

Livable Newton

Coalition for inclusive, sustainable development

September 19, 2018

Via E-mail (c/o Nadia Kahn, nkhan@newtonma.gov)

RE: Hancock Estates (formerly Kessler Woods) – Special Permit #102-06(15) Amendment

Dear Chair Schwartz and Members of the Newton City Council Land Use Committee:

For the reasons set forth below, we urge the Newton City Council and Mayor Fuller to conduct a prompt and thorough review of (1) the compliance of Hancock Estates with Newton's Inclusionary Zoning Ordinance (IZ Ordinance) and Special Permit; and (2) the City's practices and protocols implementing the IZ Ordinance to ensure full compliance in future developments. We also urge the Land Use Committee to reject the proposal to "swap" four 2-bedroom family-sized apartments at Hancock Estates.

Hancock Estates does not comply with Newton's Zoning Ordinance and its Special Permit:

- **The type of units included as inclusionary units at Hancock Estates do not reflect the unit mix at the development** – The inclusionary units at Hancock Estates include 1- and 2-bedroom units, all with either 1, 1 ½, or 2 bathrooms. The market rate units, however, include thirteen (13) 2-bedroom units with "dens" and forty-three (43) 2-bedroom units with 2½ bathrooms. None of the 2-bedroom units with "dens" or the 2-bedroom units with 2½ bathrooms are inclusionary units. The plans approved in conjunction with the Special Permit for the development showed only 2-bedroom units and no "dens." Sized larger than the 2nd bedrooms and with windows, it appears that the "dens" meet all state code requirements for bedrooms and that these units with "dens" (3rd bedrooms?) are not in compliance with the Special Permit. Please note also that, while the sizes of the inclusionary units appear to comply with the minimum square footage requirements in the ordinance, many of the market rate 2-bedroom units are almost twice the size the inclusionary 2-bedroom units (1,900+ square feet v. the largest 2-bedroom inclusionary units at 1,025 square feet) and many of the market rate 1-bedroom units (with 1,187 square feet) are larger than the inclusionary 2-bedroom units.
- **The distribution of the inclusionary units by floor in Hancock Estates does not comply with the dispersion requirements** – Section 5.11.7 of Newton's Zoning Ordinance requires that inclusionary units "be dispersed throughout the development and ... sited in no less desirable locations than the market rate units." At Hancock Estates, 46.2% of the inclusionary units are on the first floor (comprising 21.4% of the 1st floor units), 38.5% of the inclusionary units are on the more desirable second floor (comprising 16.6% of the second floor units), and only 15.3% of the inclusionary units are on the most desirable third floor of the development (comprising just 6.6% of the 3rd floor units). This does not meet the design and construction requirements of

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Section 5.11.7 of Newton's Zoning Ordinance. Moreover, since one of the inclusionary 2-bedroom units proposed to be "swapped" is on the second floor and one is on the third floor, the concentration of inclusionary units on the first floor and the lack of integration required by Section 5.11.7 of Newton's Zoning Ordinance would be further exacerbated if the "swap" is approved.

- **The Hancock Estates rent-up did not comply with the proportional rent-up requirements**– Section 5.11.4 of Newton's Zoning Ordinance requires that "Inclusionary units shall comprise at least 15 percent of the units to have been offered for sale or rental *at each point* in the marketing of the development." (emphasis added) To date, and starting in 2017, at least 62 market rate units at Hancock Estates have been marketed and received certificates of occupancy and many have been rented and occupied. At the same time, marketing of only some of the inclusionary units (9 of 13) only recently commenced. To date, no inclusionary units have been rented and the lottery for the 9 units isn't scheduled until October 3, 2018.
- **The advertising of the Hancock Estates apartments does not comply with the requirements for Local Action Units and counting on the state's Subsidized Housing Inventory (SHI)** – An advertisement for the "Brand New Luxury" apartments at Hancock Estates published most recently in the Newton Tab on September 12, 2018 depicts a handsome white couple (copy attached). No other pictures of persons are included. This violates the requirements of the Massachusetts Department of Housing and Community Development (DHCD), applicable to the development and to all units at the development, per the Ordinance, Special Permit and Regulatory Agreement. DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines require that "all advertising and marketing materials portraying persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups as well as persons with disabilities." Moreover, the advertisement does not contain the HUD Fair Housing logo or the "Equal Housing Opportunity" slogan. This discriminatory advertising renders the Hancock Estates inclusionary units ineligible for the SHI.

The proposed "swap" of four family-sized 2-bedroom inclusionary units at Hancock Estates should be rejected:

- **The swap will be a financial windfall for the developer** – Based on a preliminary valuation analysis, we believe the developer will realize an almost \$1.8 million profit by transferring Hancock Estate's market rate units to 219 Commonwealth Ave. The analysis utilizes current cap rates, estimated operating expenses and vacancy for each asset type, the developer's published rents for Hancock Estates and the affordable rents provided on the memorandum entitled "Inclusionary Unit Swap Proposal" dated August 1, 2018 and provided to the City of Newton by the developer. We believe the developer's projected 219 Commonwealth Ave market rate rents are significantly overstated from the actual market rents and therefore we adjusted these downward based on recent actual market rate comparables. By inflating these market rate rents, the developer makes it appear that the market rate value of the units at 219

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Commonwealth Ave are worth significantly more than they actually are worth. Our projections estimate the market value of the four 2-bedroom units at Hancock Estates is approximately \$4 million, while the total affordable value for the same units is only approximately \$425,000. The difference in these values is \$3.575 million. The approximate market value of the proposed nine units at 219 Commonwealth Avenue is \$3.22 million, while the affordable value for the same units is approximately \$1.43MM. The difference in these values is \$1.79 million. Subtracting the differences in value generates the developer's realized profit of almost \$1.8 million due to the transfer (\$3.575 million less \$1.79 million).

- **The swap is inconsistent with the clear intent and preference of the Newton Zoning Ordinance**
– The clear intent and preference of Newton's Zoning Ordinance is to have units created and made available to low- and moderate-income households at the actual location of each development, thereby increasing diversity in that neighborhood location and at each specific development.
- **The swap does not provide a better public benefit for the City of Newton** –The Inclusionary Housing Plan for Hancock Estates states that: “The affordable units will have the same finishes as the market rate units including granite countertops, stainless steel appliances, in-unit washers and dryers, hardwood floors, and access to on-site amenities such as an exercise facility, Wi-Fi café, business center, theatre, community room, and underground parking.”¹ Moreover, all of the units at Hancock Estates are accessible to those with disabilities as the development is serviced by an elevator. While detailed plans for the units to be rehabilitated at 219 Commonwealth Avenue have not been submitted by the petitioner, it is unlikely that they will be of the quality of the inclusionary units at Hancock Estates or will have the amenities or accessibility of the inclusionary units at Hancock Estates.
- **With no information provided by the petitioner regarding the development budget and financing for 219 Commonwealth Avenue, it is not possible to determine if the public funding limitation of Newton's Zoning Ordinance would be complied with** – Section 5.11.10 of Newton's Zoning Ordinance prohibits an applicant from using public development funds to construct inclusionary units. Given the great disparity in the quality of the units at 219 Commonwealth Avenue, the 9 units proposed for the “swap” should not be considered “a greater number of affordable units that are otherwise required” within the meaning of Section 5.11.10. With no information provided by the petitioner regarding the development budget and financing for 219 Commonwealth Ave, it is impossible to determine what the developer's investment in that property will be and whether Section 5.11.10 of Newton's Zoning Ordinance would be complied with if the swap were to be approved.

¹ Despite this statement in the Inclusionary Housing Plan, the Revised Plans for the development (10/15/2015) identify the level of finishes for the units as “standard,” “deluxe” or “premium.” All of the inclusionary units have standard finishes.

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We are not writing this letter in opposition to affordable housing at 219 Commonwealth Avenue. Rather, our concerns relate to the compliance by the Hancock Estates developer with the requirements of the Newton Zoning Ordinance, Special Permit, Inclusionary Housing Plan and Regulatory Agreement and to urge the City Council and the Mayor to ensure that the objectives of Newton's Inclusionary Zoning Ordinance are accomplished and that the developer is not being enriched by moving some of the required units off-site. Our City government must examine its practices and deploy sound real estate expertise and procedures to create transparency and fairness in this development and in future developments.

Sincerely,

Engine 6
League of Women Voters of Newton
U-CHAN

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And the following individuals:

Dolores Acevedo-Garcia	Penny Hauser-Cram	Tatjana Meschede
Bryan Barash	Betsy Hecker	Judy Norsigian
Liz Baum	Philip Herr	Scott Oran
Bill Berman	Susan Heyman	Susan Parsons
Pia Bertelli	Kathleen Hobson	John Pelletier
Tom Bledsoe	Ann Houston	Bertil Peterson
Tamara Bliss	Judy Jacobson	Roxan Peterson
Elizabeth Sonia Cooper	Marcia Johnson	Helen Rittenberg
Patrick Dober	Rhanna Kidwell	Jeffrey Sacks
Sarah Ecker	Marian Knapp	Geoffrey Sherwood
Regina Eliot-Ramsey	Jason Korb	Doris Ann Sweet
Louise Freedman	Henry Korman	Doris Tennant
Sarah Gant	David Koven	Lexi Turner
Hattie Gawande	Sarah Laski	Jay Walter
Wanda Getchell	Kathy Laufer	Lynn Weissberg
Nanci Ginty Butler	Marion Lipson	Dan Wiener
Kimberly Gladman Jackson	Bart Lloyd	Marianne Ulcickas Yood
Fran Godine	Robyn Maltz	Steven Yood
Janet Goldenberg	Kevin McCormick	Nancy Zollers
Laurie Hackett	Josephine McNeil	

Cc: Mayor Ruthanne Fuller
Newton City Council
Community Preservation Committee (original funders of Kessler Woods site)

Hancock Estates

Apartments in Chestnut Hill

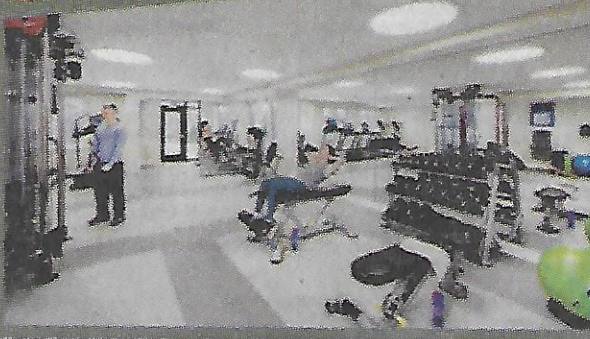
Downsize Your Space, Upsize Your Lifestyle

**Brand New Luxury
One & Two Bedroom
Apartment Homes
in Newton, MA**

- Gourmet Kitchens
- Spa-Like Bathrooms
- High Quality Finishes
- Spacious Floor Plans
up to 1,900 Sq. Ft.
- Upscale Amenities
- Concierge
- Pet Friendly
- Garage Parking
- One to Five Year
Leases Available

**Hancock Estates
at Chestnut Hill**

200 Estate Drive
Newton, MA 02467



Call (617) 969-3515 or visit HancockEstatesApartments.com

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