the Applicant shall provide funding not to exceed \$5,000 every two years to fund Town review of the TDM plan

implementation. Any successors in interest shall also be required to provide this reporting to the Town.

17. Prior to the issuance of the Certificate of Occupancy for the main building lobby, 1% of the hard costs of constructing the proposed building and underground parking structure (exclusive of tenant fit-up) shall be spent by the Applicant, or given to the Town, for physical transportation mitigation measures and off-site streetscape improvements, such as, but not limited to, intersection improvements, lighting, street furniture and widening sidewalks, subject to the review and approval of the Planning Board or its designee. Any physical off-site improvements to be constructed by the Applicant shall be presented by the Applicant and approved by the Planning & Community Development Director (or his designee) and the Director of Transportation and Engineering. These improvements shall be used primarily for the Gateway East improvements or such improvements as prove feasible to improve circulation and the public realm in the Route Nine corridor in Brookline Village. The Applicant's obligation with respect to construction of off-site improvements shall be subject to approval by the various Town boards, commissions and department heads with jurisdiction over such off-site areas. The Applicant shall, at the discretion of the Town, complete the improvements to the extent possible or provide the funds to the Town for expenditure by the Town prior to the issuance of such Certificate of Occupancy, and the balance of funds that are unspent and uncommitted to the completion of these improvements at the time of the issuance of such Certificate of Occupancy shall be paid to the Town.
18. Prior to the issuance of a building permit, and in addition to the 1% of hard construction costs listed above, the Applicant shall fund \$250,000 towards the signalization and timing of the intersection of Brookline Avenue and Pearl Street. These improvements should include: a new traffic signal controller and necessary signal equipment to ensure full signal coordination at the Brookline Avenue/Washington Street intersection, interconnections and wiring, and a spare conduit from this intersection to the Pearl Street/Washington intersection terminating at a 12"x12" pull box.
19. Provided that the Brookline Avenue/Pearl Street traffic light work is performed directly by the Applicant (rather than by the Town with use of funds provided by the Applicant), the Brookline Avenue/Pearl Street traffic light shall be operational prior to the issuance of the Certificate of Occupancy for the main building lobby. The Applicant's obligations under Condition #18 and this condition with respect to the Brookline Avenue/Pearl Street traffic light shall be subject to approval by the various Town boards, commissions and department heads with jurisdiction over such traffic signal.
20. Prior to the issuance of the Certificate of Occupancy for the garage, the Applicant shall provide signage requiring right hand turn only at the exit to the garage and other appropriate signage and pedestrian safety devices at the garage and service vehicle entries, and maintenance of optimal sight lines at entries.
21. Within 60 days of the issuance of the Certificate of Occupancy for the main building lobby, weather permitting, the Applicant shall complete the restoration of Pearl Street to its prior condition. The Applicant shall also install on Pearl Street any traffic calming features, as part of the 1% fee, to improve traffic safety operations in accordance with plans agreed upon by the Director of Engineering/Transportation and the Planning &

Community Development Director (or his designee). The Applicant shall cooperate with the Town's efforts to coordinate bus operations on Pearl Street.

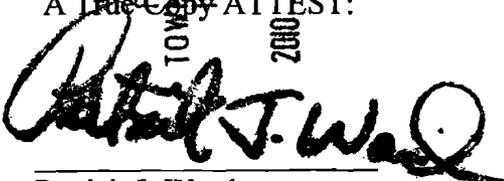
22. Prior to the issuance of the Certificate of Occupancy for the main building lobby, the Applicant shall establish a permanent employee program for outreach to Brookline residents substantially consistent with the Brookline Residents Permanent Employment Program attached hereto as Exhibit A.
23. Within 60 days of the issuance of the Certificate of Occupancy for the main building lobby, complete as-built plans certified by a registered architect as in compliance with the approved plans shall be prepared and filed with the Building Commissioner.
24. Prior to the issuance of Certificates of Occupancy for retail uses on the ground floor which, when considered in addition to the upper level uses, would require under Section 6.06 more than four loading facilities, a loading facility plan shall be reviewed and approved by the Director of Transportation/Engineering and the Planning & Community Development Director which will demonstrate that the usage of the loading docks for retail, office, medical office and restaurant uses is not in operation at the same time. If deemed required by the Director of Transportation/Engineering and the Planning & Community Development Director, the Applicant may be required to designate a Dock Master to schedule deliveries to the Project.

Unanimous Decision of

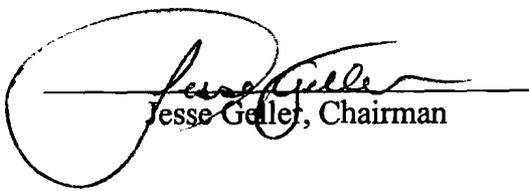
The Board of Appeals

Filing Date June 25, 2010

A True Copy ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Jesse Geller, Chairman

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TOWN OF BROOKLINE
TOWN CLERK
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EXHIBIT A

Brookline Residents Permanent Employment Program

The following is an outline of a program to be implemented by the owner (the "**Owner**") of 2 Brookline Place (the "**Project**") to make local Brookline Residents, in particular residents of Village Way and the Brookline Housing Authority, aware of permanent jobs opportunities at the Project.

The Program will apply to jobs related to operation, management, maintenance, and provision of security to the Project filled by employees hired directly by Owner or by independent contractors engaged by the Owner providing services exclusively to the Project, and will also apply to permanent jobs at the Project for any space at the Project used by Owner in the course of Owner's business.

In filling jobs for operation, security, maintenance and management personnel employed directly by the Owner at the Project or for any space at the Project used by Owner in the course of Owner's business (a "**Permanent Job**"), the Owner will adhere to the following procedures:

- At least five days prior to publicly announcing or advertising the availability of a Permanent Job, the Owner will send a job description via email to the Brookline Housing Authority Executive Director; Town Meeting Members from Precincts 4, 5, and 6; the Brookline Adult & Community Education Director; and the Brookline Residents Permanent Employment Program Email List. The Owner is not required to so notify if the Owner intends to fill the opening via transfer or promotion from its existing staff or by union referral in accordance with a union contract.
- The Owner will provide an email notification system such that interested Brookline residents are able to subscribe to the early job description notification described above. The Planning & Community Development Department will provide a link to the email subscription program on their webpage, within periodic mailings and/or newsletters.
- The Owner will physically post job descriptions in a prominent public location within the building.

The Owner will give first consideration to qualified Brookline applicants, but is not required to hire such candidates.

- The Owner will assign an individual on the Project's management staff to be responsible for ongoing compliance the Brookline Residents Permanent Employment Program. Annual updates including the total number of employees related to operation, management, maintenance, and provision of security to the Project, percentage of Brookline residents, and staff contact information will be sent to the Brookline Director of Planning & Community Development or his designee.

The Owner will require that any independent contractors engaged by the Owner providing such services exclusively to the Project follow procedures similar to those set forth above. Also, after the execution of any lease for space in the Project, the Owner will send to each tenant a letter urging that the tenant, in its new hiring, adhere to the goals of the Brookline Residents Permanent Employment Program.