Town of Brookline
Massachusetts

BOARD OF APPEALS
Mark G. Zuroff, Chairman
Christopher Hussey
Jonathan Book

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0040
33 WINTHROP ROAD

Petitioner, 31-33 Winthrop Development LLC, applied to the Building Commissioner for a building permit to construct a shared driveway with a combination of covered and angled parking to service the existing building located at 29-31 Winthrop Road and the building that is permitted and currently under construction on the newly created lot at 33 Winthrop Road. While portions of the proposed shared driveway would be on both lots, all ten parking spaces servicing the two lots would be located on 29-31 Winthrop Road.

The proposal is offered as an alternative to the permitted as-of-right plan for the new building at 33 Winthrop Road, which has five tandem spots at 33 Winthrop Road, four tandem spots at 29-31 Winthrop Road, and three separate curb cuts to service the various parking spots. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed September 22, 2016 at 7:15 p.m., in Brookline Town Hall, Room 111, 1st Floor as the date, time, and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 September 8, 2016 and September 15, 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: **29-31 WINTHROP AND 33 WINTHROP ROAD to construct a two family on rear lot, create a common driveway, construct garage and provide all parking on front lot in a T-6 (TWO-FAMILY & ATTACHED SINGLE-FAMILY) zoning district on September 22, 2016 7:15 PM Room 111 1st Floor Town Hall 333 Washington Street (Petitioner: 31-33 Winthrop Development LLC)**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law for 29-31 Winthrop Road:

1. **Section 5.43: Exceptions to Yard and Setback Regulations**
2. **Section 5.44.3,4: Accessory Underground Structures**
3. **Section 5.50: Front Yard Requirements**
4. **Section 5.60: Side Yard Requirements**
5. **Section 5.91: Usable Open Space (lot 1 and slope lot 2)**
6. **Section 6.03.1.a,b: Location of Required Off-Street Parking Facilities**
7. **Section 6.04.2.a,b: Design of All Off-Street Parking Facilities**
8. **Section 6.04.4.b: Design of All Off-Street Parking Facilities**
9. **Section 6.04.5.c.4: Design of All Off-Street Parking Facilities**
10. **Section 6.04.5.d: Design of All Off-Street Parking Facilities**
11. **Section 6.04.6: Design of All Off-Street Parking Facilities**
12. **Section 6.04.7: Design of All Off-Street Parking Facilities**
13. **Any Additional Relief the Board May Find Necessary**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law for 29-31 Winthrop Road:

1. **Section 5.43: Exceptions to Yard and Setback Regulations**
2. **Section 5.60: Side Yard Requirements**
3. **Section 5.91: Usable Open Space**
4. **Section 6.03.1.a,b: Location of Required Off-Street Parking Facilities**
5. **Section 6.04.4.b: Design of All Off-Street Parking Facilities**
6. **Section 6.04.5.d: Design of All Off-Street Parking Facilities**

7. **Any Additional Relief the Board May Find Necessary**

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.

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.***

Jesse Geller, Chair
Christopher Hussey
Jonathan Book
Publish: September 8, 2016 & September 15, 2016

The public hearing was held on September 22, 2016.

Present at the hearing was Chairman Mark G. Zuroff and Board members Jonathan Book and Christopher Hussey. Deputy Building Commissioner Mike Yanovitch from the Building Department and Zoning Coordinator Ashley Clark from the Planning Department were also present. Board Chairman Zuroff called case 2016-0040 forward and reviewed standard hearing procedure.

Mr. Zuroff stated there is new construction as part of the project and subdivision but that the hearing is related to the parking situation and not the building construction. Mr. Zuroff stated the building being built on the rear lot is an as-of-right project and that matters related to that house were not under review. Mr. Zuroff stated the scope of the hearing was limited to the zoning relief sought with regard to the parking solution.

The case was presented by Jeffrey Allen.

Attorney Jeffrey Allen requested to combine the cases 29-31 Winthrop Road and 33 Winthrop Road and waived a reading of the notice.

Attorney Allen stated that the plan under consideration for special permit relief was the plan dated September 8, 2016, and asserted that that plan before the Board seeking special permit relief is a better plan than the as-of-right plan that is under construction. Mr. Allen reported that the Planning Board had unanimously endorsed the special permit plan, and offered that the proposed plan was preferable for many reasons including the minimization of asphalt by going from three driveways to one driveway, the removal of any and all tandem parking, and the replacement a significant proportion of surface level parking with indoor or covered parking. Under the proposed plan, only three parking spaces would be exposed surface parking.

Mr. Allen stated that the By-law requires five cars or more for the driveway to be 20' wide, but by putting the five cars at the front, Petitioner would be able to reduce the width of the driveway at the latter portion of the driveway, beyond the fifth space. Additionally, Mr. Allen explained that by putting the five spaces for the rear building in a parking structure under the backyard of 29-31 Winthrop Road the cars would have a much smaller impact on abutters, and petitioner would also be able to create more usable open space on top of the garage. The Petitioner is also able to put the cars in an area where they will have much less of an impact on abutters.

Mr. Allen stated that the Assistant Director of Regulatory Planning would have to approve a final landscaping plan that would include walls, fences, and so forth in order to protect University Path and the neighbors from interference from car lights.

Mr. Allen reported that among the comments from the Planning Board there was a general aesthetic dislike for the 20-foot wide driveway. Mr. Allen indicated that while the 20' width was an unfortunate requirement of the By-law, Petitioner would seek to mitigate

the impact of the requirement by using pavers for some distance on either side of the driveway to maintain the required width, but in a softer, more aesthetically pleasing manner.

Mr. Allen continued that not only was the proposed plan obviously more functional and less impactful on the neighbors than the as-of-right plan, it would also be safer than the as-of-right plan. Accordingly, Mr. Allen stated that all the factors under Section 9 of the By-law were met for a special permit. Mr. Allen stated that the architect and engineer are present to answer any questions.

Finally, Mr. Allen pointed out a polygonal bump out on the plan which raised a need for relief under **Section 5.43** of the by-law, and explained that that polygon was the result of an agreement with an abutting neighbor who wishes to put an addition on their house. Inasmuch as Petitioner would not need the polygon in question if the relief sought is granted, Petitioner agreed to transfer the polygon to the abutters to assist them with their expansion plans.

Mr. Allen concluded that, in looking at the proposal in context, it is clear that the relief sought is preferable to the as-of-right alternative in terms of parking, circulation, safety and aesthetics, and relief should therefore be granted.

Mr. Zuroff asked whether the entire driveway could be made from permeable pavers in order to alleviate some of the concerns about run-off. Petitioner replied that that was a difficult question to answer without doing research, but noted (1) that with regard to run off, Petitioner would need to comply with DPW requirements, and (2) that he had already been told by the Brookline Engineering Department, in the context of the as-of-right plan, that the slope of the driveway was too steep to make permeable pavers effective.

Mr. Zuroff stated another concern he has been made aware of is whether there will be a berm to protect the path, to which Mr. Allen replied that there is an existing wall along University Path and that Petitioner will be enhancing the wall which is part of the landscaping plan that is going to the Assistant Director of Regulatory Planning for approval. Mr. Allen further pointed out that under the special permit plan there will be less of the University Path abutting the driveway than under the as-of-right plan.

The project's architect, Kent Dukham, described the retaining wall and the difference in grade. Mr. Duckham confirmed that the retaining wall will sustain the soil and will be sufficient to stop a car from rolling over it. Mr. Duckham stated there will be a fence placed on top of the retaining wall. Mr. Allen stated the fence above the retaining wall will be worked out with the Planning Department, and to this point, Deputy Building Commissioner Yanovitch added that the Building Code sets forth minimum requirements for vehicle barriers, and stated that, if the proposal is granted, the Building Department will make sure that a code-compliant system is in place to ensure that vehicles do not end up on the path.

Mr. Zuroff then inquired about landscaping or screening along the pathway so that people walking up the stairs on the path do not look as if they are walking straight into a car. He asked if there would be visual screening. Mr. Duckham answered that a counterbalancing landscape plan will do just that, and Mr. Allen pointed out that is one of the conditions set forth in the planning board's recommendation for approval.

Mr. Hussey asked about a shaded area is on the proposed plan, and Mr. Allen explained that it indicated an easement. Mr. Zuroff asked whether, since all the parking is on one lot, common ownership of the lots would be maintained, and Mr. Allen replied that

mutual access would instead be guaranteed by cross easements in perpetuity. Mr. Allen stated the curb cut would be made to comply with zoning which requires 20 feet, but pointed out that will be the only curb cut rather than the three set forth in the as-of-right plan. Mr. Zuroff then asked for public comment in favor of the applicant.

Abutter Thomas Vitolo (153 University Road) stated that the by-right plans submitted show a five car tandem driveway between Petitioner's house and his home, as near to his property line as could be. Mr. Vitolo stated that the by-right driveway puts the detrimental aesthetics, noise, and emissions extremely close to his home, and the tandem nature of the driveway exacerbates the impacts. Mr. Vitolo asserted that the house that Petitioner is building, by right, will dramatically change the way his family will enjoy their home; because the new house is south of his, on ground about 10' higher than his, and on the order of 15' taller than his, his backyard will change from a sunny courtyard to more of a shaded alley. Mr. Vitolo stated that if Petitioner is awarded the parking and setback special permits, Petitioner will be able to, and has agreed to sell approximately 128 square feet of land to Mr. Vitolo's family, which would be enough for Mr. Vitolo to build a small addition on the back of their modest single family house, squaring off an L-shaped footprint. This would enable Mr. Vitolo's family to add a bedroom for Mr. Vitolo's mother-in-law. Accordingly, Mr. Vitolo urged the Board to approve the special permits requested by Petitioner to relocate the parking and allow for the Vitolos and Petitioner to execute the land sale.

Bradley Coleman (11 Gardner Road) stated that the development is higher relative to his home and the impacts of development are quite negative for his family. Mr. Coleman stated that, as with Mr. Vitolo, for him, the proposed plan would be a modest improvement

as it would move the parking a little bit further away from his home. Accordingly, he urged approval of what he characterized as a small improvement to a generally negative situation.

Mr. Zuroff then asked for comment from those in opposition. Paul Eysie and Steven Beyer, owners of a single family Tudor house diagonally across the street from 29-31 Winthrop Road (25 Royal Road) shared their concerns. Mr. Eysie expressed concerns around car lights exiting the proposed common driveway. He stated that the Planning Board recommended a buffer screening and indicated that he and Mr. Byer had had their landscaping company create a proposal to mitigate the visual impact on his and Mr. Byer's home.

Mr. Eysie asked for the Board's help to ensure that when he and Mr. Byer look out of the windows which face the new development, they would see a landscaped area. He also expressed concern with what would happen on University Path because he thought that the fence along the path would be almost at level with the parking and assumed that, as a result, the fence would have to be substantially raised.

Mr. Eysie asked if a landscaping and screening plan would be reduced to writing before you you're the Board rendered its decision. He indicated that this desire was motivated by the limited time-window that he would have to file an appeal if he and Mr. Beyer did not agree with the plan. Mr. Eysie further expressed concern over a city tree at the corner of Winthrop Road, right in front of the path.

Mr. Allen responded that Petitioner would have to create a landscape plan that would require approval by the Planning Department, and that the Planning Department

would no doubt take into account input from interested parties, and that Petitioner would most certainly seek to find common ground with anyone impacted by the development.

Mr. Zuroff stated the public should understand that the Board encourages developers and public to work with one another and reaffirmed that when the final landscape plan was submitted, he was certain that the Planning Department would consider Mr. Eysie's concerns.

Mr. Hussey reaffirmed this point, pointing to condition number five of the Planning Board's recommendation that, "Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, including all counterbalancing amenities and features intended to minimize the visual impact of vehicle headlights on abutting properties and the fencing/retaining wall between the new access drive and University Path to separate vehicular and pedestrian traffic, subject to review and approval by the Assistant Director for Regulatory Planning." He urged Mr. Eysie to speak with the Assistant Director, in addition to the developer, to make sure that she gives him a chance to comment on the final plan. Ms. Clark indicated that she would write up the minutes to clearly indicate to the Assistant Director of Regulatory Planning the concerns of the abutters and the extent of Mr. Eysie's interest in reviewing the final landscape plan.

With regard to the street tree, Mr. Allen stated that Mr. Duckham designed the driveway to not impact the tree, but in the worst case, the driveway could be widened in the other direction. Deputy Commissioner Yanovitch added that the Building Department will review any driveway and that the curb cut application would be reviewed by town tree warden Tom Brady, who would require an appropriate minimum setback to the tree. If there are any issues with that, it will go to the street tree commission who will vet that.

A Mr. Klein, on behalf of his father who resides at 27 Winthrop Road, stated that he is not in opposition to the plan and thinks it is significantly superior to the as-of-right plan, but indicated concerns with the plan having to do with light pollution, views, and site coverage with regard to the parking. Mr. Klein asserted that with the as-of-right plan, no parking was angled, but with the special permit plan, cars would turn and headlights might shine directly into his father's first floor. Accordingly, he asserted that he would like some screening to go there.

Mr. Klein further asked if there was some way to make the patio above the proposed underground garage not feel like an additional structure on the property, preferring, instead to have the patio look green and natural to blend it in better to the neighborhood. Finally, he indicated some concern around a retaining wall shown on the diagram to be added along the property line. This last concern was not entirely clear, but Mr. Allen stated that everything Mr. Klein raised would be addressed in the landscape plan

Chairman Zuroff called upon Zoning Coordinator, Ashley Clark, to deliver the findings of the Planning Board. Ms. Clark stated the Planning Board considered both the as-of-right parking solution and the proposed parking solution, which requires zoning relief. Though the Planning Board feels the proposed parking solution creates a congested environment for the front lot, they are not opposed to this proposal because it is functional compared to having five tandem spots on each lot separately. Additionally, the new proposal also provides a counterbalancing amenity in the form of a roof deck on top of the parking structure. The Planning Board would like to see landscape screening to protect abutters from light disturbances. Therefore, if the Board of Appeals finds that the statutory requirements for relief are met, the Planning Board recommends approval of the site plan

prepared by Bruce Bradford, dated 7/27/16, and the architectural plans and site plan by Kent Duckham, dated 9/8/2016 subject to the following conditions.

1) Prior to the issuance of a building permit, the applicant shall submit stamped and surveyed site plans showing setbacks for parking structures, floor plans, and elevations showing all proposed materials, subject to the review and approval of the Assistant Director of Regulatory Planning.

2) Prior to the issuance of a building permit, the applicant shall submit final engineered plans showing grade and sections through University Path, subject to the review and approval of the Assistant Director of Regulatory Planning.

3) Prior to the issuance of a building permit, the applicant shall submit a drainage plan, subject to the review and approval of the Department of Public Works Engineering Division.

4) Prior to the issuance of a building permit, the applicant shall submit an assurance of permanence of common ownership of the parking structure easement as outlined by the Brookline Zoning By-Law under 'lot'.

5) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, including all counterbalancing amenities and features intended to minimize the visual impact of vehicle headlights on abutting properties and the fencing/retaining wall between the new access drive and University Path to separate vehicular and pedestrian traffic, subject to review and approval by 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 elevations and floor plans stamped and signed by a registered architect; and 3) evidence easements and decision have been recorded at the Registry of Deeds.

Board Chairman Zuroff called upon Deputy Building Commissioner Michael Yanovitch to deliver the opinion of the Building Department. Mr. Yanovitch stated that if the board does find the proposal meets the criteria for the grant of the requested special permits, the Building Department will work with the petitioner and abutters to address their concerns.

Board Deliberation

Mr. Hussey confirmed that the special permits needed are for the driveway and proposed new parking structure. Mr. Hussey felt the proposed parking layout reduces blacktop in the area and the as-of-right parking proposal is unworkable with the tandem spaces. It also requires 3 curb cuts whereas the proposed makes due with some minor widening. Mr. Hussey stated he would vote in favor of the proposed parking layout. Mr. Book agreed with Mr. Hussey and stated the proposed parking layout is superior to the as-of-right layout. Mr. Book stated he did not know how you would deal with tandem space. So, subject to the conditions and between the neighbors and Ms. Selkoe's landscape plan, it will be worked out to everyone's satisfaction. Mr. Book stated he was in favor of granting the requested relief.

Mr. Zuroff stated in favor of request that, if the applicant had come for relief with the as-of-right plan, the Board would have had a real problem with it and would have suggested something along the lines of what is being offered in the special permit. Mr.

Zuroff confirmed that by increasing the width of the driveway, there is no need for a variance for the width the driveway. Mr. Zuroff stated that he supports the plan for all reasons stated and with faith that the Building Department and Assistant Director of Regulatory Planning will oversee the landscaping so the public concerns are addressed. Mr. Zuroff stated there is a unanimous grant of relief under **§§ 6.04** and **5.43**.

Accordingly, the Board voted unanimously to grant special permit relief and approve the site plan prepared by Bruce Bradford, dated 9/20/16, and the architectural plans and site plan by Kent Duckham, dated 9/8/2016, subject to the following conditions:

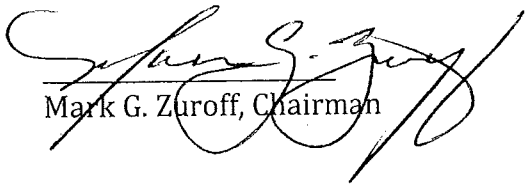
1) Prior to the issuance of a building permit, the applicant shall submit stamped and surveyed site plan showing setbacks for parking structures and floor plans and elevations showing all proposed materials, subject to the review and approval of the Assistant Director of Regulatory Planning.
2) Prior to the issuance of a building permit, the applicant shall submit final engineered plans showing grade and sections through University Path, subject to the review and approval of the Assistant Director of Regulatory Planning.
3) Prior to the issuance of a building permit, the applicant shall submit a drainage plan, subject to the review and approval of the Department of Public Works Engineering Division.
4) Prior to the issuance of a building permit, the applicant shall submit an assurance of permanence of common ownership of the parking structure easement as outlined by the Brookline Zoning By-Law under 'lot'.
5) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, including all counterbalancing amenities and features

intended to minimize the visual impact of vehicle headlights on abutting properties and the fencing/retaining wall between the new access drive and University Path to separate vehicular and pedestrian traffic, subject to review and approval by 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 elevations and floor plans stamped and signed by a registered architect; and 3) evidence easements and decision have been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 10/28/16



Mark G. Zuroff, Chairman

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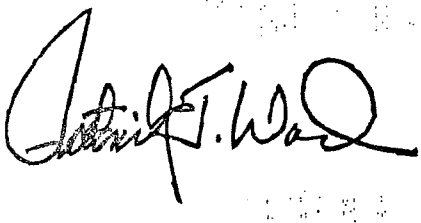
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals