



# Town of Brookline

## Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
TOWN CLERK

2016 SEP - 8 P 12: 5

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2016-0012  
36 LONGWOOD OWNER, LLC  
c/o MICHAEL DURAND  
36 LONGWOOD AVENUE, BROOKLINE, MA

Petitioner, 36 Longwood Avenue LLC (c/o Michael Durand), applied to the Building Commissioner for permission to demolish an existing structure and construct a seven unit apartment building with associated parking underneath. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 11, 2016, at 7:00 p.m. in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their 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 July 28, 2016 and August 4, 2016 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**36 LONGWOOD AVENUE- Demolish an existing structure and construct a seven unit apartment building«Comments»«Comments» in a «SITEZONING», Apartment House, residential District on August 11«HearingDate», at 7:00 PM «HearingTime» in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner: «PeopName»; Owner: «OwnerName»)**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

**«PlanningComment»y**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*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 Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneirson@brooklinema.gov](mailto:rsneirson@brooklinema.gov).***

*Jesse Geller, Chair*

*Christopher Hussey*

*Jonathan Book*

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Christopher Hussey and Lark Palermo. Building Commissioner Daniel Bennett and Zoning Coordinator & Planner Ashley Clark were also present. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the Petitioner Michael Durand along with project architect, Peter Quinn, Peter Quinn Architects, LLC, 259 Elm Street #301, Somerville, MA 02144. Zoning Board of Appeals Chairman Johanna

Schneider called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the Petitioner met with abutters on several occasions over the course of a year to devise a plan that incorporated their suggestions and addressed their concerns. Mr. Allen noted that the Petitioner comes before the Zoning Board with the unanimous support of the Planning Board, who commended the Petitioner for working with the neighborhoods on this project.

Attorney Allen stated that the subject property is located in the M-2.0 District, close to the intersection of Longwood Avenue and Sewall Avenue in Coolidge Corner. He stated that except for except for a converted single-family carriage house and a separate two-family dwelling that is located to the rear, the surrounding neighborhood consists primarily of multi-family dwellings.

Mr. Allen stated that the Petitioner intends to demolish the existing two-family home and construct a new seven-unit multi-family dwelling with underground parking for 15 vehicles. Mr. Allen indicated that a demolition delay was imposed on the home, which expired in December, 2015. Attorney Allen noted that the relief sought may be granted by special permit.

Peter Quinn then reviewed the plans with the Board. Mr. Quinn provided a contextual overview of the surrounding neighborhood. He indicated that he considered the heights of, and materials used, on neighboring buildings in order to propose a building that fits into the neighborhood. Specifically, Mr. Quinn pointed out that he considered 30 Longwood Avenue which has a cast stone façade and a raised front yard 6 feet off the ground with parking behind it, 45 Longwood Avenue, a nine story building, and 50-60 Longwood Avenue, an eleven story twin tower building. He reiterated that the proposed seven-unit multi-family dwelling with underground parking for 15 vehicles is consistent with the neighborhood.

Mr. Quinn indicated that the landscaping plan provided by Blair Hines incorporates abutter suggested materials and plantings to provide adequate privacy. He also stated that at the request of a neighbor, the proposal will incorporate a cedar fence at the rear.

Mr. Quinn stated that the neighbors expressed concern about maintaining an existing view corridor. The proposed plan will maintain the view corridor, and a number of trees will be preserved which will provide a landscaping zone in addition to the proposed trees.

Mr. Quinn highlighted the landscaping between the proposed building and the neighboring building and stated that it maintains a 25 foot side yard setback. Mr. Quinn indicated that cast stone, traditional brick, fiber treated wood systems, fiber cement panels and neutral gray tones are all design elements taken from the surrounding buildings that will be incorporated into the proposed building.

With respect to parking, Mr. Quinn stated that the Zoning By-Law requires two spaces per unit. He indicated that the depth of the parking garage is attributed to the need to maximize parking and access for handicap space. A hydraulic lift system will be used to allow each household to meet the parking requirement. He indicated that this system has safety mechanisms incorporated and will stack the vehicles and maximize parking space. Mr. Quinn stated that 11 ½ feet of clearance is needed to maintain functionality of the lifts. Mr. Quinn stated that the lifts will be operated by the unit owners. He stated that the Petitioner seeks relief on two compact parking spaces in order to get the lift system to function.

The Petitioner, Michael Durand, stated that a shadow study was conducted during the process with the neighbors. He stated that his by-right option would allow him to expand in width, which was not a preferential option for the neighbors. Mr. Durand indicated that abutters felt that encroaching on the rear was a more preferable option than to expand in width which would cast a

shadow to the east and west of the property. Mr. Durand indicated that opting not to expand in width also allowed for the preservation of existing trees which would otherwise be destroyed.

Chairman Schneider inquired about the maintenance of the stacker machine. Mr. Quinn indicated that the maintenance of the responsibility of the units owners who utilize them.

Attorney Allen informed the Board that the relief is being sought under the following provisions of the Town of Brookline Zoning By-Law: **Section 4.08.3** - Affordable Housing Requirements; **5.09.2.d**-Design Review; Section 5.50: Front Yard Requirements; **Section 5.70**-Rear Yard Requirements; and **Section 6.04**.

Attorney Allen stated that the conditions of **Section 4.08.3** of the Zoning By-law were met. A cash payment is allowed where, as here, a project is under sixteen units. He stated that the Petitioner has met with the Town of Brookline Housing Division and will comply with the cash payment requirements. Attorney Allen then reviewed the requirements under **Section 5.09.2.d** of the Zoning By-law. He stated that the Petitioner kept the proposed garage smaller than initially intended which requires him to seek setback relief. This was done to preserve eight healthy mature trees at the rear of the property. Additionally, he stated that the trees along the edge of this corridor were preserved by limiting the underground garage footprint. He stated that as part of the project's counterbalancing amenities, additional trees will be planted.

Attorney Allen stated that the building is consistent with height and materials to surrounding buildings and the transitional style of the building fits in well with its surroundings. Attorney Allen stated that abutters requested a view corridor between 30 Longwood and the left hand wall. The goal was to make this view corridor as wide as could be accommodated, and several bays in this space were eliminated.

Attorney Allen then addressed the request for dimensional relief. Attorney Allen stated that under Section 5.43 of the Zoning By-law, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided. He restated that the Applicant is proposing extensive landscaping as the counterbalancing amenity. Attorney Allen reiterated that the cedar fence that is proposed at the rear of the building will also be incorporated as a counterbalancing amenity.

Attorney Allen then discussed special permit relief under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location for the seven-unit building because the site is zoned for multi-family development and is abutted on both sides by large multi-story multi-family dwellings ; (2) the use will not adversely affect the neighborhood because the Petitioner has met with the neighbors and modified the design in response to their comments, specifically regarding the siting of the building on the lot and where bays should be located; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the garage entrance is setback substantially from the street to avoid conflicts with pedestrians; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use with the development meeting all building code requirements for a multi-family residential dwelling; and (5) there will be no effect on the supply of housing available for low and moderate income people as this development will contribute needed funding to the Town of Brookline Affordable Housing Trust Fund.

Mr. Hussey inquired about stormwater filtration and whether Peter Ditto, Director of Engineering and Transportation had advised. Mr. Quinn stated that he has met with and discussed stormwater filtration with the Engineering and Transportation Department.

Zoning Board of Appeals Chairman Johanna Schneider asked if there was anyone present who wished to speak in favor of or against the proposal. No comment was offered.

Zoning Board of Appeals Chairman Schneider then called upon Ashely Clark, Zoning Coordinator & Planner for the Town of Brookline, to deliver the findings of the Planning Board:

## **FINDINGS**

### **Section 4.08: Affordable Housing Requirements**

A special permit is required for all residential developments of six or more dwelling units. A cash payment is allowed if a project is under 16 units.

### **Section 5.09.2.d: Design Review**

#### **Community and Environmental Impact and Design Standards**

Multiple dwellings with four or more units require a special permit subject to the design review standards listed under *Section 5.09.4(a-1)*. The relevant sections of the design review standards are described below:

#### **a. Preservation of Trees and Landscape**

There are a number of mature trees on the site, primarily along the side lot lines and along the rear lot line. After careful review with the landscape architect it was determined that four trees on the left lot line and 4 small trees along the rear lot line can be saved. The applicant proposes to plant a replacement tree in the rear right hand corner of the lot and another two 5" caliber lacebark Elms in the front yard. All street trees will remain. The portions of the underground structure not directly under the main building will be landscaped. The grades along the front of the building will be largely retained and the 15' front yard will be landscaped.

#### **b. Relation of Buildings to Environment**

The height of the building is similar to the building to the immediate left. The front of the building faces south so it does not cast shadows on the public ways. It does however cast shadows to either side and to the rear. [See attached shadow studies.] The owner has been holding a series of meetings with the abutters and has made several modifications including increasing the proposed rear yard setback from 22' to 24'-6". The required rear yard setback is 30' and the applicant is requesting a special permit.

#### **c. Relation of Buildings to the Form of the Streetscape and Neighborhood**

The building heights in this immediate area vary greatly from 2 ½ story wooden houses up to the twin 11 story towers of 50-60 Longwood Ave. The proposed project is essentially the same height as the building at 30 Longwood Ave to the immediate left. All of the neighboring buildings that are three stories or higher are brick buildings and brick is proposed for this building. The architectural styles vary from Art Deco (to the immediate right) to Victorian (across the street) to Modern (1960s, across the street) to "Transitional" (30 Longwood Ave). The proposed building could be classified as "Transitional" in that it combines brick with traditional wood clad double hung windows and has a number of bays. The top floor of the

project is articulated as an attic level with a material change from brick to fiber cement siding and a cornice line at the transition from the 4<sup>th</sup> floor to the top floor.

**d. Open Space**

Abutters requested a view corridor between 30 Longwood and the left hand wall. The goal was to make this view corridor as wide as could be accommodated, and several bays in this space were eliminated. The trees along the edge of this corridor were preserved by limiting the underground garage footprint. The proposed building has a 38% ratio of building footprint to lot area compared to 48% at 30 Longwood Ave (to the left) and 49% at 42-46 Longwood Ave (to the right).

**e. Circulation**

The proposed 15' deep landscaped front yard provides a buffer between the sidewalk and the building. The front door and front porch overlook the steps and walk to the public way. The land slopes down from the left hand side to the right hand side. This has been utilized to minimize the length of the handicap ramp up to the front door on the left and to minimize the length of the ramp down to the garage on the right. The driveway curb cut is new, and the existing curb cut will be closed. The garage door is approximately 75' from the front lot line and below grade, limiting conflicts with pedestrians in this heavily pedestrian area. There is ample bike storage in the basement. The parking layout accommodates the required number of parking spaces, including a handicap van and two guest spaces.

**f. Stormwater Drainage**

The proposed stormwater management system will be designed to reduce the peak rates of runoff and volume so that there is no increase from the existing conditions for the 2, 10, 25 and 100 year design storms. It is anticipated that the proposed stormwater management system will include infiltration structures under the parking garage that will be designed to infiltrate or retain the 25 year, 24 hour event (5.5" of rain). The final size of the infiltration system will be based upon final soil testing results. A potential emergency overflow connection from the subsurface drainage system to the existing drainage system in Longwood Avenue may be included in the final design. This overflow would be set at an elevation above the estimated on site 100 year storage level. The proposed drainage system will also have a Long Term Maintenance and Operations Plan that will include measures to be implemented during construction as well as post construction to ensure that the system operates as designed. Stormwater management will comply with Article 8.25.

**g. Utility Service**

All utilities to the building will be underground. The applicant is proposing an underground transformer vault in the driveway area between the structure and the front property line subject to approval from Eversource. There will not be a dumpster on site. Trash and recycling will be stored in the trash room, and the property manager will put out the bins and bring them back in on the correct pick up days.

**h. Advertising Features**

There are no plans at this time to do more than identify the address on the entry of the building.

**i. Special Features**

Portions of the proposed basement extend beyond the footprint of the building at grade. These areas will accommodate full landscaping over the top.

**j. Safety and Security**

Guard rails will be installed for sudden grade changes over 18” in the landscape.

**l. Microclimate**

Roof top condensing units are planned and screening is anticipated for these units. They will meet the Noise Control provisions.

**m. Energy Efficiency**

Energy efficiency is required the “stretch code” provisions of the building code. This project will meet or exceed these codes. Lighting will be set to operate on motion detectors, and nearly all, if not all lighting, will be LED type. Plumbing fixtures and mechanical equipment will be high efficiency. Building materials will be evaluated on their environmentally friendly basis.

**n. Shadow Studies**

Comparative shadow studies were done for June 21<sup>st</sup>, March 21<sup>st</sup>, September 21<sup>st</sup>, and December 21<sup>st</sup> at 9 am, 12 pm, and 3 pm. between the existing building and the proposed building. [See attached shadow studies on SH-1-SH-3.] Also included are shadow studies for the same days and times comparing the proposed project to a similar project that does not require rear yard setback relief. [See attached shadow studies on SH-3 –SH-6.] All these shadow studies have been presented to the abutters who attended the preliminary feedback meetings held by the owner. The consensus was that the difference in shadows regarding the rear yard setback was small, and the rear yard setback relief was preferred to the alternative scenario of making up the lost building space at the rear by increasing the building’s width.

**Section 5.43: Exceptions to Yard and Setback Regulations**

**Section 5.50: Front Yard Requirements**

**Section 5.70: Rear Yard Requirements**

**Section 6.04.2.d and e: Design of All Off-Street Parking Facilities**

**Section 6.04.3: Design of All Off-Street Parking Facilities**

**Section 6.04.4.c: Design of All Off-Street Parking Facilities**

A special permit may allow tandem spaces with a full time attendant. Three stackers are proposed, each with two cars. The remaining 9 cars are not tandem and include one handicap van space.

	Required/Allowed	Proposed	Finding
Front Yard Setback	20'	15'	Special Permit*

<b>Rear Yard Setback</b>	30'	24 ½'	Special Permit*
<b>Driveway Width</b>	20'	18'	Special Permit*
<b>Compact Spaces</b>	3	6	Special Permit*

\*Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided. The applicant is proposing extensive landscaping as the counterbalancing amenity.

Ms. Clark stated the Planning Board supports this proposal for a seven unit residential building in Coolidge Corner with fifteen underground parking spaces. The relief that is needed is minimal, and the proposed design is attractive. The Planning Board appreciated that the developer has met several times with neighbors and has changed the design to address their concerns, including eliminating bays on the left side of the building facing 30 Longwood Avenue. Ms. Clark stated that the Planning Board also noted that the Applicant has proposed extensive landscaping as a counterbalancing amenity as required by Section 5.43 of the Zoning By-law.

**Therefore, the Planning Board recommends approval of the site plan by Hayes Engineering, dated 5/11/16, and the architectural plans by Peter Quinn Architects, dated 7/8/16, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning after input from the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units," approved January 7, 2004, and with the choice of

the applicant to make cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation upon the sale of each unit:

A sum equal to 3.75% of the adjusted sales price of the unit (actual sales price, including the cost of all parking, less an exemption deduction of \$125,000) shall be deducted from the net proceeds due the seller for each of the seven units at 36 Longwood, and provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client's Fund Account, payable to the Brookline Housing Trust.

The check shall be mailed, accompanied by a copy of the HUD settlement statement, signed by the seller and buyer, and a copy of unit deed, by first class mail or hand delivery to:

Director of Planning & Community Development  
333 Washington Street - 2nd Floor  
Brookline, MA 02445

If any condominium unit(s) is/are to be rented by the owner instead of sold, the cash payments relative to the units being rented shall be immediately due and payable, unless, upon a request by the owner due to a significant change in market conditions, the Director of Planning and Community Development approves a different schedule of payments.

Prior to issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

4. Prior to the issuance of a building permit, the applicant shall submit a construction management plan including indicating where construction vehicle(s) will be parked subject to the review and approval of the Building Commissioner.

Mr. Bennett stated that the Building Department has no objections to the requested relief and felt that the requested relief is minimal. He stated that the Applicant has worked with the neighborhood, participated in the Design Advisory Team process, and made the necessary changes to mitigate any concerns. Mr. Bennett stated that if the Board finds that the Applicant has met the requirements for a special permit, the Building Department will work with the Applicant to ensure compliance.

During deliberation, Mr. Hussey stated the project is well designed and that he appreciated the Applicant's participation in the neighborhood process. He indicated that he is supportive of

the proposal. Ms. Palermo commended the Applicant on his work with the neighbors and stated that she is supportive of the proposal.

Ms. Schneider stated that she believed the requirements for a special permit were met and she found the landscaping to be a sufficient counterbalancing amenity.

The Board then determined by unanimous vote that the requirements for a special permit from application of Sections 5.50, 5.70, 6.04.2.d and e, 6.04.3, 6.04.4.c of the Zoning By-Law pursuant to Sections 5.43 and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- 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.
- e. Development will not have any effect on the supply of housing available for low and moderate income people.

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

1. Prior to the issuance of a building permit, the applicant shall submit final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning after input from the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units," approved January 7, 2004, and with the choice of the applicant to make cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation upon the sale of each unit:

A sum equal to 3.75% of the adjusted sales price of the unit (actual sales price, including the cost of all parking, less an exemption deduction of \$125,000) shall be deducted from the net proceeds due the seller for each of the seven units at 36 Longwood, and provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client's Fund Account, payable to the Brookline Housing Trust.

The check shall be mailed, accompanied by a copy of the HUD settlement statement, signed by the seller and buyer, and a copy of unit deed, by first class mail or hand delivery to:

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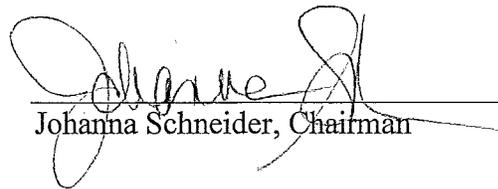
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4. Prior to the issuance of a building permit, the applicant shall submit a construction management plan including indicating where construction vehicle(s) will be parked subject to the review and approval of the Building Commissioner.

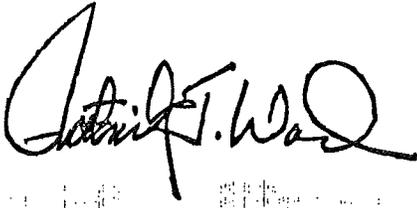
Unanimous Decision of  
The Board of Appeals

Filing Date:

9/8/2016

  
Johanna Schneider, Chairman

A True Copy  
ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is stylized with a large initial "P" and a long, sweeping underline.

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Patrick J. Ward  
Clerk, Board of Appeals