

**BOARD OF APPEALS**  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2011-0014

Petitioner, Brookline Housing Authority applied to the Building Commissioner for permission to construct a three story residential building with affordable units and parking below at 86 Dummer Street. The application was denied and an appeal was taken to this Board. The petitioner also desires to modify a previous Board decision, 080019, related to the location of an accessible ramp.

On March 24, 2011, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed April 21, 2011 at 7:15 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on March 31, and April 7, 2011, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

## NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **BROOKLINE HOUSING**  
Owner: **BROOKLINE HOUSING AUTHORITY**  
Location of Premises: **86 DUMMER ST**  
Date of Hearing: **APRIL 21, 2011**  
Time of Hearing: **7:15 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

A public hearing will be held for a variance and/or special permit from:

1. **4.08.3; Affordable Housing Requirements, special permit required.**
2. **5.09.2.d&k; Design Review, special permit required.**
3. **5.20; Floor Area Ratio, variance required.**
4. **6.02.2.d; Off-Street Parking Space Regulations, special permit required.**

**Modification of Board of Appeals Case #080019 dated August 14, 2008**

of the Zoning By-Law to **CONSTRUCT AN APARTMENT BUILDING REQUIRING BOA RELIEF at 86 DUMMER ST**

Said premise located in a **M-1 (apartment house)** residence district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Enid Starr  
Jesse Geller  
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members Jonathan Book and Mark Zuroff. Attorney Robert Allen Jr. of 300 Washington Street, Brookline MA presented the case on behalf of the petitioner, Brookline Housing Authority.

Attorney Allen explained that that the Petitioner, Brookline Housing Authority (BHA) wishes to construct a three story residential building with 32 units of affordable rental housing and parking for 75 cars, on-grade and in a garage below (the "Proposal"), on the existing site of Trustman Apartments (Trustman) at 86 Dummer Street, and modify a previous Board of Appeals decision in order to relocate a handicap ramp from Dummer St. to the rear of the St. Paul St. building. The Trustman site is 2.86 acres and encompasses one entire block and is bounded by St. Paul, Dummer, Amory and Egmont Streets. It currently contains 86 units of family housing housed in three buildings that fronts the three sides of the block. The Proposal will complete the quadrangle of the building by facing Dummer Street, and be consistent with the neighboring quadrangle development. The new building would be owned by a newly created limited liability company which would groundlease from the BHA a portion of the existing Trustman parcel.

Attorney Allen introduced Steve Tise of Tise Design Associates to present the proposal. Mr., Tise explained that BHA is proposing to construct a fourth apartment building, which will face Dummer Street and partially enclose the courtyard on the north side. Directly across Dummer Street are commercial buildings that have main entrances on Commonwealth Avenue. The new three story building will have 32 affordable residential units and increase the total number of units at the Trustman property from 86 to 118. The apartment building will include 6 one-bedroom units, 22 two-bedroom units, and 4 three-bedroom units. There will be a common lobby with access to an

elevator and interior corridors at the St. Paul Street end, and also four additional, ground floor private entrances off of Dummer Street. These private entrances serve the larger 2 and 3 bedroom apartments. Two of the 32 apartments will be fully accessible, and two will be Community Based Housing designed for people with disabilities, including elders and individuals who are in nursing facilities or institutions or are at risk of institutionalization. Apartment sizes range from 695 s.f. for one-bedroom units to 1,240 s.f. for three-bedroom townhouse style units. The intent of the new building's design is to replicate the scale, patterns, and colors of the existing Trustman buildings, while using a contemporary architectural vocabulary and having varying façade patterns and materials. The majority of the existing courtyard recreational uses will be retained. There will be a dedicated bicycle room and recycling center on the ground floor for all Trustman residents. The structure will be designed to LEED Silver equivalency, and the goal is to include as many sustainable features as possible. A total of 75 on-site parking spaces are proposed in both on-grade (35) and indoor facilities (40). Additionally, the applicant is requesting a modification of Board of Appeals Case # 080019 to relocate a handicap ramp from the side of the St. Paul Street building, which faces Dummer Street, to the rear of the St. Paul Street building; while this will reduce parking during construction it will add an additional parking space upon completion.

Attorney Allen informed the Board that the relief is being sought under the following provisions of the Town of Brookline Zoning By-Law: 4.08.3 - Affordable Housing Requirements (special permit required); 5.09.2.d&k – Design Review (special permit required); 5.20 – Floor Area Ratio (variance required), and; 6.02.2.d – Off Street Parking Regulations (special permit required).

Attorney Allen stated that the conditions of 4.08.3 were met since all of the 32 units will be affordable. He informed that BHA complied with Section 5.09.2.d and three Design Advisory

Team (DAT) meetings were held on December 1, 2010; January 5, 2011 and January 31, 2011.

DAT members supported the Proposal.

Attorney Allen continued that the Petitioner is requesting an FAR of 1.2 or 150,630 sf., thus requiring a variance. As part of this Proposal, BHA retained Geotechnical Partnership, Inc. (GPI) to conduct a comprehensive investigation of the soil under the premises. GPI found that the premises have several unusual features which both increase the cost of the redevelopment and reduce useful square footage. GPI concluded that the site is unusual and unique to have both poor quality fill and organic soils in such great total thickness. Due to the soil conditions, the use of a conventional foundation is out of the question so some type of aggregate piers or columns of compacted stone will need to be installed in this soft organic soil to increase bearing pressure and mitigate settlement under structural footings. This will come at great expense.

This increased cost requires additional density in order to keep the per-unit cost of the Project below that required by the Department of Housing and Community Development and as specified in the Qualified Allocation Plan ("QAP"). The QAP details the selection criteria and application requirements for low income housing tax credits which is a major source of funding for this Project.

Thus, a literal enforcement of the Zoning By-Law would render the Applicants project financially infeasible and cause substantial hardship to the Petitioner. The development of the project, at the requested density is necessary to allow the applicant to meet the strict requirements of the QAP, as well as other funding sources such as the Town's Trust Fund money, HOME program, and other sources necessary without which it is not possible to achieve such a deep level of affordability. Attorney Allen suggested that the desired relief may be granted without substantial detriment to the public good, as the Project will be consistent with

the overall density of the immediate neighborhood and create a more viable and safer streetscape.

Finally, Attorney Allen clarified that there are currently 72 parking spaces at Trustman. With the proposed addition of 32 units in this transit oriented development - at the MBTA B line branch of the green line - there will be a total of 118 units with 75 parking spaces are proposed.

As part of this Proposal, BHA retained Jacobs Engineering Group (Jacobs) to conduct a comprehensive parking study at the premises and comparable BHA properties. Attorney Allen summarized Jacob's findings, that the planned parking ratio of 0.66 spaces per units was consistent with the actual parking use at the development, 0.49 spaces per unit. Parking demand at Trustman has typically never exceeded supply. In conclusion, Jacobs found that 58-64 spaces are sufficient at Trustman; less than what is proposed and greater than one-fifth of the number of spaces that would otherwise be required.

Chairman Starr asked if anyone wished to speak. Roger Blood as Chairman of the Brookline Housing Advisory Board (HAB) spoke on behalf of HAB in support of the project stating that the Town was investing housing trust fund money into this project and explained that this is one of the best per unit cost developments that the Town has invested in. He supported partnering with BHA, as they are experienced in affordable housing.

Polly Selkoe, Assistant Director for Regulatory Planning provided the findings of the Planning Board.

**Section 4.08.3 – Affordable Housing Requirements**

A special permit is required for affordable housing for any residential development six units or greater. In this case, all of the units will be affordable.

**Section 5.09.2.d – Design Review**

Multiple dwellings of 4+ units require a special permit under *Section 5.09.4(a-l)*, design review standards.

- A.) Preservation of Trees and Landscape** - No significant trees or landscape features will be displaced because the building is mostly within the footprint of the existing parking lot. The new building will extend approximately 6' further into the courtyard than the current parking lot. Construction may require disturbing another 10' or so, but the basic courtyard uses and design will remain. New street trees are proposed for the Dummer Street frontage.
- B.) Relation of Buildings to Environment** - The proposed design uses the slope to create a lower entrance to a below grade garage. The three story building harmonizes with the other Trustman buildings and nearby three story developments. By closing the courtyard on the north side, Dummer Street will have an activated built edge.
- C.) Relation of the Buildings to the Form of the Streetscape and Neighborhood** - The proposed building activates Dummer Street by creating three points of entry along the façade. The upper entrance, closest to St. Paul, will be the main entrance to a common lobby for the majority of building residents. Further down Dummer Street, as the grade falls away to the east, two pairs of private entrances, serving the largest apartments, will have front doors facing Dummer Street. This same pattern is repeated on the opposite courtyard elevation. Despite the fact the building has internal corridors and an elevator, the design acknowledges traditional neighborhood patterns by creating multiple (private) entries and engaging the sidewalk and perimeter landscaped spaces with the building's interior. The intent is for the scale, massing, and building colors to reflect the existing structures, but the materials and fenestration will be contemporary and unique.
- D.) Open Space** - The existing courtyard will remain virtually the same with minor modifications. Because this proposal calls for below grade parking under the new building and the preservation of the unique courtyard feature, the amount of usable and landscaped open space significantly exceeds what is required by zoning. While the current proposal increases parking surface by adding additional on grade spaces at the east end of the courtyard, this new area will be gated to allow for use as a hard surfaced play area should parking demand, now or in the future, fall below that required as a condition of the special permit requisite parking ratios.
- E.) Circulation** - Vehicular circulation is similar to what exists with two curb cuts onto Dummer Street. However, the new design has the curb cuts serving separate parking areas at different elevations rather than a single interconnected, sloped parking lot. Adjacent to the upper lot, next to the primary building entrance, a bicycle storage room is located with direct access to grade, and it will be available to the entire development, not just residents of this proposed addition. The handicap parking spaces at Trustman behind the corner buildings at St. Paul and Amory Streets are being preserved, and augmented by 4 new handicap spaces inside the proposed garage.
- F.) Stormwater Drainage** - The new structure will collect roof and parking lot runoff and pipe into retention structures to accommodate phased removal into the street systems. No off site impact of any kind is expected. The applicant is continuing to study sustainable

porous pavement as an option to a structured stormwater system, subject to the review of the Town engineer.

- G.) Utility Service** - All utilities are underground and simple street connections are envisioned as shown on the submitted preliminary plan.
- I.) Safety and Security** - While security in the Trustman Community and neighborhood is not a significant issue, a residential structure on Dummer Street, with "windows on the street" and multiple access points, will enhance security. With full frontage on Dummer, fire and emergency services are uncompromised as well, as is evacuation.
- J.) Heritage** - Traditional low scale neighborhood block patterns front the surrounding. Rather than detracting from Brookline's heritage, this proposal closes the courtyard at Trustman, and extends the fabric of the larger neighborhood by fronting Dummer Street with residential uses.
- K.) Microclimate** - The plan for the extension of Trustman is to basically build over existing parking. While the proposal calls to increase parking spaces from 72 existing to 75, the design is for 41 spaces to be in a garage under the structure. The structure will be equipped with high albedo roofing (subject to PV installation), so the actual number of heat absorbing asphalt surface spaces will be reduced from 72 to 43. Additionally, the proposed structure is on the north side of the recreational courtyard, so there will be no adverse impact from shadows.
- L.) Energy Efficiency** - The proposed design incorporates many sustainable features. Among them are photovoltaic roof panels, energy recovery units on the roof, fresh air to each dwelling unit, and potentially thermal sidewall to supplement the recovery system on the south elevation. The thermal envelope will meet or exceed the Commonwealth's energy and building codes, and all equipment will be Energy Star compliant and/or have very high SEER ratings. The current plan is to design the structure to a minimum LEED Silver equivalency.

**Section 5.20 – Floor Area Ratio**

	Allowed	Existing	Proposed	Finding
Floor Area Ratio	123,126 s.f. 1.0	109,176 s.f. .89	150,638 1.2	<u>variance</u>

**Section 6.02.2.d – Off-Street Parking Space Regulations:** The number of spaces required for housing having age of occupant or maximum rents or sales prices controlled in order to comply with the conditions of federal, state, or local legislation may be reduced by the Board of Appeals by special permit where it can be demonstrated that the parking needed for occupants and visitors will be below that otherwise required. A special permit under this section shall not reduce the parking requirement below one-fifth of the number of spaces that would otherwise be required. *The total parking requirement for the site increases by 3 spaces under this proposal. Special permit required.*

Parking Spaces	Required	Allowed by SP	Existing	Proposed	Finding
For 32 addtl. units	65 addtl.	3 addtl.	72 (for 86 units)	75* (3 addtl.)	Special Permit**
118 units total	250	50	---	75	

\*During construction of the handicap ramp, the parking temporarily will be 68 spaces.

\*\*See Section 6.02.2.d as mentioned above.

**Modification of Board of Appeals Case #080019 (8/14/08)** to relocate handicap ramp serving 347 St. Paul Street per request of the Planning Board.

Ms. Selkoe said that the Planning Board supported this proposal to construct a new 34 unit residential building at the Brookline Housing Authority's Trustman property. There are few locations still available in Brookline where a building of this size and providing so many affordable units, can be built. The building fills the gap on the north side of the Trustman property, which is the only side of the property with no building on it. The other three sides each have buildings facing St. Paul, Egmont and Amory Streets. The new building, in addition to enlivening the streetscape on Dummer Street, will also serve to partially screen the center courtyard, where there is both surface parking and recreational equipment for the residents. The design of the building, although contemporary in style, will complement the other buildings on the site and surrounding neighborhood, is similar in scale, and continues entrances along Dummer Street.

Ms. Selkoe reported that amenities include: two fully handicap accessible units, two Community Housing units, four handicap parking spaces in the garage, a dedicated bicycle room and recycling center for all Trustman residents (which will replace some of the at grade dumpsters), LEED Silver equivalency, and if funding is available, rooftop photovoltaic panels and energy recovery units. Additionally, the applicant, at the request of the Planning Board, has

agreed to relocate a handicap ramp serving some of the apartments in the St. Paul Street building from its location fronting on Dummer Street to the rear of the St. Paul Street building. She said that the provision of 75 parking spaces should be adequate considering the previous experience of the Housing Authority with parking demand at this site, and with the availability of rapid transit nearby.

Ms. Selkoe reported that the proposal conforms to the requirements for height, landscaped and usable open space and yard setbacks but does exceed the allowed Floor Area Ratio for this M-1.0 zoning district by .2 or 27, 512 s.f. However, if the building were limited to the 13,950 s.f. of floor area remaining in the allowed FAR, it would not be financially feasible to build additional affordable units. The applicant's attorney believes the grounds for a variance are met due to the financial hardship created by the slope of the land (a 15' differential running from west to east) and to the soil conditions, because the site is a filled site of loose organic matter, in some cases as deep as thirty feet. Instead of using a conventional foundation, more expensive construction using aggregate piers or columns of compacted stone is required. These are needed to increase bearing pressure and prevent settlement under the structural footings in this soft soil.

Therefore, she said the Planning Board recommended approval of the plans, titled "Trustman Apartments," prepared by Tise Design Associates, and last dated 2/21/11, and the relocation of the handicap ramp, subject to the following conditions:

- 1. Prior to the issuance of a building permit, final floor plans and elevations, indicating façade design, rooftop details, and placement of utilities shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, a final site plan, indicating landscaping, parking layout, transformer, if any, and street trees on Dummer Street, shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.**

- 3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of portable toilets, and a rodent control plan, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department.**
- 4. Prior to the issuance of a building permit, the Housing Advisory Board shall review and approve the project's Affordable Housing Plan, per Section 4.08.**
- 5. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial rental period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.**
- 6. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building floor plans and elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chairman then called upon Michael Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard reported that the plans seemed well crafted and the project would provide additional units of much needed affordable housing. Mr. Shepard said that he was supportive of the conditions recommended by the Planning Board and if approved would insure the structure is built in accordance with the conditions and the requirements of the state building code.

During deliberations the Board Members felt that variance standards under MGL c. 40A section 10 have been met. The Board agreed with Attorney Allen that the GPI report identifies circumstances relating to the unique soil conditions and topography of the land for which the variance is sought, and especially affecting such land, but not affecting generally the Zoning District in which the land is located. Further, that the desired relief may be granted without substantial detriment to the public good, as the Project will be consistent with the overall density of the immediate neighborhood and create a more viable and safer streetscape. Further, the Board was persuaded by the Jacob's report that the requested parking was adequate for the site.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Section 5.43 subject to completion of the counterbalancing amenities as herein below provided, Section 8.02 and Section 9.05:of the Zoning By-Law with respect to the relief requested, except relief necessary for installation of the air conditioner condenser within the side yard property line set back, and made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, final floor plans and elevations, indicating façade design, rooftop details, and placement of utilities shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, a final site plan, indicating landscaping, parking layout, transformer, if any, and street trees on Dummer Street, shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.**
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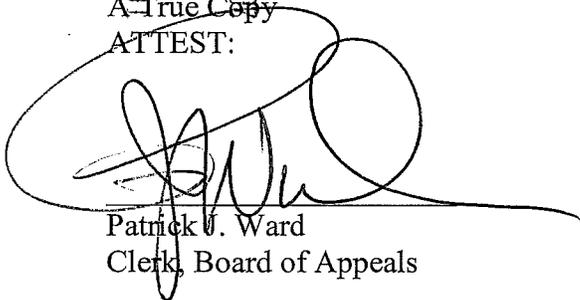
Unanimous Decision of  
The Board of Appeals

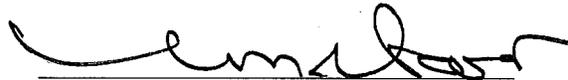
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Date: May 13, 2011

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Patrick J. Ward  
Clerk, Board of Appeals

  
Enid Starr, Chairman

Twenty days have elapsed and  
no appeal has been filed.

Filing Date: June 02, 2011

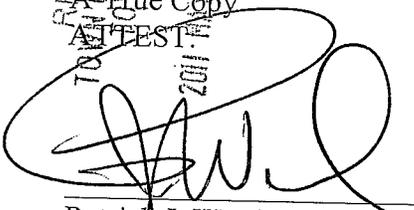
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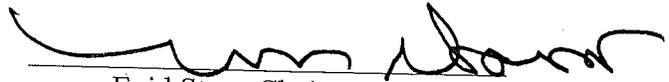
  
Patrick J. Ward  
Town Clerk

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Unanimous Decision of  
The Board of Appeals

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Clerk, Board of Appeals

  
Enid Starr, Chairman

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