

FEBRUARY 14, 2013

BOSTON REDEVELOPMENT AUTHORITY

REPORT AND DECISION ON THE APPLICATION OF BW  
OFFICE OWNER LIMITED PARTNERSHIP, BW ANCHOR  
RETAIL OWNER LIMITED PARTNERSHIP AND BW  
RESIDENTIAL-RETAIL OWNER LIMITED PARTNERSHIP FOR  
AUTHORIZATION AND APPROVAL OF A PROJECT UNDER  
CHAPTER 121A OF THE GENERAL LAWS AND ACTS OF 1960,  
CHAPTER 652, BOTH AS AMENDED, KNOWN AS THE  
BOYLSTON WEST CHAPTER 121A PROJECT

A. The Hearing. A public hearing (“Hearing”) was held at 6:00 p.m. on February 14, 2013, in the offices of the Boston Redevelopment Authority (“Authority”) in the Board Room of the Authority, Room 900, Boston City Hall, Boston, Massachusetts, by the Authority on an application filed with the Authority and dated February 4, 2013 (“Application”), for authorization and approval of a redevelopment project, as described herein (“Project”) under Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, both as amended (respectively hereinafter referred to as “Chapter 121A” and “Chapter 652”) to undertake and carry out the Project pursuant to said Chapter 121A and Chapter 652. Due notice of said Hearing was given previously by publication on February 1, 2013 in the Boston Herald, a daily newspaper of general circulation published in Boston, and by mailing, postage prepaid, in accordance with Rule 4 of the Rules and Regulations of the Authority for securing approval of a project under Chapter 121A (“Rules and Regulations”), and in accordance with Section 13 of Chapter 652. Clarence J. Jones, Timothy J. Burke, James M. Coyle, Consuelo G. Thornell, and Paul D. Foster, members of the Authority, were present at the Hearing.

B. Authority Action. In passing upon the Application, the Authority has considered the Application itself, all documents, plans, exhibits and supplemental information filed therewith or referred to herein, the oral evidence presented at the Hearing, the exhibits offered in evidence at the Hearing, and arguments and statements made at the Hearing.

C. The Application. On February 4, 2013, the Applicant, as defined herein, submitted to the Authority an application entitled, APPLICATION FOR APPROVAL OF BW OFFICE OWNER LIMITED PARTNERSHIP, BW ANCHOR RETAIL OWNER LIMITED PARTNERSHIP AND BW RESIDENTIAL-RETAIL OWNER LIMITED PARTNERSHIP TO UNDERTAKE A PROJECT IN BOSTON, MASSACHUSETTS UNDER M.G.L. CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960 (the “Application”), for approval under the provisions of Massachusetts General Laws Chapter 121A and the Acts of 1960, Chapter 652, both as amended (collectively, “Chapter 121A”) of the Project (further defined herein).

D. The Project Area. The Project Area is located on an approximately 82,586 square foot parcel, bounded on three sides by Boylston Street, Kilmarnock Street, and Van Ness Street, commonly known as 1325 Boylston Street, and consists of the Office Parcel, the Residential Parcel, the Retail Parcel and the Anchor Retail Parcel, all as more fully described below and in the Application (the "Project Area"). A plan of the Project Area is attached as Appendix 2 to the Application. For the reasons set forth in the Application (see Section 2(a) and Appendix 4) and in this Report and Decision and in all documents, plans and exhibits filed with the Application or referenced in this Report and Decision, the Authority hereby finds and declares that the Project Area is blighted, substandard and/or decadent as set forth in Section 1 of Chapter 121A. The Project, as hereinafter described, will permanently and comprehensively overcome the blighted, substandard and decadent conditions in the Project Area, but can only do so with the aids provided by Chapter 121A. The Authority finds and declares that without the benefit of governmental intervention by the approval of the Project under Chapter 121A, development of the Project Area to overcome the existing conditions, and the public benefits which the Project affords would be unlikely to occur, and that the Project will serve to promote the sound growth of the community. The existing conditions render it improbable that the Project Area could be redeveloped by the ordinary mechanics of private enterprise.

The Applicant is not the owner of the Project Area. The owners of the land and the improvements thereon comprising the Project Area are affiliates of the Applicant and are identified in Section 2(c)(i) of the Application. Prior to construction of the Project, title to the Project Area will be transferred, through one or more conveyances, to the Applicant.

E. The Project. The total development cost of the Project, including acquisition and soft costs, will be approximately \$328 million. The Project will consist of the demolition of the existing buildings within the Project Area and the construction of a mixed-use building consisting of approximately: (i) 233,000 square feet of office space ("Office Unit", which will be located within the "Office Parcel"); (ii) 172 residential units ("Residential Unit", which will be located within the "Residential Parcel"); (iii) 168,750 square feet of anchor retail use, including approximately 42,000 square feet of storage, loading and back of house areas, together with rights appurtenant thereto ("Anchor Retail Unit", which will be located within the "Anchor Retail Parcel"); and (iv) 31,000 square feet of small store retail use ("Retail Unit", which will be located within the "Retail Parcel"). In the Residential Unit, 7.5% of the on-site units will be affordable under the Authority's affordable housing program and the Applicant will also be providing an affordable housing contribution equivalent to 12.5% of the total number of market rate units multiplied by \$200,000, as more particularly set forth in the Development Plan for Planned Development Area No. 82. In addition, the building massing for the Project is broken into three portions that reflect the different

functions and create a rhythm appropriate to the historic land ownership along Boylston Street. The Project will feature a number of separate elements of varying height and massing, using form and materials to clearly differentiate the retail from the residential, and the residential from the office use. The Project is designed to maximize pedestrian access and public use while minimizing parking and traffic impacts. Surface parking at the Project Area will be eliminated, and will be replaced with a below-grade garage (which will be separate from the Project) that will provide adequate parking for residents and occupants of the Project, will continue to provide public parking, and may provide some parking to users under long-term, monthly or daily leases/agreements.

The Project was also designed to accommodate the layout of a new street or private way (known as Richard B. Ross Way) connecting Boylston Street and Van Ness Street. When complete, the Project will extend the emergent street wall along Boylston Street, create an attractive, active new street wall along Van Ness Street, and enhance connectivity with Richard B. Ross Way.

All exterior alterations or additions proposed to be made to the Project from and after the issuance of the final certificate of occupancy for the Project shall be subject to design review by the Authority consistent with the approvals for the Project given by the Authority on September 15, 2011 pursuant to Article 80 of the Boston Zoning Code (the "Article 80 Approvals"). At the discretion of the Director of the Authority, any additions to the Project shall be subject to approval of the Authority. The development of the Project is subject to design review by the Authority pursuant to Chapter 121A/Chapter 652 and Article 80B of the Boston Zoning Code and to the issuance of a certification of consistency and compliance, and other approval documents by the Authority pursuant to Articles 80B and 80C of the Boston Zoning Code.

The Project consists of a portion of the overall Fenway Triangle project, which will include a new parking garage containing approximately 575 below-grade spaces, and the demolition of the existing three-story building located at 132 Brookline Avenue and redevelopment as a residential building with ground floor retail, including approximately 150 residential units and approximately 5,000 square feet of Gross Floor Area for retail uses. As such, the Project will serve as a further catalyst for the development of the rest of the Fenway Triangle project and surrounding community.

Chapter 121A designation is essential to the feasibility of the Project. The Project has the potential to alter an entire neighborhood. However, several factors, including current high construction costs and the weak economy, impair the Project's feasibility. The following factors are among the challenges facing the Project:

1. The Office Parcel is not yet leased. Although the office component represents a speculative development risk to Developer, as defined herein, Developer is prepared, with the assistance of a 121A

designation, to move forward with this component of the Project, recognizing that the office space is key to the vitality of the Project and to the mixed use planning objectives of the City and the neighborhood.

2. The costs of sub-grade construction in the Fenway neighborhood are very high due to the same type of subsoil conditions that are encountered elsewhere in the City of Boston.
3. The other components of the Project generally support themselves, but do not provide sufficient returns that, in and of themselves, are capable of alleviating the above described financing impediments.

The Project needs Chapter 121A designation in order to be competitive in the marketplace for commercial tenants and thus to achieve economic feasibility.

E. Decision. The Authority hereby acts as follows:

- 1) Approval. The Application is hereby approved only to the extent set forth herein. If there is any inconsistency between the terms and conditions of this Report and Decision and those of the Application, the terms and conditions of this Report and Decision shall govern.
- 2) Applicant. The entities approved by the Authority to undertake the Project are: (i) BW Office Owner Limited Partnership (“BW Office LP”), a Massachusetts limited partnership; (ii) BW Anchor Retail Owner Limited Partnership (“BW Anchor LP”), a Massachusetts limited partnership; and (iii) BW Residential-Retail Owner Limited Partnership (“BW R-R LP”), a Massachusetts limited partnership (individually or collectively as the context may require, the “Applicant”).

The sole general partner of BW Office LP is BW GP LLC, a Massachusetts limited liability company, which is 100% owned by Boylston West LLC (the “BWO General Partner”). The BWO General Partner is a Massachusetts Limited Liability Company formed under Chapter 156C of the Massachusetts General Laws. The sole limited partner of BW Office LP is Boylston West LLC. Boylston West LLC is a Delaware Limited Liability Company, consisting of Boylston West Acquisition LLC and Fenway Enterprises Boylston West LLC as members.

The sole general partner of BW Anchor LP is BW Anchor Retail GP LLC, a Massachusetts limited company, which is 100% owned by Boylston West Target LLC (the “BWA General Partner”). The BWA General Partner is a Massachusetts Limited Liability Company formed under Chapter 156C of the Massachusetts General Laws. The sole limited partner of BW Anchor LP is Boylston West Target LLC. Boylston West Target LLC is a Delaware Limited Liability Company, consisting of Miscellaneous Income Corp. and Fenway Enterprises Boylston West LLC as members.

The sole general partner of BW R-R LP is BW GP LLC, a Massachusetts limited company, which is 100% owned by Boylston West LLC (the "BWRR General Partner"). The BWRR General Partner is a Massachusetts Limited Liability Company formed under Chapter 156C of the Massachusetts General Laws. The sole limited partner of BW R-R LP is Boylston West LLC. Boylston West LLC is a Delaware Limited Liability Company, consisting of Boylston West Acquisition LLC and Fenway Enterprises Boylston West LLC as members.

Copies of the Certificates of Formation of the Applicant and of its general partners are on file with the Authority. Any subsequent amendments or restatements to, or of such certificates shall be submitted to the Authority promptly after filing with the Secretary of State of the State of Massachusetts; provided, however, that any such amendments or restatements that substantially and materially alter the certificates in a manner that is inconsistent with the provisions of this Report and Decision shall be subject to the prior review and approval of the Authority's Director before their filing with the Secretary of State of the State of Massachusetts.

- 3) Cost of the Project; Financing. In the opinion of the Authority, the approximately \$328,000,000 cost of the Project has been realistically estimated in the Application, and the Project is practicable. The Project Area will be owned by the Applicant. The Applicant will lease all or a portion of the Project to affiliated entities (collectively, the "Developer"). The Developer will enter into subleases or similar agreements, through one or more intermediate conveyances, pursuant to which retail operators, office users, residents and other end-users and occupants will ultimately use and occupy the Project. Developer will own, develop, operate and maintain the buildings and improvements within the Project either directly or through arrangements with affiliated parties and/or other occupants of the improvements of which the Project are a part. Funding includes a loan with a major life insurance company. In addition, certain equity will be contributed to the Project by affiliates of or entities controlled by Samuels & Associates Development LLC, clients advised by J.P. Morgan Investment Management, Inc. and/or JPMorgan Chase Bank ("JPM") and the Applicant anticipates a sale of the anchor retail component of the Project to a major national retailer at or near project completion, the proceeds of which sale will provide further financial support to the Project. A more detailed description of the financing for the Project has been provided to the Authority. The Authority hereby approves the method of financing for the Project, as described in the Application.

Any future financing or refinancing made by the Applicant in connection with the Project may be made without the prior approval of the Authority, but with prior written notice thereof, if provided by (i) a recognized institutional lender, an insurance company, trust company, bank, pension fund, real estate investment fund, real estate investment trust, investment vehicle directed by an investment advisor (including without limitation, securitized loans), investment banking firm, private equity firm, venture capital company, sovereign nation or any agency, commission

or authority thereof, or sovereign wealth fund (in each case provided that such entity is not prohibited by any law or regulation from providing financing for the Project), (ii) the Applicant or any stockholder, partner, member, manager or affiliate thereof, or any Affiliated Entity (as hereinafter defined), and/or (iii) the federal government, the Commonwealth of Massachusetts, the City of Boston, or any political subdivision or instrumentality thereof. All other financing shall be made only with the prior approval of the Authority as to the identity and capability of the financing party or parties, the sufficiency of such financing and its compliance with the provisions of Chapter 121A and this Report and Decision, and such other additional information as may be requested by the Authority.

- 4) Limitation on Equity Return. Consistent with Section 18C of Chapter 121A, the Applicant, as the fee owner of the Project Area, will be the entity subject to the limitations on equity returns established under Chapter 121A Sections 9 or 18C. The partners of the Applicant, in their sole capacity as such, and not in their individual capacity, nor in their capacity as lessees of, partners or members of any lessee, sublessee or any other entity having an interest in the Project, or of any other entity, including without limitation, the Developer, shall not receive as net income from the Project, any sum in excess of an annual cumulative eight percent (8%) return of the amount invested in the Project by the Applicant for so long as the Project is subject to Chapter 121A; except that, if in any year it has so received a sum less than the aforesaid eight percent (8%) return, it may receive in a subsequent year or years, additional sums not exceeding in the aggregate the amount of such deficiency, without interest.
- 5) Minimum Standards. The minimum standards for financing, construction, maintenance and improvement of the Project as set forth in Section 3(e) and Appendix 5 of the Application, are hereby adopted and imposed as Rules and Regulations applicable to the Project for the same period as the Project is subject to the provisions of Chapter 121 A and Chapter 652. If there are any inconsistencies between the terms and conditions of the Minimum Standards in the Application and the terms and conditions of this Report and Decision, this Report and Decision shall govern.
- 6) Limitation on Liability. No officer, director, stockholder, partner, member, manager, employee or agent of the Applicant or the Developer or of any affiliate of either, or their respective successors and assigns, shall have any personal liability under this Report and Decision. The liability of the Applicant or its successors and assigns (including, without limitation, mortgagees) shall be limited solely to the interest of the Applicant in the Project.
- 7) Future Transfer of Interests. The Applicant will not voluntarily transfer, assign, convey or sell in any manner, or hypothecate its interest in the Project, except in

accordance with the Regulatory Agreements to be entered into by the Applicant prior to the Effective Date, as provided in Section H, below.

F. Consistency with Master Plan. The Project does not conflict with the Master Plan for the City of Boston, because the Project Area comes within a classification in the Master Plan which permits commercial uses of the kind proposed by the Applicant and because the Project is consistent with the goals of the Master Plan. The Project will also contribute to the economy of the City of Boston through the creation of construction and permanent jobs and the contribution of tax payments under the 121A program.

G. Effect of the Project. The Project will not be in any way detrimental to the best interests of the public or the City of Boston or to the public safety and convenience, and is not inconsistent with the most suitable development of the Project Area's neighborhood or the City. The blighted, decadent and substandard condition of the Project Area has been a matter of concern to the surrounding neighborhood. The Authority finds that the development of the Project will help to continue to revitalize the Project Area and the surrounding neighborhood, will provide a significant number of jobs during construction of the Project, and will help to meet the needs of the City for affordable housing.

H. Additional Rules and Regulations. In addition to the Minimum Standards approved in paragraph E.5 hereof, the Authority hereby requires that the Applicant, prior to filing any building permit application for the Project, enter into: (1) Regulatory Agreements with the Authority pursuant to the requirements of Chapter 121A, Section 18C, in similar format as the draft Regulatory Agreements attached as Appendices 7A, B, and C to the Application, with such changes as the Director of the Authority may in his discretion deem necessary and appropriate ("Regulatory Agreement"), (2) enter into a 6A Contract with the City of Boston under Chapter 121A, Section 6A, in similar format as the draft 6A Contracts attached as Appendices 6A, B, and C to the Application, the terms and conditions of which must be acceptable to the Commissioner of Assessing ("6A Contract"); (3) submit to the Authority for its review and approval all plans and specifications for the Project as the Authority may require and accept such changes and modifications thereto as the Authority may deem necessary or appropriate, and (4) adhere to such design review requirements as the Authority in its discretion may impose. The Applicant may seek termination of the Chapter 121A/Chapter 652 designation for parts of the Project and the Project Area.

Notwithstanding the approval of this Report and Decision by the Mayor of the City of Boston (the "Mayor") and the filing of the same with the City Clerk (such filing date with the City Clerk being the "Approval Date"), but further such approval shall not become effective until the later to occur of: (i) the Regulatory Agreements and 6A Contracts required by this Section H are executed by the Applicant and a fully executed

counterpart of the 6A Contract is filed with the City Clerk; and (ii) January 1, 2014 (the "Effective Date").

I. Environmental Considerations; Section 61 Findings. The Authority has reviewed the environmental impact of the Project through the Article 80 review process. Pursuant to the provisions of Section 61 of Chapter 30 of the General Laws, the Authority finds and declares that the Project will not result in damage to or impairment of the environment, and that all practicable and feasible means and measures have been taken or will be utilized to avoid or minimize damage to the environment.

J. Duration of Period of Tax Exemption. The Project shall have a fifteen (15) year tax exemption under the applicable provisions of Chapter 121A, from and after the Effective Date, as set forth in Section 10(b) of the Application, plus an extension of not more than twelve (12) months, as may be necessary, subject to the approval of the Authority's Director, to extend the otherwise applicable terms of the Office Parcel's designation under Chapter 121A, as set forth in Section 10(b) of the Application, for a duration equal to the time between the Approval Date and the Effective Date (the "**Effective Date Extension Period**"), as those terms are defined in Section 10(b) of the Application.

K. General Findings and Determinations:

1. The Authority hereby finds and determines that any procedural or other requirements of applicable statutes and of the Rules and Regulations, which may not have been complied with regarding the Application or the Authority's proceedings in connection therewith, are hereby waived.
2. The Authority acknowledges and agrees that the obligations of the Applicant are conditioned in all respects upon (i) the conveyance of the Project Area to the Applicant; and (ii) the issuance of all permissions, variances, permits and licenses that may be required with respect to the construction of the Project. If any of the conditions in clauses (i) or (ii) above is not met at any time during the term of the Applicant's designation under Chapter 121A, then the Applicant shall have the right to seek the termination of the designation of the Project and the Project Area under Chapter 121A and the termination of all approvals granted pursuant to this Report and Decision and all agreements entered into in connection herewith.
3. The Applicant shall not be held in any way liable for delays which may occur in the construction, repair and maintenance of the Project or the failure to perform its obligations under the Application or otherwise, by reason of scarcity of materials or labor, labor difficulties, damage by fire or other casualty or any other cause beyond the reasonable control of the



Applicant, including, without limitation, delays due to the presence of hazardous materials in, on or under the Project Area or any portion thereof. The Applicant shall use due diligence to secure all such permissions, variances, permits and licenses and to overcome any such delays.

4. If any of the provisions of the Application or the approval or consent granted pursuant thereto or any of the agreements entered into in connection therewith are held invalid, the remainder of such provisions shall not be affected thereby.
5. The respective rights and remedies of the parties hereunder or under the approval and consent granted pursuant to the Application or under any of the agreements entered into in connection therewith or at law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies.

L. Authorization to Execute Documents. The Authority's Director is hereby authorized to execute, in the name and on behalf of the Authority, the Regulatory Agreement and any and all agreements, instruments or documents required or authorized by this Report and Decision including without limitation any estoppel certificate or like instruments to and for governmental bodies, lenders or other interested parties, at his/her discretion, that confirm matters covered by this Report and Decision.

M. Severability. If any of the provisions of this Report and Decision or the approval or consent granted pursuant thereto or any of the agreements entered into in connection therewith are held invalid, then the remainder of this Report and Decision and such agreements shall remain in full force and effect.

