

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE REPORT

WEDNESDAY, APRIL 6, 2011

Present: Ald. Schnipper (Chairman), Lennon, Albright, Salvucci, Gentile, Danberg, and Lappin
Absent: Ald. Crossley

Also present: John Daghlian (Associate City Engineer), David Turocy (Commissioner of Public Works), and Ouida Young (Associate City Solicitor)

#86-11 COMCAST OF NEW ENGLAND petition for a Grant of Location to install approximately 180' of conduit, southeasterly, from a new service vault located behind the sidewalk in front of 181 Wells Avenue in order to provide Comcast service to 189 Wells Avenue. [03-10-11 @10:44 AM]

ACTION: **APPROVED 5-0 (Lappin and Lennon not voting)**

NOTE: Comcast representative Rich Ferucchi reviewed the petition for a grant of location to install a service vault, related PVC pipe, and conduit in Wells Avenue. The work is being done at the request of several of the tenants of 189 Wells Avenue and Comcast of New England is paying the entire cost of the installation. The Department of Public Works has approved the grant of location with the standard street-opening permit conditions including a police detail. The project should take a day or two to complete. The public hearing was opened and no one spoke for or against the project. Ald. Albright moved approval, which carried unanimously.

#214-10(4) COMMISSIONER OF PUBLIC WORKS requesting abandonment of the 80' building setback line along Boylston Street (Route 9) located on the property at 200 – 230 Boylston Street (Chestnut Hill Square) established by Board Order #100483, dated December 3, 1951, as it conflicts with proposed building locations shown on plans related to Special Permit Board Order #214-10 dated 12/06/10. [12-10-10 @1:17 PM]

ACTION: **APPROVED 7-0**

NOTE: Associate City Solicitor Ouida Young reviewed the request to abandon a building setback line. A building setback line is essentially an easement on a property dedicated to public use. There is a building setback line established by the Board of Aldermen in 1951 on Boylston Street from the corner of Florence Street to the Hammond Pond Parkway. The owners of 200-230 Boylston Street are requesting that the City abandon the portion of the building setback line located in front of their property as it conflicts with the building locations for the Chestnut Hill Square special permit approved by the Board of Aldermen. The abandonment of a building setback line requires a public hearing and approval of the Board of Aldermen. The Associate City Solicitor clarified that there does not seem to have been any need for the building setback line on the property and there is currently no need for the City to maintain the building line on that piece of property.

The public hearing was opened and Carol Vogt, 130 Otis Street, Newtonville made general statements regarding construction practices. She would like Building Inspectors to focus on how a building is constructed, the weight of materials loaded on trucks leaving construction sites, and storm water retention on site. The public hearing was closed and Ald. Albright moved approval of abandonment of the 80' building setback line along Boylston Street located on the property at 200 – 230 Boylston Street (Chestnut Hill Square), which carried unanimously.

#214-10(3) COMMISSIONER OF PUBLIC WORKS, in accordance with Massachusetts General Law Ch. 40, Sec. 15, requesting abandonment of certain City water and drain utility easements located on the property at 200 – 230 Boylston Street (Chestnut Hill Square) as well as relocation of water and drain utilities, utility lines and acceptance of related water and drain utility easements. [12-10-10 @1:17 PM]

ACTION: **APPROVED AS AMENDED 6-0 (Lennon not voting)**

NOTE: Associate City Engineer John Daghlian and Tim Sullivan of Goulston and Storrs presented the request for the relocation of easements and utilities located at 200-230 Boylston Street (Chestnut Hill Square) to the Committee. Mr. Sullivan referred the Committee to the attached easement relocation and discontinuance summary. The request should also include the discontinuance of three agreements and the discontinuance of a portion of Florence Street. Two of the agreements relate to rezoning restrictions from the 1950s for the two parcels of property that make up 200-230 Boylston Street, as described in Item Numbers 2 and 5 of the summary. The two parcels are subject to the City's current commercial zoning codes and the rezoning restrictions are no longer necessary. The restrictions also conflict with the special permit for the proposed development on the site as approved by the Board of Aldermen. The third agreement is described in Item Number 11 of the summary and is related to the grading of Florence Street, which is no longer necessary due to the completed construction of Florence Street. The request for discontinuance of a portion of Florence Street is due to a small remaining piece of that right of way that may remain on the property of 200-230 Boylston Street as described in Item Number 8 of the summary.

Associate City Engineer John Daghlian explained that New England Development has requested that the City abandon an easement to allow the City to slope or bank land adjoining Florence Street, as it is no longer necessary and of no use to the City. New England Development is also requesting the abandonment of two water main easements and a main drain and sewer main easement, located on the two parcels that make up 200-230 Boylston Street and accept new easements on the site for relocated utilities. The acceptance of the proposed easements would allow New England Development to relocate the City's water main, main drain, and sewer main on the site. New England Development will pay for all costs associated with the design and construction to relocate the utilities. The abandonment and/or relocation of the easements are a requirement of Condition #28 of Special Permit #214-10(2), which is attached.

The Engineering Division of the Department of Public Works has reviewed the plans and Mr. Daghlian provided the attached memo to the Board of Aldermen outlining the scope of work

and New England Development's responsibilities regarding the relocations. Mr. Daghlian recommended approval of the abandonments and relocations, as the new sewer main and drainage pipe will reduce inflow and infiltration of the City's sewer and drainage infrastructure and the new water mains will create a looped system, which will improve water pressure and water quality.

Ald. Gentile requested that Bill Cronin of New England Development provide an update on the progress of negotiations related to the appeal of the special permit for Chestnut Hill Square. He is concerned that the City is putting time and resources into the Chestnut Hill Square Project and the project may not go forward. Mr. Cronin assured the Committee that New England Development is working towards a resolution to the litigation and it is hoped a settlement will be reached shortly.

Ald. Lappin moved approval of the item as amended to include all requested abandonments of easements, discontinuance of agreements, and acceptance of easements. The motion for approval as amended carried unanimously.

#385-07 ALD. SCHNIPPER AND GENTILE updating the Public Facilities Committee on the progress of the Newton North High School Project. [11/21/07 @ 10:23 AM]

ACTION: **HELD 6-0 (Lennon not voting)**

NOTE: Ald. Schnipper informed the Committee that the City had received the final certificate of occupancy for the new Newton North High School. The demolition of the old school is continuing and should be complete by mid-July.

Ald. Gentile stated that the construction team is looking at moving the baseball field 20' down Lowell Avenue towards Elm Road. Moving the field away from Hull Street would eliminate the need for a retaining wall along that portion of Hull Street. The Law Department does not feel that the change is substantial enough to trigger a site plan approval process. Instead of the retaining wall, there would be a gradual slope from Hull Street to the field. All of the fencing around the field would remain in place. The elimination of the retaining wall would save the City a large amount of money and in Ald. Gentile's opinion result in a better plan. Shifting the field would mean the loss of 20' of field; however, the Newton North High School Athletic Director feels that the field would still work and the field would still meet all of the requirements for tournament play. The shift of the field will also reduce the number of balls that enter neighboring yards.

Committee members asked that a plan of the changes to the field location and proposed slope be made available to them. Ald. Gentile assured the Committee that he would make an effort to obtain the plans. With that, a motion to hold the item for future discussion was made, which carried unanimously.

Respectfully submitted,

Sydra Schnipper, Chairman

Easement Relocation and Discontinuance Plan Summary

(Relocated
Water Main)

1. **Water Main Easement** (Book 8873 Page 382) – The Petitioner is requesting that this Easement to enter the property to lay, make, repair and maintain water mains. This Easement will be relocated from its current location (labeled as “1” on the attached plan) to the area shown as Water Line Easements “A” and “B”. This relocation was reviewed and approved by the City and the City’s peer review consultant during the Chestnut Hill Square (the “Project”) special permit process.

(Previous
Rezoning
Restriction for
1950’s Buildings
Being Razed)

2. **Agreement** (Book 9750 Page 185) – The Petitioner is requesting that the City abandon this Agreement by and between the City and the prior property owner of the parcel labeled as parcel 82002 0014 on the attached plan. The Agreement created the following property restrictions in exchange for a previous rezoning:
 - a. No buildings within 80 feet of Route 9;
 - b. Total area occupied by buildings must be less than 10,000 sf; and
 - c. Maintenance of certain parking ratios.

This Agreement should be abandoned because it conflicts with the proposed development program for the Project, which was reviewed and approved by the Board of Aldermen and was for a building to be razed.

(Previous
Rezoning
Restriction for
1950’s Buildings
Being Razed)

3. **Building Line** (Book 7848 Page 354) – The Petitioner is requesting that the City abandon the 80 foot building setback line along Route 9 as established by Board Order #100483, dated December 3, 1951. This Building Line should be abandoned because it conflicts with the proposed building locations for the Project, including the streetscape Building C, which were reviewed and approved by the Board of Aldermen, and was for a building to be razed.

(Relocated
Water Main)

4. **Easement Taking** (Book 8761 Page 121)– The Petitioner is requesting that the City abandon the easement taken by Board Order #570-56 for the purposes of laying, making, repairing and maintaining a water main. This easement should be abandoned because it is no longer necessary due to the relocation of the Water Main to the area shown as Water Line Easements “A” and “B” on the attached plan.

(Previous
Rezoning
Restriction for
1950’s Buildings
Being Razed)

5. **Agreement** (Book 8440 Page 151) – The Petitioner is requesting that the City abandon this Agreement by and between the City and the prior property owner of the parcels labeled as parcels 82002 0015 and 82002 0015B on the attached plan. The Agreement created the following property restrictions/obligations in exchange for a previous rezoning:

- a. Construction of an access service road parallel to Route 9;
- b. No buildings within 80 feet of Route 9;

- c. Installation of drainage;
- d. No structure within area of proposed Florence Street widening; and
- e. Payment for Florence Street sewer.

This Agreement should be abandoned because it conflicts with the proposed development program for the Project, which was reviewed and approved by the Board of Aldermen and relates to buildings to be razed.

- (Relocated Drain/Sewer Line)
6. **Easement Taking** (Book 9714 Page 111) – The Petitioner is requesting that the City abandon the easement taken by Board Order #835-60(2) for the purposes of laying, making, repairing and maintaining a main drain and sewer. This easement should be abandoned because it is no longer necessary due to the completion of the main drain and sewer and the new easement to be provided for the area shown as Drain Line “C” on the attached plan.
- (Relocated Water Main)
7. **Easement** (Book 7229 Page 497) – The Petitioner is requesting that the City abandon the easement granted on December 16, 1947 for laying a water main in Hammell Place. This easement should be abandoned because it is no longer necessary due to the relocation of the Water Main to the area shown as Water Line Easements “A” and “B” on the attached plan and the building on Hammell Place no longer exists.
- (Florence Street Connection to Hammell Place)
8. **Discontinuance** (Book 11805 Page 3) – The Petitioner is requesting that the City confirm the discontinuance of a portion of Florence Street that arguably remains on the site. The discontinuance of this small remaining piece of right-of-way should be confirmed because it was shown on a plan but erroneously omitted from the legal description contained in Board Order #56-70.
- (Relocated Drain Line)
9. **Drain Line** – The Petitioner is requesting that the drain line labeled as “9” on the attached plan be relocated to the area shown as Drain Line “C” with an easement provided to the City. This relocation was reviewed and approved by the City and the City’s peer review consultant during the Project special permit process.
- (Florence Street Slope)
10. **Easement Taking** (Book 8761 Page 104) – The Petitioner is requesting that the City abandon the easement taken by Board Order #229-56 to slope or bank on land adjoining for the support of Florence Street. This easement should be abandoned because it is no longer necessary due to the completion of Florence Street construction.
- (Florence Street Grading)
11. **Agreement** (Book 1894 Page 66) – The Petitioner is requesting that the City abandon the Agreement regarding grading for Florence Street. This agreement should be abandoned because it is no longer necessary due to the completion of Florence Street construction.

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 6, 2010

ORDERED:

That the Board of Aldermen (the “Board”), finding that the public convenience and welfare will be substantially served by its action hereunder, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in Chapter 30 of the Revised Ordinances of the City of Newton, Massachusetts (the “Zoning Ordinance”), that the application meets the criteria established in, §30-19(m), §30-20(l), §30-23(c)(2)(a-h) and §30-24 (d)(l)-(5), and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, GRANTS approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL in the Business 4 Zoning District (the “BU-4 District”) to allow: buildings to exceed dimensional standards for height and number of stories; retaining walls of greater than 4 feet in setbacks; multi-family dwelling; multi-level parking facility; restaurants with greater than 50 seats; open-air businesses; buildings containing individually or in the aggregate 20,000 or more square feet in gross floor area; reduction in parking spaces for compatible uses; waiver of parking spaces for retail, restaurant, office and health club uses constructed and occupied prior to full build-out of the Project; entrance and exit driveways in excess of 25 feet wide; managed and/or valet parking; parking within the required setbacks; a waiver of dimensions for parking stalls, including handicapped parking stalls; two freestanding signs; and signs larger, in quantities, illumination and locations other than allowed by-right in the BU-4 District.

In accordance with the Zoning Ordinance and the applicable rules of the Board, the Petitioner submitted its pre-application for the proposed Project, including the required pre-filing review checklist, to the Chief Zoning Code Official on June 8, 2010. The Chief Zoning Code Official having determined that the Petitioner’s submission was complete, issued a Zoning Review Memorandum dated July 29, 2010 itemizing any and all relief required in connection with the proposed project. On August 2, 2010, the Petitioner filed a draft application, addressing all comments noted in the Zoning Review Memorandum, with the Director of Planning and Development, who approved the draft application pursuant to the required Completeness Review. The final application was duly filed with the City Clerk on August 2, 2010.

After due notice of public hearing published in the *Boston Globe* on September 14, 2010, and September 21, 2010, and mailed to all parties in interest all pursuant to and in compliance with the Zoning Ordinance and M.G.L. ch. 40A, the Board held a public hearing at Newton City Hall on September 28, 2010. At the close of the public hearing, the application was duly referred to the Board’s Land Use Committee, which held working session meetings on the application on October 19th, November 4th, November 23rd and November 30th, 2010. At the conclusion of the working session meetings, the Land Use Committee voted to (i) recommend approval of the

application to the Board; and (ii) forward a draft written Board Order to the Board for consideration.

Comments from the public and various City boards and departments were received by the Board during the public hearing. In addition, the Board received extensive testimony and written reports from the City's professional consultants, Woodward and Curran, Inc. (civil engineering) and McMahan Associates, Inc. (transportation). During the review process, the Petitioner's professional consultants also provided various supplemental materials in response to requests by the Board, its consultants and various City departments that reviewed the Project (as defined below). The foregoing written reports and supplemental materials prepared by City staff, as well as comments received from the public are included in the record of the Board's proceedings and provide factual and technical background for the Findings and Conditions set forth within the body of this Order.

Finding that all applicable provisions of the Zoning Ordinance and the Board of Aldermen Rules and Orders have been complied with, the Board GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the Land Use Committee of the Board through its Chairman Alderman Ted Hess-Mahan:

1. The Chestnut Hill Square Project will redevelop, in two phases, an existing underutilized site into a mixed-use development of up to 245,000 square feet of commercial space and up to 100 residential units (the "Project"). The Project is anticipated to include approximately 154,000 square feet of retail and restaurant space, 61,000 square feet of medical office space and/or 30,000 square feet of health club space. Phase 1 of the Project will consist of three buildings, for the retail, restaurant, office space, and health club or other by-right uses permitted in the BU-4 District. Phase 2 of the Project will consist of one residential building with commercial space and a parking garage.
2. The entire Project site is located in the BU-4 District, pursuant to that certain Order of the Board # 214-10 which has been adopted by the Board in conjunction with, and immediately prior to, this Order.

With regard to special permits under §§ 30-11(d)(7), (8), (9),(10), and (k), §30-15, Table 3, and the criteria under sec. 30-24(d)(1)-(5):

3. The Project represents a mix of uses, scale and location that advances the City's planning goals, as set forth in the City's Comprehensive Plan and Zoning Ordinance, with respect to smart growth and business development along the Route 9 corridor.
4. The Project site is an appropriate location for the proposed mixed-used development, which is anticipated to include a mix of retail, restaurants including those with over 50 seats, office, health club, residential or other by right uses permitted in the BU-4 District, serving residents and surrounding neighborhoods and attracting visitors because the site is located on Route 9, a state highway and a major transportation and commercial corridor. Furthermore, the Petitioner are required by Mass DOT in accordance with Mass DOT's Section 61 finding to make numerous infrastructure improvements in order to make the Project feasible from a traffic standpoint and to improve travel along this

portion of Route 9 overall. The Project as developed and operated in accordance with the conditions of this Special Permit/Site Plan approval will not adversely affect the surrounding neighborhoods.

5. The design of the Project site and the buildings, including, but not limited to, the building heights, setbacks, open space and pedestrian and vehicular circulation is appropriate for the site and the surrounding area by concentrating the tallest buildings towards the center of the Project, retaining more open space than required in the BU-4 District for commercial projects and creating safe and accessible vehicular and pedestrian circulation routes within the Project.
6. To minimize the Project's impacts on the Florence Street neighborhood, the Project has been designed so that the Florence Street entrance/exit will be not be used for any purpose other than as a secondary construction access point during construction of the Project and for emergency vehicle access during and following construction. In addition, existing vegetation closest to Florence Street will be substantially retained and enhanced with additional trees and plantings to provide a landscaped edge along Florence Street.
7. The Project accommodates vehicular and pedestrian movement through the implementation of numerous on- and off-site measures to support pedestrian, vehicular and bicycle access to the Project, including providing redesigned access to the site in connection with an extensive transportation infrastructure improvement program proposed to improve the Route 9 corridor; newly constructed accessible sidewalks and crosswalks along Rt. 9 and Florence Street and within the Project; landscaped areas within the site to provide safe pedestrian walkways as well as plazas and gathering spaces. As proposed, there will be no nuisance or serious hazard to vehicles or pedestrians.
8. The access to the Project over streets is appropriate for the type(s) and number(s) of vehicles anticipated and the Project will function efficiently within the existing transportation system with the implementation of a proposed transportation infrastructure improvement program. Based on an independent review by McMahan Associates, Inc. the Petitioner has proposed significant roadway improvements to offset the impacts of the proposed Chestnut Hill Square project, many of which originate from and are consistent with "The Route 9 Corridor in Brookline and Newton Report" produced by the Central Transportation Planning Staff for the Massachusetts Highway Department published in February 2002.
9. In addition to those required by current state laws and building code in effect, the Project as proposed incorporates a number of sustainable design measures, which would represent a significant contribution toward the efficient use and conservation of natural resources and energy. These include: redevelopment of an already developed site, open space in excess of that required in the BU-4 District, light-colored reflective roof membranes, solar-ready construction of Building C, construction and operational phase recycling programs, high efficiency exterior lighting systems, a tenant manual requiring tenant water and energy conservation measures and/or participation in Transportation Demand Management measures, tree shaded parking areas, stormwater management

systems (condition 26) and the Petitioner's contributions to the Fats Oils Grease (FOG) program (condition 33). In addition, as required by the Massachusetts Environmental Policy Act (MEPA) and the Department of Energy Resources (DOER), the petitioner will also implement a comprehensive strategy to reduce mobile greenhouse gas emissions.

10. The Petitioner will improve public welfare and safety on the Project site and in the surrounding area through measures such as the installation of an OPTICOM traffic signal preemption system for all modified traffic signals and the implementation of a proposed transportation infrastructure improvement program within the Route 9 corridor to decrease emergency response times within the area.
11. The Petitioner will provide a Construction Management Plan which will include appropriate procedures and protocols to be implemented during construction of the Project to minimize construction related impacts, such as blasting, noise, dust, and construction traffic, and to provide construction parking areas on site to the extent feasible.

With regard to the site plan criteria under §§ 30-23(2)(a)-(h):

12. Based on an independent review by Woodward and Curran, Inc. and comments received from the City's Engineering Department, there is sufficient capacity in the City's water and sewer system to support the Project. The Petitioner has also agreed to: (a) install two 12-inch water lines, which will cross the Project site to connect the water main servicing Route 9 to the water main servicing Florence Street; and (b) make a contribution towards the study of an existing problem related to fats, oils, and grease ("FOG") within the City's sanitary sewer system.
13. The Petitioner will install a stormwater management system, which, based on the independent review by Woodward and Curran, Inc., will result in overall improvement to the flow management and water quality runoff from the Project site.
14. Appropriate landscaping and screening of the parking area(s) and structure(s) will be provided including, but not limited to, buffering from the Florence Street neighborhood by substantially retaining the existing vegetation closest to Florence Street and enhancing the area with additional trees and plantings.
15. The Project is a redevelopment of a site that generally contains only large areas of asphalt and abandoned buildings. To the extent feasible, the Petitioner will minimize removal of viable trees and soil (with nearly all of the existing vegetation immediately along Florence Street intended to be substantially retained and enhanced). The Project will be landscaped in a manner that will enhance the appearance of the site in keeping with the appearance of neighboring, commercially developed areas.
16. The utility services lines along the Project's Route 9 frontage will be located underground subject to necessary permits and approvals. The feasibility of underground location of other utility service lines will be reviewed by the Petitioner in light of other site design considerations, such as the location and configuration of structures, site costs, required earthwork and other similar considerations.

17. No historical resources currently exist on the Project site and demolition of the existing buildings on site requires no further historic review under the City's historic ordinances.

With regard to the reduction in the required number of parking stalls under §30-19(d)(18) and other parking waivers including an additional reduction in parking stalls under § 30-19(m):

18. The Project's use of structured parking, reduction in the number of required parking stalls, and indoor off-street loading facilities creates greater opportunity for open space on the Project site, which allows the Petitioner to increase landscaping and provide for plazas and gathering spaces on site. This design enhances the environmental features of the Project while still providing sufficient parking to accommodate projected demands. The Petitioner's parking space waiver is expressed as a percentage by which the number of spaces that would otherwise be required under the Zoning Ordinance for any given combination of uses in the Project are reduced (the "Parking Reduction").
19. The combination of three (3) or more uses in a single integrated development, as proposed by the Project, allows a reduction of up to 33% of the required number of parking stalls. An additional reduction in the number of parking stalls is justified in view of the anticipated parking demands, and is further justified given that literal compliance is impracticable due to the size and grade of the lot and desired scale, design, and use characteristics for this site. The Petitioner has also submitted a Transportation Demand Management Plan which will help reduce vehicle trips to the site and a Managed Parking Plan which will help manage parking during peak periods.
20. Based on the mix of uses set forth in the application for this Special Permit/Site Plan Approval, at the conclusion of Phase 1, a total of 691 parking stalls will be provided on site, including 22 handicapped spaces; at the conclusion of Phase 2, a total of 908 parking stalls will be provided on site, including 29 handicapped spaces and 392 spaces in the garage; the total number of required parking stalls for the anticipated uses (including 100 dwelling units in the residential building) for both phases is 1375 spaces; the total Parking Reduction for Phase 1 shall not exceed 39% (i.e., a waiver of up to 438 spaces); and the total Parking Reduction at the conclusion of Phase 1 and 2 shall not exceed 34% (i.e., a waiver of up to 467 spaces).

With regard to the criteria for Inclusionary Housing required under section 30-24(f):

21. The Inclusionary Housing Plan filed with the application satisfies all applicable requirements for the issuance of this Special Permit/Site Plan Approval.

With regard to the criteria for waivers for signage under section 30-21(l)

22. The mix of uses within the Project, the complex nature of the building layout (which includes several facades inwardly oriented to encourage pedestrian activity and connectivity) and the unique architecture of the Project, the Board finds that the proposed number, size, location, type and height of the signage program as substantially shown in the Petitioner's Comprehensive Signage Package (see Exhibit A), which include two (2) free standing signs along Rt. 9, are in the best interests of the public as they serve

important wayfinding, building identification and ornamental functions and match the scale of the Project.

With regard to retaining walls in excess of four feet in height under section 30-5(b)(4):

23. The proposed retaining walls greater than four feet in height, which are located within the setbacks as generally shown the Special Permit Plan Set, will not adversely impact immediate abutters because the Petitioner has proposed appropriate materials, designed the walls at an appropriate scale in relation to abutting properties, accommodated stormwater through the proposed stormwater management system so that it is generally detained on-site as required, and will remove any trash and debris that accumulates around and between such retaining walls and abutting properties on at least a semi-annual basis.

In light of the above findings and the following conditions imposed by this Order, the Board of Aldermen finds that the public convenience and welfare of the City will be served and that the criteria of §30-23 and §30-24 for granting a special permit/site plan approval will have been satisfied.

PETITION NUMBER: #214-10(2)

PETITIONER: NED Chestnut Hill Square LLC, successor(s), assign(s) and/or designee(s)

LOCATION: 200-230 Boylston Street, Boylston Street, 7 Hammell Place LLC, 114 and 146 Florence Street; Section 82, Block 2, Lots 8, 9, 10, 11, 12, 13, 14, 15, 15A, 15B, 15C, 18, 29, 30, 32. The project area is shown on the Zoning Plan Exhibit A dated 8/2/10 prepared by Harry R. Feldman, Inc. and referenced on Exhibit A-1 attached hereto.

OWNER: G&K LLC; Key Chestnut LLC; 7 Hammell Place LLC; and NED 220 Boylston LLC

ADDRESS OF OWNER: 200 Boylston Street, Chestnut Hill, MA 02467
One Wells Avenue, Newton, MA 02459

TO BE USED FOR: A mixed-use development of approximately 245,000 square feet of commercial space and up to 100 residential units, and accessory parking as described in Finding 1 above

CONSTRUCTION: New construction including masonry and brick veneer buildings with glass storefronts and windows, accented with metal and glass

canopies and metal panels, fieldstone and cement block retaining walls, precast concrete garage

EXPLANATORY NOTES:

The following special permits are granted subject to the Findings and Conditions set forth herein: §30-15, Table 3 to allow buildings to exceed dimensional standards, including height and number of stories as generally shown on the Special Permit Plan Set; §30-5(b)(4) to allow retaining walls of greater than 4 feet, which are located within setbacks as generally shown on the Special Permit Plan Set; §30-11(d)(7) to allow a multi-family dwelling containing up to 100 units, §30-11(d)(8) to allow a multi-level parking facility containing approximately 392 spaces; §30-11(d)(9) to allow restaurants with greater than 50 seats; §30-11(d)(10) to allow open-air businesses; §30-11(k) to allow buildings containing individually or in the aggregate 20,000 or more square feet in gross floor area; §30-19(m) for a waiver of parking spaces by the Parking Reduction set forth in the application for any uses constructed and occupied prior to full build-out of the Project (e.g. 438 of the 1,129 required parking spaces are waived to provide 691 spaces prior to full build-out based on the uses anticipated by the application); §30-19(d)(18) to reduce the sum total of parking spaces required for the Project at full build-out by the Parking Reduction set forth in the application based on the combination of three or more uses in a single integrated development (e.g. 467 of the 1,375 required parking spaces are waived to provide 908 spaces for the Project based on the uses anticipated by the application); §30-19(h)(4), §30-19(m) to allow entrance and exit driveways in excess of 25 feet wide as generally shown on the Special Permit Plan Set; §30-19(h)(5)(b) to allow managed and/or valet parking; §30-19(h)(2)(c), §30-19(m) for parking within the required setbacks and a waiver of dimensions for parking stalls,

including handicapped parking stalls as generally shown on the Special Permit Plan Set; §30-20(f)(9) and §30-20(l) to allow one freestanding primary sign for the residential building and two additional freestanding signs; and §30-20(d)(2), §30-20(c)(1), (2) and (9), §30-20(i)(4), §30-20(l) for signs larger, in quantities, illumination and locations other than allowed by-right

ZONING: Business 4

Approved subject to the following conditions:

1. All buildings, parking and other site features associated with this Special Permit/Site Plan Approval for the Project shall be located and constructed/implemented consistent with the plan set entitled “Special Permit Application Submission for Chestnut Hill Square Boylston Street/Route 9 Newton, MA” (the “Special Permit Plan Set”), which plans are identified in Exhibit A and are hereby incorporated by reference.
2. This Special Permit/Site Plan Approval shall be deemed to have been (i) exercised, for the purposes of utilizing the benefits of the change of zone authorized by Board Order #214-10, upon the submission to the City of an application for a building permit for all or any portion of the Project; and (ii) vested and exercised, with respect to the entire Project, for all purposes, once construction under this Special Permit/Site Plan Approval has begun for any portion of the Project. In no event shall any portion of the Project for which a certificate of occupancy has been issued in accordance with the provisions of this Special Permit/Site Plan Approval be deemed to be in violation of this Special Permit/Site Plan Approval or be deemed to have lapsed due to the fact that any phase of the Project has not been commenced or completed, subject to the 10 year lapse provision contained in condition 3 below.
3. The Project may be constructed in two Phases. Phase 1 of the Project will consist of three buildings for the retail, restaurant, office space, health club or other by-right uses permitted in the BU-4 District. Phase 2 of the Project will consist of one residential/commercial building containing up to 100 residential units and a parking garage. Each of the proposed buildings/site improvements may be constructed and occupied prior to construction of the remaining buildings/site improvements (including the parking structure), provided that adequate parking and landscaping associated with such proposed building, as set forth in the Special Permit Plan Set and application are provided by the Petitioner. The determination as to the adequacy of parking and landscaping shall be subject to the review and approval of the Commissioner of Inspection Services and the Director of Planning and Development and shall be made in accordance with the provisions of condition 16 below. The Petitioner agrees to submit updated construction sequencing plans and landscape sequencing plans to the Director of Planning and Development and the Commissioner of Inspectional Services, together with a memorandum demonstrating that the current construction and landscaping status and

the proposed parking are consistent with the relief granted by this Special Permit/Site Plan Approval in connection with any request for a certificate of occupancy.

Construction of any phase of the Project will not obligate the Petitioner to construct the balance of the Project (or any portion thereof) in a subsequent phase(s), provided that the Petitioner shall be obligated to complete any requirements that are a condition of a certificate of occupancy in accordance with the provisions of condition 16 below. If the Petitioner has not commenced construction of any portion of the Project within ten years of the exercise (as defined in Condition 2(ii) above) of this Special Permit/Site Plan Approval, construction of such portion, even if consistent with the original Special Permit Plan Set, shall require an amendment to this Special Permit/Site Plan Approval.

4. The Petitioner shall comply in all material respects with the final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, Fire Department, Public Works Commissioner, City Engineer, and City Traffic Engineer. The Final Construction Management Plan shall be materially consistent with the construction sequencing shown in the Special Permit Plan Set, and include appropriate provisions for dust controls, noise, blasting, construction traffic routing, a requirement that access to the site from Florence Street be restricted to use as a secondary construction access point and be chained or gated during construction, and off-site construction parking that may be required to provide parking for uses in operation on the site during construction activities. The final Construction Management Plan shall also include adequate and appropriate procedures and protocols to be implemented to allow effective operation of the Project site during construction, including, without limitation providing temporary cellular antennas to maintain cellular service in the area of the Project during construction activities.
5. The Comprehensive Signage Package submitted by the Petitioner (see Exhibit A) is hereby approved in concept. The Petitioner shall submit a final Comprehensive Signage Package to the Director of Planning and Development for review and approval prior to implementation of the Project signage program. The Director of Planning and Development shall review the Comprehensive Signage Package, in consultation with the Newton Urban Design Commission, and provide the Petitioner with recommendations but in no event shall any such recommendations require the Petitioner to obtain additional relief under the Zoning Ordinance. The Director of Planning and Development shall review any proposed modifications to the Project signage program to ensure that the same are generally in harmony with the findings, safeguards and conditions set forth in this Special Permit/Site Plan Approval and substantially consistent with the Comprehensive Signage Package submitted by the Petitioner in support of the application for this Special Permit/Site Plan Approval.
6. Subject to the provisions hereof and receipt of all necessary state, federal and local permits and/or approvals, including MassDOT review, revision, approval (the "Approvals"), the Petitioner shall design and construct the Route 9 Corridor Improvements and Local Roadway Improvements, which shall include the installation of an OPTICOM traffic signal preemption system for all modified traffic signals, as

substantially set forth in the Traffic Impact and Access Study submitted in support of the application for this Special Permit/Site Plan Approval (see Exhibit A), as the same may be modified by MassDOT or other applicable authorities (the “Proposed Transportation Improvement Program”).

The Board recognizes that certain portions of the Proposed Transportation Improvement Program fall under the jurisdiction of MassDOT or other state agencies and that the Petitioner’s obligation to construct the Proposed Transportation Improvement Program may be satisfied through state and/or federal infrastructure work/funding; provided however, that, subject to the provisions of Condition 8 below, the failure of such state and/or federal infrastructure work/funding shall not relieve the Petitioner from this Condition 6. In order to ensure coordination of the Proposed Transportation Improvement Program between state and local jurisdictional areas, the Petitioner, at the request of the Director of Planning and Development, shall provide the City with a summary of the status of MassDOT’s review. The Petitioner shall submit to the Director of Planning and Development for review in consultation with the Commissioner of Public Works, City Engineer, the Commissioner of Inspectional Services and the City Traffic Engineer (i) copies of final design plans for the Proposed Transportation Improvement Program upon the final issuance of all of the Approvals for the Proposed Transportation Improvement Program (or any portion thereof); and (ii) a certification from a professional traffic engineer or MassDOT and/or City’s Traffic Engineer Peer Reviewer confirming the substantial completion of the Proposed Transportation Improvement Program (or any portion thereof).

Prior to a request for modification of the state highway access permit for the Project, the Petitioner shall meet with the Director of Planning and Development, Commissioner of Public Works, City Engineer, the City Traffic Engineer, and the Commissioner of Inspectional Services to obtain the City’s comments and, to the extent feasible, incorporate such comments into the Petitioner’s request for modification. Subject to Condition 8 below, the Proposed Transportation Improvement Program shall be substantially completed prior to substantial occupancy of the Project authorized under this Special Permit/Site Plan Approval.

7. Subject to the provisions hereof and receipt of all of the Approvals, the Petitioner shall initially implement the Transportation Demand Management measures, including, without limitation, the shuttle bus service, as generally set forth in the Traffic Impact and Access Study submitted in support of the application for this Special Permit/Site Plan Approval (see Exhibit A), as the same may be modified by MassDOT or other applicable authorities (the “TDM Measures”). The Petitioner will review the TDM Measures with the Director of Planning and Development prior to the opening of the first building in the Project, including operations of the shuttle service. At the request of the Director of Planning and Development or at the Petitioner’s election, the Petitioner will annually evaluate the effectiveness of the TDM Measures to determine whether any proposed adjustment to the TDM Measures should be made to optimize the TDM program. Any adjustments to the TDM Measures resulting from such annual review will be submitted to the Director of Planning and Development and City Traffic Engineer and shall be maintained on file at the Project. Subject to Condition 8 below, the TDM Measures shall

be substantially implemented prior to initial occupancy of the Project authorized under this Special Permit/Site Plan Approval, unless otherwise determined by the Director of Planning and Development in consultation with the City Traffic Engineer.

8. A Certificate of Occupancy may be issued for any portion of the Project prior to completion of the Proposed Transportation Improvement Program or implementation of the TDM Measures upon submission by the Petitioner of a parking analysis and traffic report prepared by a professional traffic engineer to the Commissioner of Inspectional Services, Director of Planning and Development, and the City Traffic Engineer evidencing that the parking provided and improvements completed, together with any necessary alternative measures proposed by the Petitioner in the Traffic Impact and Access Study submitted in support of the application for this Special Permit/Site Plan Approval (see Exhibit A), are sufficient to safely and efficiently accommodate the (i) parking required by the Zoning Ordinance (as the same may be adjusted by the Parking Reduction); and (ii) anticipated traffic volumes for the portion of the Project for which the Certificate of Occupancy is sought. The parking analysis and traffic report shall be subject to review and approval by the Commissioner of Inspectional Services, in consultation with the Director of Planning and Development, and the City Traffic Engineer.
9. The City has previously secured partial, but not sufficient, funding from another developer for the installation of a traffic signal at the intersection of the Route 9 eastbound offramp and Hammond Pond Parkway (the "HPP Signal") in the amount of \$250,000 (the "Signal Funding"). Upon the issuance of all necessary Approvals, the Petitioner agrees to install or cause to be installed the HPP Signal in accordance with the Proposed Transportation Improvement Program. Upon substantial completion of the HPP Signal, as certified by a professional traffic engineer, the Director of Planning and Development shall request appropriation of the Signal Funding to the Petitioner, provided that nothing in this condition shall require the Mayor and Board of Aldermen to approve such appropriation request.
10. The Petitioner will provide the City with a good faith estimate of the cost to design and construct a sidewalk built to City standards within the northerly portion of the Florence Street right-of-way from 188 Florence Street to the westerly boundary of the Atrium Mall property. If the good faith estimate exceeds \$300,000, the City may either provide the Petitioner with the additional funds necessary to construct the sidewalk or may elect to construct the sidewalk itself in which event the Petitioner shall pay the \$300,000 to the City prior to construction of the sidewalk. If the good faith estimate is less than \$300,000 or the City provides such additional funds to cover the cost in excess of \$300,000, the Petitioner shall, subject to approvals, design and construct the sidewalk. The completion of this work shall not be a condition to the issuance of a Certificate of Occupancy for any portion of the Project, but the Commissioner of Inspectional Services may include the cost to install the sidewalk in the 135% bond or other security in accordance with the provisions of condition 16.
11. Subject to the provisions hereof and receipt of all of the approvals, the Petitioner shall construct the Route 9 sidewalk/landscaped areas proposed in the Special Permit plan set

in front of Building C. The Petitioner agrees to seek approval for effective 15' sidewalk/landscaped area (whether owned by MassDOT or Petitioner) which areas may include a five (5) foot sidewalk along Route 9, a four (4) foot planted buffer area and a six (6) foot internal sidewalk/walkway, all subject to review and approval by MassDOT after consultation with the City Traffic Engineer and Director of Planning and Development, provided, further that the petitioner shall not be required to seek amended and/or additional special permits or variances or other relief in connection with the project.

The Petitioner agrees to contact the owners and tenants of the Capital Grille and David's buildings, so called, to discuss expanding the sidewalks adjacent to such buildings and to the extent such owners and/or tenants consent is obtained, and such expansion does not result in zoning or other violations, to implement improved sidewalk conditions at their frontage.

12. The Petitioner shall comply with the Post Development Traffic Monitoring Program set forth in Exhibit B attached hereto.
13. On-site Project sidewalks, pedestrian ramps and handicapped parking spaces shall be constructed in material compliance with any applicable requirements of the City of Newton General Construction Details, the Americans with Disabilities Act (ADA) and/or the Massachusetts Architectural Access Board (MAAB) requirements (unless otherwise allowed by the grant of a waiver or variance). Where new off-site sidewalks are provided at an intersection that the Petitioner will install or modify a traffic signal system, said improvements will be constructed to include pedestrian push buttons, bicycle detection, traffic signal phasing, wheelchair accessible ramps, and associated sign and pavement markings to the extent appropriate and feasible and subject to receipt of all necessary Approvals. The Petitioner agrees to work with the City's Committee for People with Disabilities regarding its reasonable request for the relocation of the handicap parking stalls to enhance utilization of such stalls; provided that no construction, reconstruction, or reconfiguration of Project improvements shall be required other than pavement restriping. The Petitioner will also enforce handicap parking restrictions and will register with the Newton Police Department to allow police enforcement of handicap parking restrictions as well.
14. Managed and/or valet parking operations are permitted at the Project provided they are conducted in all material respects pursuant to a professionally-prepared Parking Management Plan, which shall be maintained on file at the Project and available for review upon request by the Director of Planning and Development. Valet parking must be kept within the Project site.
15. Petitioner will store snow at the Project, except to the extent removal is deemed by the Petitioner to be operationally necessary during peak parking periods. To the extent snow removal is necessary, such removal will be conducted pursuant to a Snow Removal Plan, which shall be maintained on file at the Project and available for review upon request by the Director of Planning and Development. The Petitioner will request permission from MassDOT to clear the sidewalks along the Route 9 Project frontage of snow and ice. If

MassDOT approves the Petitioner's request, the Petitioner shall use commercially reasonable efforts to keep the sidewalks along the Route 9 Project frontage of the site clear of snow and ice at all times in order to improve safe pedestrian travel. The Petitioner shall also remove snow along the sidewalk on its Florence Street frontage in accordance with the City's snow removal ordinance.

16. A Certificate of Occupancy may be issued for any portion of the Project prior to installation of all required landscaping and hardscape/open space areas shown in the Special Permit Plan Set or installation of the sidewalk along Florence Street. Prior, however, to issuance of such Certificate of Occupancy, the Commissioner of Inspectional Services in consultation with the Director of Planning and Development may require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining landscaping, hardscape/open space areas, and the sidewalk along Florence Street to secure the installation of these items. The Commissioner of Inspectional Services may include in the value of such bond or other security the costs associated with any portion or all of the required landscaping, hardscape/open space, and/or Florence Street sidewalk as he deems reasonably necessary to ensure that the site amenities, pedestrian and vehicular circulation pathways, and gathering spaces as show on the Special Permit Plan Site will be installed even if the Project's Phase 1 or Phase 2 are not completely built-out. The review under this condition shall be in addition to the review to be conducted under condition 8 above.
17. Any plant material required by this Special Permit/Site Plan Approval that becomes diseased or dies shall be replaced with similar material on an annual basis.
18. No changes to the Project shall be permitted, except as otherwise set forth in this Special Permit/Site Plan Approval, unless they are consistent with the Special Permit Plan Set. Consistency determinations shall be subject to review and approval by the Commissioner of Inspectional Services but shall not require approval of the Board. When making a request for a consistency determination, the Petitioner shall submit updated construction sequencing plans and a memorandum to the Commissioner of Inspectional Services demonstrating that such change(s): (i) do not require further Massachusetts Environmental Policy Act (MEPA) review under 301 CMR 11.10(8); (ii) constitute a reallocation or reconfiguration of square footage among uses in the Project or otherwise allowed in the BU-4 District such that no increase in the Parking Reduction approved hereunder is required; (iii) do not require a new type of zoning relief (other than the categories of relief granted and/or modified pursuant to this Special Permit/Site Plan Approval); and (iv) maintain the same percentage of useable open space as shown in the Special Permit Plan Set. If the Commissioner of Inspectional Services grants any consistency ruling pursuant to this Condition, he shall provide a copy to the Land Use Committee of the Board. The Land Use Committee shall not be required to vote or to approve the consistency request.
19. Nothing in this Special Permit/Site Plan approval shall prevent the Petitioner from submitting a building(s) to a condominium property regime, provided that the land on which such condominium is located shall not be subdivided. In no event shall the

submission of the buildings to a condominium property regime relieve the Petitioner of any applicable requirements of this Special Permit/Site Plan Approval. The violation of the conditions of this Special Permit/Site Plan Approval by an owner or occupant of a single condominium unit within the Project shall not be deemed to be a violation by any other owner or occupant within the Project, but shall be deemed to be a violation by the owner or occupant of the condominium unit(s)/premises violating the conditions of this Special Permit/Site Plan Approval. The City may, at the election of the Commissioner of Inspectional Services, look to the applicable condominium association, or in the event of a lease-hold condominium, the applicable lessor, in connection with such violation. Nothing herein shall limit the rights of a condominium association against a violating owner or occupant.

20. The Petitioner shall merge the existing 11 distinct parcels to one new lot either prior to the issuance of the first building permit for the Project, or within thirty (30) days from the issuance of such permit.
21. The Petitioner shall design and construct an at-grade pedestrian crossing of Route 9 at the signalized Project driveway. Said crossing shall be push button-actuated and include a marked crosswalk. The Petitioner shall work with the City and MassDOT to ensure that the pedestrian crossing phase includes an appropriate amount of time for pedestrians to cross Route 9. The Petitioner shall also install a marked crosswalk across Florence Street and Louise Road at the intersection of these two roadways.
22. The Petitioner will work with the MBTA to establish a bus stop and layover areas within the Project to accommodate the bus routes passing by the site.
23. The Petitioner will implement the TDM Measures as set forth in Condition 7 above and the Post Development Traffic Monitoring Program attached hereto as Exhibit B. The goal of the TDM Measures is to reduce single-occupancy vehicle traffic associated with the Project by a minimum of 10 percent during the commuter peak-hours. This goal (10 percent reduction in single-occupancy vehicle traffic) will be monitored by the Petitioner as a part of the Post Development Traffic Monitoring Program for the Project. Should the Post Development Traffic Monitoring Program indicate that a 10 percent reduction in Project-related peak-hour traffic has not been achieved as a result of the TDM Measures, the Petitioner shall work with the City and the Route 128 Business Council to expand and refine the elements of the TDM Measures.
24. The Petitioner will seek MassDOT approval for roadway treatments or other measures such that the vehicles exiting the easternmost Project driveway are directed through signs and channelization onto the Hammond Pond Parkway off-ramp from Boylston Street.
25. The Petitioner shall not allow the Florence Street entrance/exit to be used for any purpose other than as a secondary construction access point during construction of the Project, and for emergency vehicle access during and following construction. The Petitioner shall chain or gate the Florence Street access during and after construction.

26. The Petitioner has committed to an ongoing stormwater system cleaning and maintenance effort as described in their Stormwater Operations and Maintenance Plan on file with the City. The Petitioner will comply during construction with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site and provide documentation to the City once every four months during construction that the stormwater pollution control measures to be undertaken during construction have been implemented on an ongoing basis. The Petitioner will provide the City with a Stormwater Pollution Prevention Plan prior the issuance of the initial occupancy permit for any portion of the Project.
27. The utility services lines along the Project's Route 9 frontage will be located underground, subject to necessary Approvals. The feasibility of underground location of other utility service lines will be reviewed by the Petitioner in light of other site design considerations, such as the location and configuration of structures, site costs, required earthwork and other similar considerations.
28. The Petitioner has applied to the Public Facilities Committee to relocate the existing City drain easement and grant the City a new easement for access and maintenance of the new drainage culvert and water main pursuant to the Easement Relocation Plan noted on Exhibit A. The Easement Relocation Plan, once approved by the Board, will be recorded at the Middlesex South Registry of Deeds.
29. The Petitioner will remove any trash that may accumulate between the Petitioner's retaining wall and the retaining wall along Florence Court Condominiums at least semi-annually.
30. The Petitioner shall be responsible at its sole cost for trash disposal for the residential units.
31. The Petitioner will comply with applicable state and local laws, regulations and protocols governing blasting, including, the Standard Blasting Conditions for Special Permit/Site Plan Approvals, dated May 31, 2002 on file with the City Clerk.
32. The Petitioner will not contest parking restrictions on the north side of Florence Street.
33. The Petitioner will work with the City Engineer regarding a study of an existing problem related to FOG within the City's sanitary sewer system and will negotiate with the City Engineer regarding a contribution towards such study. Such contribution shall be made prior to the issuance of any Certificate of Occupancy.
34. The Petitioner shall prepare a Functional Design Report in support of planned improvements that will provide a review of design alternatives for both the Parker Street and Centre/Cypress Street intersections for review by the Director of Planning and Development in consultation the City Traffic Engineer.
35. Prior to applying for a building permit for the residential building, the Petitioner shall submit a Final Inclusionary Housing Plan to the Director of Planning and Development

for review in consultation with the Newton Housing Authority for compliance with the provisions of §30-(f)(8).

36. No building permit shall be issued pursuant to this special permit/site plan approval until the Petitioner has:
 - a. recorded a certified copy of this board order with the Registry of Deeds for the Southern District of Middlesex County.
 - b. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. with regard to each building permit, submitted final plans and elevations to the Director of Planning and Development to assure consistency with the applicable plans approved under this Special Permit/Site Plan Approval.
37. The issuance of a Certificate of Occupancy for all or any portion of the Project shall evidence compliance with all Conditions set forth herein except as otherwise expressly set forth herein or properly noted on such Certificate of Occupancy.
38. At the completion of Phase I, the Petitioner will review the as-built condition with the Commissioner of Inspectional Services in consultation with the Director of Planning and Development to determine to what extent, if any, additional pedestrian amenities (i.e. reconfiguration of existing gathering spaces, width of sidewalks, and similar issues) can be reasonably incorporated consistent with the approved site plan. The Petitioner shall not be required to seek amended and/or additional special permits, variances or other relief and shall, further, only be obligated to implement such amenities under the consistency review provision of this Special Permit/Site Plan Approval.

Under Suspension of Rules

Readings Waived and Approved

20 yeas 0 nays 4 absent (Aldermen Freedman, Gentile, Salvucci, and Sangiolo)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on December 9, 2010. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on _____ and that NO APPEAL to said decision pursuant to M.G. Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

EXHIBIT A¹

Special Permit Application Materials

- **Special Permit Application**
 - Special Permit Narrative
 - Zoning Table
 - Parking Table
 - As-of-Right Diagram
 - Easement Relocation and Discontinuance Plan
 - Inclusionary Housing Plan
 - Traffic Impact and Access Study, including the Traffic Demand Management Program
 - Shared Parking Analysis
 - Stormwater Management Report
 - Shadow Study
 - Comprehensive Signage Package

- **Special Permit Plan Set:**
 - C.00 Cover Sheet
 - C.01 Context Plan / Area Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.02 Existing Conditions Site Plan (3/17/09, Stamped and Signed by Robert Applegate, a Professional Land Surveyor)
 - C.03 Layout and Traffic Control Plan (8/2/10, revised 11/30/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.04 Erosion Control Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.05 Grading and Drainage Plan (4/27/10, Stamped and Signed by John Stoy and Duncan Wood, Professional Engineers)
 - C.06 Utility Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.07 Fire Truck Circulation Plan (8/2/10, , revised 11/30/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.08 Service Truck Ingress Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.09 Service Truck Egress Plan (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.10 Pedestrian Circulation Plan (8/2/10, , revised 11/30/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.11 General Notes (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.12 Erosion Control Details (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.13 Drainage Details (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.14 Drainage Details (8/2/10, Stamped and Signed by John Stoy and Duncan Wood, Professional Engineers)
 - C.15 Utility Details (8/2/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.16 Utility Details (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - C.17 Site Details (8/2/10 Stamped and Signed by John Stoy, a Professional Engineer)
 - C.18 Grade Plane Calculations (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - SL.01 Site Photometric / Lighting Plan (8/2/10, , revised 11/30/10 Prepared by WSP/Flack and Kurtz, Lighting Consultants)
 - SL.02 Lighting Fixture Lot Sheet (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - L.01 Overall Landscape Plan (8/2/10, , revised 11/30/10 Prepared by CBA Landscape Architects)
 - L.02 Enlarged Landscape Plan North (8/2/10, , revised 11/30/10 Prepared by CBA Landscape Architects)
 - L.03 Enlarged Landscape Plan South (8/2/10, , revised 11/30/10 Prepared by CBA Landscape Architects)
 - L.04 Plant List & Detail (8/2/10, Prepared by CBA Landscape Architects)
 - T.01 Tree Inventory and Location Plan and List (8/2/10, Prepared by CBA Landscape Architects)
 - A.01 Grocer Level and Parking Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.02 Retail Level 1 Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.03 Health Club Level 2 Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.04 Office & Typical Residential Upper Level Plan (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.05 Site Sections (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.06 Site Elevations East, West and North (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - A.07 Site Elevations South & Interior Retail (8/2/10, Stamped and Signed by Robert Slattery, a Registered Architect)
 - CS.01 Construction Sequencing Plan 1 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.02 Construction Sequencing Plan 2(8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.03 Construction Sequencing Plan 3 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.04 Construction Sequencing Plan 4 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.05 Construction Sequencing Plan 5 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.06 Construction Sequencing Plan 6 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - CS.07 Construction Sequencing Plan 7 (8/2/10, Stamped and Signed by John Stoy, a Professional Engineer)
 - Consolidation Plan of Land (3/19/09, Prepared by Harry R. Feldman, Inc.)
 - Zoning Plan Exhibit A (8/2/10 Prepared by Harry R. Feldman, Inc.)
 - Easement Relocation Plan (8/2/10, Prepared by Harry R. Feldman, Inc.)
 - RW-1 – Retaining Walls (or systems of walls) greater than four feet in height

¹ In the event of any inconsistency between the plans set forth on this Exhibit A, the final design shall be deemed to conform to the Layout and Traffic Control Plan (C.03).

EXHIBIT B

Post Development Traffic Monitoring Program

The Petitioner shall complete a post development traffic monitoring program for the Project in order to: (i) document the actual traffic characteristics of the Project; (ii) evaluate the success and refine the elements of the TDM Measures; and (iii) assess traffic volumes and operating conditions at the two primary driveways serving the Project and at specific off-site intersections. The monitoring program will consist of the following elements:

1. Collection of 24-hour automatic traffic recorder counts over a continuous 7-day, week-long period on the two primary driveways serving the Project.
2. Collection of weekday morning (7:00 to 9:00 AM), weekday evening (4:00 to 6:00 PM) and Saturday midday (11:00 AM to 2:00 PM) peak period manual turning movement counts at the following intersections hereafter defined as the “traffic monitoring program study area”:
 - Route 9 at the signalized Project driveway/The Mall at Chestnut Hill Driveway
 - Route 9 at the east project driveway
 - Route 9 at Langley Road
 - Route 9 at Florence Street
 - Route 9 at Tully Street
 - Route 9 at Hammond Street
 - Hammond Street at Heath Street
 - Hammond Pond Parkway at the Route 9 Ramps (two locations)
 - Hammond Pond Parkway at the Chestnut Hill Shopping Center Driveway
 - Hammond Pond Parkway at Heath Street
 - Parker Street at the Route 9 Ramps (two locations)
3. Documentation of commuting modes of residents and employees of the Project including public transportation and shuttle bus use.

The traffic counts that form the basis of the Post Development Traffic Monitoring Program will be performed under average-month conditions while public schools are in regular session (April-June, September-October). The results of the Post Development Traffic Monitoring Program will be submitted to the City prior to the end of the calendar year in which the study is completed.

If the results of the Post Development Traffic Monitoring Program indicate: (1) the need to adjust the traffic signal timing for the improved or monitored intersections along Route 9, the Hammond Pond Parkway and/or Parker Street within the traffic monitoring program study area to accommodate traffic volume fluctuations solely related to the Project; (2) the need to install the second traffic control signal at the Parker Street/Route 9 westbound ramp intersection; and/or (3) the actual measured traffic volumes associated with the Project as then constructed and occupied exceed the trip estimates presented in the June 1, 2010 Supplemental Traffic Impact Assessment by more than 10 percent of the projected trip generation for then occupied uses as

measured at the two primary driveways serving the Project; then the Petitioner shall implement the following corrective measures as may be necessary and appropriate, as certified by the professional traffic engineer of record for the Project, and subject to receipt of all necessary rights, permits and approvals:

- a. Adjust the traffic signal timing, phasing and coordination for the improved or monitored intersections along Route 9, the Hammond Pond Parkway, Parker Street, Hammond Street and/or Tully Street within the traffic monitoring program study area;
- b. To the extent necessary implement refinements to on-site traffic flow and parking management;
- c. Construct the traffic signal at the Parker Street/Route 9 westbound ramp intersection and interconnect and coordinate said traffic signal with the traffic signal at the Parker Street/Route 9 eastbound ramp intersection;
- d. Expand or modify the elements of the TDM Measures in order to increase use of public transportation, the shuttle service, car/vanpools or other alternatives to automobile travel. These measures may include expansion of the shuttle bus service schedule and/or route (service area), and other incentives that are designed to encourage residents, employees and customers to use public transportation, the shuttle service or to car/vanpool, or other additional TDM Measures subject to review of the Director of Planning and Development in consultation with the City Traffic Engineer.

The Post Development Traffic Monitoring Program will commence upon occupancy of the first commercial building within the Project. The results of the Post Development Traffic Monitoring Program will be submitted annually in the form of a memorandum for review by the Director of Planning and Development in consultation with the City Traffic Engineer. The Post Development Traffic Monitoring Program will continue on an annual basis for not less than five (5) years following substantial completion of both Phases of the Project, provided, however, if the Petitioner elects not to fully complete either Phase of the Project, the Traffic Monitoring Program shall continue for a period not less than five (5) years following the Petitioner's notice to the Commissioner of Inspectional Services and the Director of Planning and Development that it has reached substantial completion of the Project.