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May 26, 2015

BY HAND

Patrick J. Ward
Brookline Town Hall
333 Washington St., 1st Floor
Room 104
Brookline, MA 02445

**Re: Appeal to Brookline Zoning Board of Appeals—
375-399 Chestnut Hill Avenue
Boston/Brookline, Massachusetts**

Dear Mr. Ward:

On April 14, 2015, Cleveland Circle Development Associates LLC (the "**Appellant**") filed an Application for Plan Examination and Building Permit with the Commissioner of the Brookline Building Department, in connection with the proposed development of a 5 and 6 story mixed use building containing a hotel component, a senior housing residential component, ground floor retail/restaurant and accessory parking (the "**Project**"), to be located on a 111,025 square foot parcel of land, 18,176 square feet of which is located in Brookline (the "**Brookline Property**") and 92,849 square feet of which is located in Boston (the "**Boston Property**"), situated on the south side of Chestnut Hill Avenue and adjacent to Cleveland Circle (collectively, the "**Property**"). In connection with the denial of the above-referenced application, enclosed please find four (4) copies of the following (unless otherwise noted):

1. Denial Letter, dated April 28, 2015, from Daniel F. Bennett.
2. Application (Exhibit "A" to the Board of Appeals Rules and Regulations), requesting the issuance of the following special permits under the referenced provisions of the Zoning By-Law of the Town of Brookline (the "**Zoning By-Law**"): (i) Special Permit for a Major Impact Project in the CL District (Sections 5.06.4. f. 2); (ii) Special Permit for Project in Cleveland Circle Hotel Overlay District (Section 5.06.4.i); (iii) Special Permit for Exception to Yard and Setback Regulations requiring 5' setback of area above three stories regarding portion of Project on the Boston Property (Sections 5.06.4.i.4.b and Section 5.43); (iv) Special Permit for Fence along property line with the MBTA right-of-way in excess of seven feet (Section 5.06.4.i.4.e); (v) Special Permit for reduction in parking requirement for senior housing (Section 5.06.4.i.5.c and Section 6.02.2.d); (vi) Special Permit for design review (Section 5.09); and (vii) Special Permit for signs more than 25 feet above ground level announcing the name of an individual building (Section 7.00.1.b.).

With respect to the violation noted in regard to Yard and Setback Regulations providing for Maximum 2' Cornice Projection into Front Yards regarding portion of the Project on the Brookline Property (Section 5.51), we respectfully request confirmation that the Project does not

in fact violate this provision; however, in the alternative Appellant seeks a Special Permit for such violation pursuant to Section 5.43 of the By-Law.

With respect to the violations noted in regard to (x) an increase in size of a sign by more than 25% above that permitted in Article VII of the By-Law (Section 7.00.1.d) and (y) a sign on building wall not parallel of within 45 degrees parallel to street which is in excess of 18 SF in area (Section 7.03.1.d), the Appellant is not pursuing relief for these items at this time.

3. Summary Chart of requested relief.
4. Five (5) sets of an Application for Special Permit (one 30"x42" set of the following plans: Site Plan Setbacks; Parking and Loading Plan; and Building Height Calculation Plan), three 11"x17" sets and one 8.5" x 11" set), dated May 26, 2015 and prepared by Elkus | Manfredi Architects and Stantec, displaying the scope of work to be performed and the existing conditions, which contains a project overview, plans showing the site and dimensions of the Project including building elevations, photographs of the building site and surrounding properties, as well as:
 - a. Building elevation displaying proposed building identification signage;
 - b. Design Review "Impact Statement"; and
 - c. "Summary of Transportation Impacts and Mitigation," prepared by Howard/Stein-Hudson Associates, Inc.

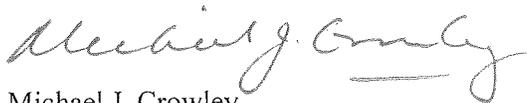
In addition, twenty (20) 11"x17" copies of the Application for Special Permit been enclosed herewith for use by Board members and an electronic copy of the plans, in pdf format, has been provided on a flash drive.

5. Five (5) copies of the site plan of the Property, dated May 26, 2015, prepared by Michael Nowicki, registered Landscape Architect.
6. Letter from the owner of record of the Brookline Property authorizing Appellant to file this appeal, dated May 20, 2015.

The Appellant has previously submitted to the Building Department the Project's study model. A check for the application fee will be submitted under separate cover.

If you require any further information please do not hesitate to contact me. We look forward to appearing before the Board of Appeals on July 9, 2015.

Sincerely,



Michael J. Crowley
Vice President
Enclosures

cc: Kara Brewton
Jay Rosa, Zoning Coordinator
Polly Selkoe



TOWN of BROOKLINE
Massachusetts

BUILDING DEPARTMENT

National Development
C/o Michael J. Crowley, President
2310 Washington Street
Newton, Ma 02462

April 28, 2015

Subject: 375-399 Chestnut Hill Avenue (Boston/Brookline)

Your request to:

Demolish existing structure and construct mixed use development

At 375-399 Chestnut Hill Avenue is denied.

The subject premises is located in a L-0.5(CL) (Local Business) Business District as well as the Cleveland Circle Hotel Overlay District

The Site plan by Michael Nowicki, registered Landscape Architect, dated April 13, 2015 and Architectural plans by Elkus/Manfredi Architects, dated April 14, 2015 do not conform to the following requirements of the Town of Brookline Zoning By- Law:

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

In accordance with the provisions of the Zoning By-Law, you may apply to the Board of Appeals for the above noted relief within thirty (30) days of receipt of this letter.

Respectfully,

Daniel F. Bennett

Cc: File, 375-399 Chestnut Hill Ave. Board of Appeals Planning

EXHIBIT "A"

TOWN OF BROOKLINE BOARD OF APPEALS
APPLICATION FOR SPECIAL PERMITS AND/OR VARIANCES
(See MGL c. 40A s. 9 &10, BOA Rules and Regulations, and Zoning By-laws § 9)

Date: May 26, 2015

Applicant(s): Cleveland Circle Development
Associates LLC

Address: c/o National Development
2310 Washington Street
Newton, MA 02462

Owner(s) of Record: National Amusements, Inc.

Address: 846 University Avenue
Norwood, MA 02062

Address of Premises: 375-399 Chestnut Hill Avenue, Brookline, MA

Deed recorded in Registry of Deeds, Book 4208 Page 374
or registered in the Land Registration Office under Certificate No. _____

Tax Assessor's Property ID No.: 238-01-00

- Are you applying for special permits X and/or variances n/a. Please list Zoning By-law sections under which special permits and/or variances are requested. (Refer to Denial Letter.)
Section 5.06.4.f.2; Section 5.06.4.i; Section 5.06.4.i.4.b; Section 5.06.4.i.4.e; Section 5.06.4.i.5.c; Section 5.09; Section 5.43; Section 5.51¹; Section 6.02.2.d; Section 7.00.1.b
- Present use of property (No. of dwelling units, if any).
The Property is currently improved by a portion of the former Circle Cinema which was closed in 2008 and which will be demolished in connection with the Project.
- Proposed use of property, including description of all buildings and facilities, hours of operation, number of employees, visits by clients or pupils, amount of off-street parking, square footage of proposed additions or structures, etc.
The development of approximately 68 Limited Service hotel rooms, 2,635 SF retail/restaurant use and 20 parking spaces, which is a portion of a larger development consisting of a 5 and 6 story mixed use building containing a hotel component, a residential component, ground floor retail/restaurant and accessory parking, to be located on a 111,025 square foot parcel of land, of which the Property consists of 18,176 square feet and 92,849 square feet of which is located in Boston (See attached narrative).
- Why does the applicant believe that the proposed use or building will meet the conditions for a special permit under Sec. 9.05 of the Brookline Zoning By-Law and will be in harmony with the purpose and intent of the Bylaw?
The Project will create an attractive new development on the western side of the Local Business District which will add limited service hotel and housing units, will activate the streetscape and provide substantial landscaping. (See attached narrative).
- Why does the applicant believe that the proposed use or building will meet the conditions for a variance under MGL c. 40A, Sec. 10, i.e. what are the special circumstances relating to soil conditions, shape, or topography of such land or structures, which do not generally affect other land or structures in the same zoning district, so that a literal enforcement of the by-law would involve substantial hardship, financial or otherwise, and that relief may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of the By-law?
N/A

¹ Appellant requests confirmation that the Project complies with this provision; however, in the alternative Appellant seeks a Special Permit for such violation pursuant to Section 5.43 of the Zoning By-Law.

375-399 Chestnut Hill Avenue

I. Introduction

This appeal requests the issuance of the following special permits under the referenced provisions of the Zoning By-Law of the Town of Brookline (the “**Zoning By-Law**”): (i) Special Permit for Project in the CL District (Sections 5.06.4. f. 2 and Section 5.09); (ii) Special Permit for Project in Cleveland Circle Hotel Overlay District (Section 5.06.4.i); (iii) Special Permit for Exception to Yard and Setback Regulations requiring 5’ setback of area above three stories regarding portion of Project on the Boston Property (as defined below) (Sections 5.06.4.i.4.b and Section 5.43); (iv) Special Permit for Fence along property line with the MBTA right-of-way in excess of seven (7) feet (Section 5.06.4.i.4.e); (v) Special Permit for reduction in parking requirement for senior housing (Section 5.06.4.i.5.c and Section 6.02.2.d); (vi) Special Permit for Design Review (Section 5.09); and (vii) Special Permit for signs more than 25 feet above ground level announcing the name of an individual building (Section 7.00.1.b).

Although the letter dated April 28, 2015 from Daniel F. Bennett (the “**Denial Letter**”) included a denial from Section 5.51 (maximum 2-foot cornice projection into a Front Yard), this appeal seeks confirmation that the Project (as defined below) complies with Section 5.51 because the Project contains a cornice element of 4 feet in depth on the Brookline Property that does not in fact project into the required 5-foot Front Yard. In the alternative, this appeal requests a Special Permit for Exception to Yard and Setback Regulations providing for Maximum 2’ Cornice Projection into Front Yards (Section 5.51 and Section 5.43).¹

Cleveland Circle Development Associates LLC (the “**Appellant**”) proposes to develop a 5 and 6 story mixed-use building containing a hotel component, a senior residential component, ground floor retail/restaurant and accessory parking (the “**Project**”), to be located on a 111,025 square foot parcel of land, 18,176 square feet of which is located in Brookline (the “**Brookline Property**”) and 92,849 square feet of which is located in Boston (the “**Boston Property**”), situated on the south side of Chestnut Hill Avenue and adjacent to Cleveland Circle (collectively, the “**Property**”).

II. Project Description and Background

In 2011, the predecessor of Appellant proposed a mixed-use project (the “**Original Project**”) with a roughly C-shaped footprint consisting of 180 hotel rooms, 18,000 SF of medical office uses, 30,000 SF of general office uses, 18,000 SF of retail and restaurant uses, and accessory parking. The Original Project has been revised in many aspects since 2011 as a result of an extensive community process in both Brookline and Boston. As currently proposed, the Project consists of two separate buildings facing an interior piazza, which will include a 162-key hotel (approximately 68 rooms on the Brookline Property), 92 active senior residential units (all on the Boston Property) and approximately 6,085 SF of first-floor retail/restaurant uses

¹ Although the Denial Letter included denials from (x) Section 7.00.1.d of the Zoning By-Law with respect to an increase in size of a sign by more than 25% above that permitted in Article VII of the Zoning By-Law, and (y) Section 7.03.1.d of the Zoning By-Law with respect to a sign on building wall not parallel of within 45 degrees parallel to street which is in excess of 18 SF in area, Appellant is not seeking relief for these items at this time.

(approximately 2,635 SF on the Brookline Property) for a total of approximately 214,291 SF (approximately 41,424 SF on the Brookline Property), together with approximately 188 parking spaces (approximately 20 garage parking spaces are located on the Brookline Property), including a combination of garage and surface parking spaces. The substitution of senior residential use in the Project for medical and general office uses which were proposed in the Original Project, together with a reduction in proposed retail and restaurant square footage in the Project as compared to the Original Project, has resulted in reduction of the impacts of the Project, including a 46% reduction in average daily vehicle trips for the Project as compared to the Original Project.

The Brookline Property is currently the site of the long-vacant Circle Cinema building and the Boston Property is the site of an occupied Applebee's restaurant. Both structures will be demolished in connection with the Project.

On May 26, 2011, in connection with the proposal of the Original Project, Town Meeting adopted Section 5.06.4.i establishing the Cleveland Circle Hotel Overlay District (the "**Hotel Overlay By-Law**"). As described in more detail in Section III.A.2 below, the Project as proposed is consistent with the vision of Town Meeting as expressed in the Hotel Overlay By-Law.

III. **Special Permits Relief Requested**

A. **Relevant Code Provisions**

1. **Special Permit for Project in the Cleveland Circle Local Business District L-0.5 (Section 5.06.4.f)**

Under Section 5.06.4.f, a Special Permit under Section 5.09, Design Review, is required for projects within the Cleveland Circle Local Business District (the "**L-0.5 District**"). If the Project proposes more than 25,000 SF of nonresidential development and therefore is a Major Impact Project as defined in Section 5.09.3.b, the Project is analyzed in its entirety under Section 5.09, even if a portion of the Project is located in another municipality. For all Major Impact Projects in the L-0.5 District, a traffic impact and access study must be submitted that clearly outlines the strategy for providing access to and from the Project and the impacts of that access on the Town's transportation system, the area's mass transit system, pedestrian and bicycle circulation, and public safety in the area of the project. In addition, for a project that is located across municipal boundaries, the Project is reviewed as a single lot in connection with parking and setbacks, and Design Review under Section 5.09 considers the entire Project façade facing the MBTA right of way abutting the Property as well as lighting proposed along this length.

The Project is located across municipal boundaries. Accordingly, a Special Permit for Design Review for a Major Impact Project is required which considers traffic impact, parking and setbacks as if the Property were a single lot, and the design and lighting of the entire façade facing the MBTA property line.

2. **Special Permit for a Project in the Cleveland Circle Hotel Overlay District (Section 5.06.4.i)**

Under Section 5.06.4.i, a Special Permit is required for certain projects within the Cleveland Circle Hotel Overlay District (the "**Hotel Overlay District**"), which (1) contain at least 40 Limited Service Hotel² guest rooms within Brookline (Section 5.05.4.i.2.a); and (2) have a floor area ratio ("**FAR**")³ within Brookline of not less than 2.2 and not more than 2.5 (Section 5.06.4.i.2.b). For such projects, special dimensional, parking, traffic mitigation and noise requirements apply, as set forth in Section 5.06.4.i.4 through 7.

The Project has 68 Limited Service Hotel guest rooms and an FAR of approximately 2.28 within the Brookline Property. Accordingly, the Project is subject to the special dimensional, parking, traffic mitigation and noise requirements as set forth in Section 5.06.4.i.4 through 7, through a Special Permit issued under Section 5.06.4.i.

3. Special Permit Granting Relief from Setback and Build-To Line Requirements (Section 5.06.4.i.4.b and Section 5.43)

Pursuant to Section 5.06.4.f.4, the entirety of the Project (including those portions within the Boston Property) is subject to the setback requirements of the Zoning Bylaw.

Section 5.06.4.i.4.b.2 requires that any portion of a building within 50 feet of Chestnut Hill Avenue that is more than three stories tall must be set back at least 5 feet from lower floors. Along the façade of the senior residential component of the Project on the Boston Property, the Project will not include any setback above three stories within 50 feet of Chestnut Hill Avenue.

Section 5.43 provides that the Board may by special permit modify "the requirements for yards or setbacks specified in this By-law," where other dimensional requirements "assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law." Accordingly, the Project requires a special permit under Section 5.43 to modify the setback requirements of Section 5.06.4.i.4.b.

4. Special Permit Granting Relief for a Fence in Excess of 7 Feet in Height (Section 5.06.4.i.4.e.)

Section 5.06.4.i.4.e provides that a screen fence along the MBTA right of way in excess of 7 feet in height may be permitted by Special Permit. Appellant proposes a fence along the MBTA right of way of approximately 8 feet in height. Accordingly, the Project requires a special permit under Section 5.06.4.i.4.e to allow such screen fence 8 feet in height.

² Section 2.12 of the Zoning By-Law defines Limited Service Hotel as "A structure in which sleeping accommodations are let for compensation primarily to transients in which no more than 5,000 square feet of space is used for eating, drinking, dancing, meeting halls or similar purposes, and where all room or rooms fall within the definition of M.G.L. 64G, §1(g) as may be amended."

³ FAR is calculated in accordance with Section 5.06.4.i.4.a, which provides that up to 10,000 SF of the ground floor of a project facing Chestnut Hill Avenue may have finished floor-to-ceiling heights greater than 12 feet but no greater than 18 feet without requiring the gross floor area to be calculated by multiplying this area by a factor greater than 1 where the floor-to-ceiling height exceeds 12 feet.

5. Special Permit for Minimum Off-Street Parking for Senior Housing (Section 5.06.4.i.5.c and Section 6.02.2.d)

Under Section 5.06.4.f.4, the entirety of the Project (including those portions within the Boston Property) is subject to the parking requirements of the Zoning By-Law. Pursuant to Section 5.06.4.i.5.a, special parking ratios apply to a project, any portion of which is within the Cleveland Circle Hotel Overlay District, as follows: (x) .5 parking spaces per limited service hotel room within the entire Project, (y) .75 parking spaces per 1,000 SF of retail use within the entire Project, and (z) 1 parking space per 1,000 SF of restaurant use within the entire Project. Under Section 6.02, Paragraph 1, Table of Off-Street Parking requirements, because the maximum FAR of the Project on the Brookline Property is 2.5, the Project must also provide at least 2 parking spaces for each residential unit containing two or fewer bedrooms, and 2.3 parking spaces for each residential unit containing more than two bedrooms. Within the senior housing component, 90 units contain two or fewer bedrooms, and 2 units contain more than two bedrooms.

The Project provides parking, as follows:

Use	SF/number of rooms	Parking Required	Parking Provided	Relief
Limited Service Hotel	162 hotel rooms	0.5 per hotel room=81	81	N/A
Retail/Restaurant	6,085 SF	0.75/1,000 SF retail and 1/1,000 SF restaurant=6	11	N/A
Senior Housing	90 units with two or fewer bedrooms 2 units with more than two bedrooms	90 x 2 + 2 x 2.3 = 185	96	Sec. 6.02.2.d

With respect to the senior housing component, Section 6.02.2.d provides that a Special Permit may be granted to reduce the minimum number of parking spaces otherwise required for a residential use under certain circumstances, including when such residential use is age-restricted, when an applicant can demonstrate that the parking needed for such occupants and their visitors will be below that which is otherwise required, and when such reduction would not result in a provision of less than 1/5 of the parking otherwise required by such Section.

Residential use at the Project will be age-restricted to seniors and as such will experience reduced parking needs. Accordingly, a Special Permit is required under Section 6.02.2.d to reduce parking for senior housing to 96 spaces, which is more than 1/5 of the 185 that would otherwise be required.⁴

⁴ 185/5 = 37.

6. Special Permit for design review (Section 5.09)

A Special Permit for Design Review, consistent with the requirements of Section 5.09, is required *inter alia* under 5.06.4.f, for a major impact project in the Cleveland Circle Local Business District. This special permit is subject to Major Impact Project review requirements set forth in Section 5.09(3)(b) and community and environmental impact and design review procedures and standards set forth in Section 5.09(4).

7. Special Permit for Projection Into Front Yard on Chestnut Hill Avenue (Section 5.43 and Section 5.51)

Under Section 5.51, no cornice can project into a required front yard by more than 2 feet and cannot be within 5 feet of a front lot line, except in districts where no front yard is required. Under Section 5.06.4.i.4.b.1, there is a required minimum front yard in the Hotel Overlay District of 5 feet. "Front yard" is defined in Section 2.25 as "[a]n open space extending across the full width of the lot and lying between the front lot line or lines and the nearest point of the building."

No portion of the 4-foot cornice on the hotel component located on the Brookline Property encroaches on the 5-foot required front yard. In fact, the entire building is set back 7'10" from the front lot line and therefore exceeds the 5-foot front yard requirement with no encroachments.

The cornice element on the upper level of the hotel component located on the Brookline Property projects 4 feet from face of the upper-level building wall into the 5' required setback area above three stories under Section 5.06.4.i.4.b. However, the encroachment of a cornice into this upper level setback area is not prohibited by Section 5.51 which applies only to encroachments into "Front Yards."

Accordingly, this appeal requests confirmation that the Project is in compliance with Section 5.51 of the Zoning By-Law.

In the alternative, if the Board does not confirm that the Project is in compliance with Section 5.51, the Project requires a special permit under Section 5.43 to modify the requirements of Section 5.51 as applied to the upper level cornice. Section 5.43 provides that the Board may by special permit modify "the requirements for yards or setbacks specified in this By-law," where other dimensional requirements "assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law."

8. Special Permit for building identification signs more than 25 feet above ground level (Section 7.00.1.b)

The Project will include one building identification sign on the Brookline Property displaying the name of the hotel operator within the Project. This sign will face the interior

piazza and provide building identification and way-finding for motorists and pedestrians in Cleveland Circle, and will reach a maximum height of 52' 10". A Special Permit under Section 7.00.1.b is required because the Project's building identification sign will reach maximum heights of greater than 25 feet above ground level.

B. Conditions and Reasons that the Board should Grant the Special Permits

Under Section 9.05(1), the Board of Appeals may grant a special permit where the Board finds that: (i) the specific site is an appropriate location for the use, structure or condition at issue; (ii) the use as developed will not adversely affect the neighborhood; (iii) there will be no nuisance or serious hazard to vehicles or pedestrians; (iv) adequate and appropriate facilities will be provided for the proper operation of the proposed use; and (v) the development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

1. The Brookline Property is an appropriate location for the Project.

The Brookline Property is located in a local business district and a hotel overlay district that specifically contemplated the Project. The Project's uses and dimensions are similar to and compatible with other existing properties in Cleveland Circle. The Property is exceptionally well-served by public transportation including the Cleveland Circle Station of the Green (C) Line, the Reservoir Station of the Green (D) Line, and the #86 MBTA bus line.

2. The Project will not adversely affect the neighborhood.

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

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

The Project will include adequate off-street parking, with a safe means of ingress and egress, so that the surrounding streets will be unaffected and unobstructed. The Appellant is committed to mitigating adverse traffic impacts created by the Project through a comprehensive transportation demand management plan. The Project's construction management plan will minimize construction impacts to the surrounding neighborhood during construction. Lastly, the Project is designed and will be operated to comply with all state noise regulation and local noise ordinances of both Brookline and Boston, without regard to municipal boundaries..

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

The Project will be provided with parking, sanitary, stormwater management, life-safety and other facilities of high-quality in compliance with applicable building and health codes. As noted above, the Project's construction management plan will minimize construction impacts to the surrounding neighborhood.

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

The Project does not propose any housing on the Brookline Property. The senior housing proposed on the Boston Property will comply with applicable executive orders and Boston policy relative to the provision of affordable housing in the City of Boston. The Project will therefore have no significant adverse effect on the supply of housing available for low and moderate income people.

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

As required by Section 5.06.4.f, Appellant has submitted a traffic impact and access study that clearly outlines the strategy for providing access to and from the Project and the impacts of that access on the transportation system of Brookline, the area's mass transit systems, pedestrian and bicycle circulation, and public safety in the area.

Additionally, as required by Section 5.06.f.4, the length of the entire façade facing the MBTA right of way has been designed and will be constructed with care and quality of finishes equivalent to that of the northern façade of the same building.

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

Sections 5.06.4.i.4 through 7 provide that a project within the Hotel Overlay District must comply with certain dimensional, parking, traffic mitigation and noise requirements.

These requirements are complied with as follows: (1) as required by Section 5.06.4.i.4.b.1, the Project is set back from Chestnut Hill Avenue not more than 15 feet and not less than 5 feet; (2) as required by Section 5.06.4.i.4.b.3, the Project is set back not less than 5 feet from the MBTA right of way; (3) as required by Section 5.06.4.i.4.c, the building on the Brookline Property does not exceed 56 feet in height; (4) as required by Section 5.06.4.i.4.d, the building on the Brookline Property does not contain substantial rooftop structures within 15 feet of the MBTA right of way; (5) as required by Section 5.06.4.i.6.a.1, the Project has access and egress to Chestnut Hill Avenue by one curb cut of no more than 2 lanes in width and controlled by a traffic signal equipped with activated demand technology; (6) as required by Section 5.06.4.i.6.a.2, the Project contains a physically segregated parking area for hotel guests and employees, from which the only available egress from the Property is to Beacon Street; (7) as

required by Section 5.06.4.i.6.a.3, the Project provides for egress only to Chestnut Hill Avenue by all other Project guests, residents and employees; (8) as required by Section 5.06.4.i.5.a, the Project complies with the minimum parking requirements as more fully described in Section III.A.5 above; (9) as required by Section 5.06.4.i.5.b, the Project will provide two loading bays, subject to the approval of the Brookline Director of Transportation and Engineering; (10) as required by Section 5.06.4.i.6.a.4, the Project provides separate taxi stands on the Boston Property and the Brookline Property; (11) as required by Section 5.06.4.i.6.b, final traffic design and mitigation for the Project includes the potential impact of the redevelopment of any directly abutting parcels, regardless of municipal boundaries, and includes not more than 110,000 SF of Limited Service Hotel use, 48,000 SF of office or medical office, and 18,000 SF of restaurant or retail use; (12) as required by Sections 5.06.4.i.6.c.1-2, the Project will provide (A) improvements to two pedestrian crossings across Chestnut Hill Avenue, including at Cleveland Circle as well as the crossing aligned with vehicular turn-around at the MBTA station south of the MBTA right-of-way, (B) a third pedestrian crossing where the signal for the Chestnut Hill Avenue entrance will be located, near the Boston/Brookline boundary, subject to approval by the Brookline Director of Transportation and Engineering as well as the Boston Transportation Department; (C) sidewalk improvements including minimum 10' wide sidewalk on the western side of Chestnut Hill Avenue from the Brookline Boundary to the MBTA bridge and (D) replacement of sidewalk on the western side of Chestnut Hill Avenue from the MBTA bridge to Clinton Road; and (13) as required by Section 5.06.4.i.7, the Project will comply with all state noise regulation and local noise ordinances of both Brookline and Boston, without regard to municipal boundaries.

Although the Project does not comply on the Boston Property with the upper-floor setback requirements applicable within 50 feet of Chestnut Hill Avenue under Section 5.06.4.i.4.b.2, or with the limit on the height of the fence on the Brookline Property facing the MBTA right of way under Section 5.06.4.i.4.e., Appellant is seeking Special Permits with respect to these items as detailed more fully in Section III.A above.

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

Section 5.43 provides that the Board may by special permit modify “the requirements for yards or setbacks specified in this By-law,” where other dimensional requirements “assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law.” Such standard of amenity may be assured by “off-setting a reduction in the depth or area of a required yard or setback by an increase in the depth or area of another yard or setback” or by “the provision or preservation of a condition or a facility not otherwise required that will counterbalance such a reduction.”

The Project will provide such counterbalance by maintaining a landscaped setback along the MBTA right of way greater than the required 5 feet and as large as 10’8” for significant sections of the setback, a landscaped and hardscaped setback facing Cassidy Playground greater than the required 5 feet and as large as 11 feet in some places, landscaped elements along the length of the rear parking lot and Clinton Road elevation along the hotel, and an interior piazza containing a generous amount of landscaping, public seating and open space. The design also incorporates a sidewalk that extends from the rear parking area through the site to facilitate safe

pedestrian passage to Chestnut Hill Avenue. In addition, the length of the hotel is approximately 279 feet which is 6 feet less than the permitted length of 285 feet. Similarly, the height of the hotel is approximately 51 feet 10 inches which is less than the permitted height of 56 feet.

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

Residential use at the Project will be age-restricted to seniors pursuant to the City of Boston's proposed Development Plan applicable to the Boston Property. The parking needed for such age-restricted residents is less than what would otherwise be generated by residential use without such age restriction. Appellant anticipates providing 188 off-street parking spaces at the Project, of which up to 96 may be used by age-restricted occupants and their visitors, and which total is far more than one-fifth of the 185 that would otherwise be required.

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

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

11. Additional conditions and reasons related to building identification signage

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

IV. Conclusion

For the foregoing reasons, the Appellant respectfully requests that the Board of Appeals grant the above-described special permits and such other relief as the Board deems proper.

Summary Table of Relief Items in Special Permit Application for the Circle Project

Item in April 28, 2015 Denial Letter (and Section of Zoning By-Law)	Basis for Relief
<u>Section 5.06.4. f. 2:</u> Major Impact Project in the CL District	Special Permit available per Section 5.06.4. f. 2, requiring compliance with Design Review pursuant to Section 5.09
<u>Section 5.06.4.i:</u> Project in Cleveland Circle Hotel Overlay District	Special Permit available per Section 5.06.4.i.2, requiring compliance with Design Review pursuant to Section 5.09
<u>Section 5.06.4.i.4.b:</u> Yard and Setback Regulations requiring 5' setback of area above three stories within 50" of Chestnut Hill Avenue	Special Permit available per Section 5.43
<u>Section 5.06.4.i.4.e:</u> Fence along property line with the MBTA right-of-way in excess of seven (7) feet in height	Special Permit available per Section 5.06.4.i.4.e
<u>Section 5.06.4.i.5.c:</u> Off-Street Parking Regulations	Special Permit for reduction in parking requirement for senior housing available per Section 6.02.2.d
<u>Section 5.09:</u> Design Review	Special Permit available per Section 5.09
<u>Section 5.51:</u> Projection into Front Yards (cornice projection) ¹	Special Permit available per Section 5.43.
<u>Section 700.1.b:</u> Building identification sign more than 25 feet above ground level	Special Permit available per Section 7.00.1.b

¹ Appellant requests confirmation that the Project complies with this provision; however, a Special Permit is available for such violation pursuant to Section 5.43.

NATIONAL AMUSEMENTS, INC.

Town of Brookline
334 Washington Street
Brookline, MA 02445

**RE: Limited Service Hotel and Active Senior Residential Community (the "Project")
399 Chestnut Hill Avenue, Brookline, Massachusetts**

Ladies and Gentlemen:

National Amusements, Inc., having an address of 846 University Ave., Norwood, MA 02062 (hereafter, the "Owner"), is the Owner of the above-referenced parcel of land which is more particularly described in the deed recorded with the Norfolk County Registry of Deeds in Book 4208, Page 374 (the "Property"). Cleveland Circle Development Associates Holdings LLC, a Delaware limited liability company having an address c/o National Development, 2310 Washington Street, Newton Lower Falls, Massachusetts 02465, is the contract purchaser of the Property.

Please allow this letter to confirm that Cleveland Circle Development Associates LLC (hereafter "Applicant") is authorized to submit the attached Application for Special Permits and/or Variances and as shown on the attached Project Overview dated May 26, 2015 in connection with Applicant's intended development of the Project on the Property.

Please do not hesitate to contact me with any questions, comments or should you require any additional information.

Sincerely,

National Amusements, Inc.

By:  _____

Name: Michael G. Kszystyniak

Title: Vice President

Date: May 20, 2015