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October 5, 2018

Livable Newton
c/o livablenewton@gmail.com

Re: Hancock Estates, Special Permit # 102-06 (15) Proposed Amendment

Dear Livable Newton Coalition Members:

I am writing on behalf of Chestnut Hill Realty in response to your letter dated September 19, 2018. We received this correspondence on the afternoon of the Land Use Committee hearing on September 20, 2018. We notified the Land Use Committee on September 20, 2018 that we requested time to respond to your letter. On September 28, 2018 Chestnut Hill Realty sent you a letter requesting to meet with you to discuss your letter. We want to extend that request again. To further that dialogue with you, this letter provides preliminary responses to your letter.

1. The Purpose of the Proposed Swap

The objective of the Proposal is that Chestnut Hill Realty finds itself in a position to assist in increasing the supply and diversity of the city's affordable housing inventory. In the Phase One lottery for 9 of the 13 inclusionary zoning units at Hancock Estates, there are 415 qualified households. 73 of these qualified households are Newton residents potentially eligible for the up-to-70% local preference. If this Proposal is not approved, the remaining 4 inclusionary units at Hancock Estates will be leased. The Proposal allows many more of those qualified households and also additional households in the workforce housing tier, including Newton residents, to be able to secure permanently deed restricted housing by virtue of the creation of 28 income and rent restricted units at the historic Chestnut Hill Apartments. Our research has revealed that in the past 14 years, only 8 units have been created in Newton as Local Action Units. The swap proposal creates 9 LAUs at Hancock Estates and 28 LAUs at The historic Chestnut Hill Apartments. Those 37 units would contribute meaningfully to meeting the demand of qualified local preference households. As housing advocates, we believe this Proposal can be embraced as a very positive contribution to expanding housing choices and increasing the affordable housing supply in Newton. For each of the households that will benefit directly from the incremental affordable units created through this Proposal, we would expect that the positive impact should be particularly significant.

2. Unit Mix

The city of Newton approved the floor plans for Hancock Estates at multiple steps in the process. The original special permit plans designated the units as either 1 BR or 2 BR units. These were schematic plans and showed only the demising walls between units. The more advanced building permit plans were construction drawings that included floor plans showing the number of bedrooms, bathrooms, and for certain unit dens. The certificates of occupancy for the leased units were properly issued. These same floor plans were provided to the city and approved again as part of the fully executed and recorded Regulatory Agreement with DHCD.

The city of Newton Zoning Ordinance does not regulate dens. Dens are often proposed as part of multi-family projects. If the city desires to either encourage or prevent units from having dens, it should do so in the Zoning Ordinance.

As noted in your Letter, the project complies with the Zoning Ordinance requirements related to the design and construction of the inclusionary units (NZO sec. 5.11.7) and related to the habitable space requirement (NZO sec. 5.11.8.). The city approved an Inclusionary Housing Plan dated March 11, 2015 which specifically notes that ... “the affordable units are sized well above the required minimum areas.”

The Zoning Ordinance does not require that all market rate units with the same number of bedrooms have the same number of bathrooms as other market or inclusionary units. The city had multiple inspections of the plans and as-built condition of the units. Those inspections reveal that the materials and quality of construction satisfy the inclusionary zoning ordinance. NZO sec. 5.11.7. C.

3. Unit Distribution

The proponent participated in a lengthy process with the city of Newton Planning Department, the Newton Housing Partnership and the City Council (then known as the Board of Aldermen) regarding the identification of specific unit locations for the inclusionary zoning units within the building. Chestnut Hill Realty met several times with Newton’s housing planner, Rob Muello, in the preparation of the Inclusionary Housing Plan. Before the special permit hearing, the unit locations were modified to conform to the recommendations of the Planning Department and Newton Housing Partnership. The special permit approved the inclusionary unit locations and sizes. The city approved an Inclusionary Housing Plan dated March 11, 2015 reflecting inclusionary unit distribution on all three floors of the building, both sides of the building and distribution on each floor. This unit distribution stayed intact throughout the special permit approval process and in the building permit plans. When the 4-unit swap involving the historic Chestnut Hill at 219 Commonwealth Avenue was presented, the units proposed for swap were approved by the city in the Regulatory Agreement with DHCD.

4. Timing of Unit Marketing

The Hancock Estates special permit was originally written and approved in 2006. See Board Order # 102-06 (3). The project changed many times and each time the Board Order was amended to reflect the revised Site Plan and new project developer. There were very strong pressures on the City Council to maintain the 2006 permit content, findings and conditions since

they were so heavily negotiated at the time of the original approval. The special permit is not written the same way that it has become customary to write them today regarding when the developer is obligated to complete the Regulatory Agreement and market the inclusionary zoning units. In fact, the special permit does not require marketing and occupancy of the inclusionary zoning units at the same time as the market rate units. The approved Inclusionary Housing Plan (March 11, 2015) says: “prior to marketing the inclusionary housing units, the Developer will enter into an agreement with the Newton Planning and Development Department to use the listing of Eligible Households provided by the Newton Housing Authority to the extent permitted by law, and to develop a supplemental list of Eligible Households that will be eligible to rent the inclusionary housing units.” This city-approved Inclusionary Housing Plan, not inconsistent with the special permit, did not mandate that the Regulatory Agreement be signed before marketing of market rate units. Though that is the practice of the city now, it was not for a permit issued in 2006 and intentionally carried forward due to the extraordinary level of project mitigation commitments written into the original special permit.

The Regulatory Agreement agreed to by the city, developer and DHCD reflects this situation involving an older special permit. It says: “The Developer must obtain DHCD’s approval of a marketing plan for the Low and Moderate Income Units.” It is not a requirement prior to marketing and leasing the market rate units. Because of the phased lottery allowed by the Regulatory Agreement, the city has notified the Proponent that for each of the last 13 market rate units to be provided certificates of occupancy, it will require evidence that a corresponding inclusionary unit has been through the lottery and leased to an eligible household.

5. Advertising

All of the marketing materials for the inclusionary units were approved by the City and DHCD in 2018 before the lottery process started in June. SEB Housing has prepared all those materials and the lottery took place on October 3. SEB Housing received over 600 applications for the 9 available units. Based upon a review of these applications, 415 households are eligible for the lottery, including 73 households who would satisfy the Local Preference requirements.

The Proponent is updating its marketing website and its advertising materials. The updated advertising and marketing materials will comply with the DHCD Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines. These materials will be in compliance at the time of an occupancy permit for any inclusionary unit. This will qualify those units for inclusion on the SHI. See DHCD c. 40B Comprehensive Permit Projects Subsidized Housing Inventory Guidelines (December 2014) sec. II. A. 2. All staff at Chestnut Hill Realty undergo Fair Housing training and meetings are conducted with all CHR leasing employees twice a year to review Fair Housing-related topics including, but not limited to, section 8 reasonable modifications, reasonable accommodations, service animals and marijuana use.

6. Financial Analysis of Swap

Prior to proposing the current 4 unit swap, the proponent’s non-profit development partner, B’nai B’rith Housing, commissioned an analysis of the extent of the private subsidy necessary to allow the creation of 24 additional income and rent restricted units in Newton. That study which was undertaken by J.M. Goldson demonstrates that a material financial subsidy by

Chestnut Hill Realty would be required. From a zoning perspective, the financial analysis is not a zoning criteria. Nonetheless, we would be happy to discuss that financial analysis with you.

7. Intent of Inclusionary Zoning

The Newton inclusionary zoning ordinance permits compliance alternatives, including on-site, off-site and with a cash payment. The proposal is sensitive to the fact that the original special permit provided for the 15% inclusionary requirement to be met on site. The swap maintains five 1 BR units and four 2BR units at Hancock Estates which is consistent with the goals you state to increase diversity at the neighborhood location of the project. The motivation of the swap to increase overall affordable housing opportunities in Newton respects that and enhances it by proposing affordable housing in both locations. There is expected to be a significant demand for the units at both locations and it is a public benefit that the swap facilitates the availability of affordable units at both properties, including one location with excellent access to public transportation. Diversity in both neighborhoods is enhanced.

8. Comparability

The proposal does not strive to make the living experience at Hancock Estates and at the historic Chestnut Hill identical. They are different properties in different neighborhoods. One is more suburban. One is more urban. One is in an area that is entirely residential and removed from public transit. One is within walking distance to village centers, the MBTA, schools and employment opportunities. Following a multi-million dollar construction project, nine households earning up to 80% of AMI, adjusted for household size, will be able to experience the units and amenities provided by Hancock Estates. After an extensive renovation, nine households earning up to 80% of AMI, adjusted for household size, will be able to experience a different set of units and amenities at the historic Chestnut Hill. In addition, 19 workforce housing households will be able to live at the historic Chestnut Hill.

9. Public Funding

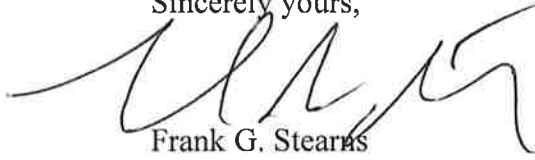
The Developer is not requesting zoning relief to allow the use of public development funds for required inclusionary zoning units under NZO sec 5.11.10. The 4 swapped units at the historic Chestnut Hill will not rely on any public development funds. Any funds secured from the MassHousing's Workforce Housing Program will exclude the 4 required inclusionary zoning units.

10. Other

We appreciate the conclusion of your letter that you are supportive of affordable housing at the historic Chestnut Hill. Hopefully this letter provides useful background that addresses your points about the compliance of Hancock Estates with Newton inclusionary zoning, its special permit, its Inclusionary Housing Plan and its Regulatory Agreement. As stated in this letter Chestnut Hill Realty is eager to meet with you to address these points, particularly your stated

concern about valuation. It desires to address these points with you in a transparent way such that you may see the value to Newton behind the proposal. We look forward to meeting with you.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Frank G. Stearns', written in a cursive style.

Frank G. Stearns

cc: Ed Zuker, Chestnut Hill Realty

Nadia Khan, City Clerk's Office
(for distribution to the Land Use Committee)

Mayor Ruthanne Fuller

Barney Heath, Planning Department