



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

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TOWN OF BROOKLINE
BOARD OF APPEALS
NO. BOA060029

Petitioner, Hammond Meadows Realty Trust, Glenland Meadows Realty Trust, Donald R. Provost and Virginia A. Provost, applied to the Building Commissioner for permission to construct twenty-nine (29) residential dwelling units in multiple structures on one lot consisting of a twenty-three (23) unit building with four (4) attached single unit townhouse, two (2) single family dwellings and an underground parking garage with access and frontage on Hammond Pond Parkway and Glenland Road as per plans. The application was denied and an appeal was taken to this Board.

On May 18, 2006, 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 June 22, 2006 at 7:30 P.M. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, to its attorney, to the owners of 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 hearings were published on June 1, 2006 and June 8, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
 MASSACHUSETTS
 BOARD OF APPEALS
 NOTICE OF HEARING

PETITIONER: Hammond Meadows Realty Trust; Glenland Meadows

LOCATION OF PREMISES: 327 Hammond Pond Parkway Brkl/36-39 Glenland Road

DATE AND PLACE OF HEARING: Thursday, June 22, 2006 at 7:15 PM in the Selectmen's Hearing Room on the sixth floor of Town Hall, 333 Washington Street, Brookline, Massachusetts

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

- 1) 5.03; Spacing of Residential Buildings on the Same Lot; Special Permit Required.
- 2) 4.08.4; Affordable Housing Requirements; Special Permit Required.
- 3) 6.09.2.d; Design Review, Special Permit Required.
- 4) 5.30; Maximum Height of Buildings; Variance Required.
- 5) 5.31.2; Exceptions to Maximum Height Regulations; Special Permit Required.
- 6) 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.
- 7) 5.44.4; Accessory Underground Structures; Special Permit Required.
- 8) 5.50; Front Yard Requirements; Variance Required.
- 9) 5.51; Projections into Front Yards; Variance Required.
- 10) 5.70; Rear Yard Requirements; Variance Required.
- 11) 6.02.1; Table of Off-Street Parking Space Requirements; Variance Required.
- 12) 6.02.2.d; Off-Street Parking Space Regulations; Special Permit Required.
- 13) 7.02.1.1; Signs in M Districts; as Regulated by 7.01.1.f;
 Signs in S, SC, and T Districts;
 Special Permit Required

Of the Zoning By-Law to construct 29 new residential dwelling units in multiple structures on one lot, 23 unit building with 4 attached single unit townhouses and a underground garage

at 327 Hammond Pond Pky Brkl/36-39 Glenland Road

Said premises located in an M-1.0 district.

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 the 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.

Diane R. Gordon
 Harry Miller
 Bailey Silbert
 Board of Appeals

On June 22, 2007 at the time and place specified in the notice a public hearing was held by this Board. Present were Chairperson Diane R. Gordon, Bailey S. Silbert and Enid Starr.

The applicant's proposal was presented through its attorney, Kenneth B. Hoffman of Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116.

The Planning Board at its preliminary meeting on this project on September 27, 2005 determined that the project warranted the appointment of a Design Advisory Team (DAT) to provide professional design review assistance to the Planning Board and the Planning Department for certain Section 5.09 projects which may have a significant impact on the character of the area. The Planning Board appointed its Chairman, Kenneth Goldstein, Member, Steven Heiken, and Nick Elton, Jay Gonzales and Arjun Mande to the Design Advisory Team to address architectural and access issues. The DAT meet on November 29, 2005, December 7, 2005, December 20, 2005, January, 24, 2006 and February 7, 2006 and recommended design improvements to the Petitioner. Most of the recommendations were adopted in the final design presented to this Board. The Planning Board unanimously recommended that the Board grant the relief sought.

The final Planning Board hearing was preceded by meetings with various neighborhood groups and Town Meeting Members with the result of almost unanimous support from these constituent groups. In particular, the Petitioner met with Heath Street abutters, the Glenland Road home owners and the Chestnut Hill Village Association.

Mr. Hoffman using visual aids, described the site and neighborhood of the proposed project. 311-327 Hammond Pond Parkway currently consists of four two-family homes located on the parkway between Heath Street and Route 9, and 36 and 39 Glenland Road, two single-family homes at the end of Glenland Road, off of Heath Street. Hammond Pond Parkway comes

under the jurisdiction of the Department of Conservation and Recreation (DCR). Across from the site on the west side of Hammond Pond Parkway are 320 Hammond Pond Parkway, a five-story 20 unit apartment building and Hammond Park Condominiums, three six-story buildings with 144 condominium units. To the south and east of the site are one, two and three family homes on Hammond Pond Parkway, Heath Street and Woodland Road. To the north is Hammond Gardens, a multi-building two and three story complex consisting of 80 condominiums units in Newton. Glenland Road is a private, dead-end road with a total of nine, single, two and three family homes on it. Two small portions of the site are within the boundaries of Newton. The site itself is roughly triangular in shape and presents a number of development challenges resulting from that shape and from the topography which varies in elevation and site conditions, principally the existing main drain that crosses the site and a high water table that leads to considerable periodic flooding. In fact, the proposed building will be required to be elevated several feet to overcome the geotechnical challenges of the site.

Mr. Hoffman also indicated the proposal was consistent with the current trend towards promoting transit oriented development, the project being located near a MBTA bus stop and the rapid transit Green Line stop at Chestnut Hill. Studies have shown, according to Mr. Hoffman, that roughly thirty-eight (38%) percent of the workers in the vicinity of the property take rapid transit to work. An additional challenge to the site is that the project is located in two separate zoning districts under the Brookline Zoning Bylaw, a T-5 or two family zoning district, and an M-1.0 multi-family zoning district. The project proposes only allowed uses for the relevant zoning districts notwithstanding that the district line divides the site. Therefore, no variances from the use requirements of the respective zones are required.

Mr. Hoffman described the applicant's proposal as follows: On Hammond Pond Parkway, the applicant proposes to construct a 23-unit residential building with three, three story townhouses attached to its southern end and one three-story townhouse attached to its northern end, for a total of 27 units. Underground parking of 44 spaces (including thirteen tandem spaces and two handicap accessible ones) will be provided. The garage entrance will be on the northern side of the building, as well as five visitor parking spaces at grade.

A portion of the Hammond Pond Parkway building (321 Hammond Pond Parkway) will be four stories and contain 35, 171 s.f. of one, two and three bedroom units, ranging from 845 sf to 2,260 sf. The façade will be constructed of traditional red brick above a masonry limestone colored base and will be broken up by a series of composite metal bay windows and overhangs. The upper floor will be set back from the main face of the building to allow for roof top terraces and will be a light colored composite metal. Four of the units will be affordable.

On both sides of the Hammond Pond Parkway building will be attached townhouses (311, 315, 319 and 325 Hammond Pond Parkway), one on the southerly side and three on the northerly side. These will vary from 2,299 s.f. to 3,196 s.f. and have the same limestone color masonry base; however, the material on the upper floors will be painted fiber cement board, such as hardiplank, with traditional trim and details. The bay windows on the townhouses, as well as the roof cornices, will be constructed of painted fiber cement board.

On Glenland Road, the applicant will construct two single family homes in place of existing single family homes. One will be a ranch style (36 Glenland Road), contain 2,412 square feet, and be handicap accessible. The other, a 2 ½ story colonial style (39 Glenland Road) will contain 2,601 square feet. The two car garages on each house have been placed on the site parallel to the road so that the garage doors will not be visible from Glenland Road. A central

outdoor parking court will provide four visitor spaces. There will be no vehicular connection between the Glenland Road and Hammond Pond Parkway portions of the site.

The applicant proposes to construct the project in two phases, the first being the two single family houses on Glenland Road and the second phase the multi family and town house building on Hammond Pond Parkway. The proposed stone wall and other improvements to DCR owned land along the Parkway will require the approval of DCR. The applicant requests that the project approval not be conditioned on constructing such improvements in the event DCR delays or refuses to approve such improvements.

The following is a description of the zoning relief required for the project: Mr. Hoffman noted that the project can be accomplished largely through special permits, although one variance is needed with respect to the setback from the property line on Hammond Pond Parkway. The Bylaw requires a larger setback than is being provided, but because Hammond Pond Parkway itself creates additional setback, no adverse impacts are caused by the more limited setback. In fact, the property is set back approximately 37 ft. from the street line which is far in excess of the actual setback requirements at this location. Moreover, the Planning Board and the neighborhood have both asked that the project be constructed as close to the Hammond Pond Parkway property line as possible so that the development can maximize the open green space to the rear facing both the Heath Street residents and the Glenland Road properties. If the setback on the Hammond Pond Parkway side of the property were to be honored as required, the green space to the rear would be impacted and the side setbacks, because of the shape of the lot, would be affected and compromised. Those setbacks are more important to this development than to the setback on Hammond Pond Parkway.

Section 4.08.4 – Affordable Housing Requirements

A special permit is required for multiple dwellings under Section 4.40, Affordable Housing Requirements. In this case, the applicant is proposing four affordable units on site, including one that will be handicap accessible.

Section 5.03 – Spacing of Residential Buildings on the Same Lot – The Board of Appeals may waive by special permit yard dimensions between buildings under the same ownership and management where it can be shown that light, air, sunlight and amenities would not lower below current standards. Assumed lot lines have been drawn between the three buildings on the site: the main structure on Hammond Pond Parkway and the two single families. See table below.

Section 5.09.2.d – Environmental Impact and Design Review

A special permit is required for multiple dwellings of more than 10 units. All of the standards in Section 5.09 have been discussed and comments on the most relevant standards follow:

b) Relation of Buildings to Environment – The DAT reviewed not only the design, but the relationship of the buildings to the surrounding area. Major changes were made to the massing and scale of both the main building and the single family houses in response to suggestions by the DAT and neighbors, so that they would fit better into the existing neighborhood context. Rather than one big building facing Hammond Pond Parkway, now there are townhouses on both ends, and the garages for the single families have been turned so they are not facing Glenland Road.

c) Open Space – Proposed landscape materials include stone walls, plantings, bluestone pavers and decorative wood fencing and improvements will be made to the Hammond Pond sidewalk to make it more pedestrian friendly. If DCR allows, a low stone wall and additional landscaping will be added to DCR land. Approximately 3,000 square feet of open space beyond what is required under the Zoning Code will be provided. With the outdoor parking and the entrance/exit to the indoor parking on the northerly side of the building, the east side will serve as a common open space for the residents

d. Circulation - There are currently two-curb cuts on Hammond Pond Parkway (approximately 200 and 340 feet north of Heath Street signal) and this proposal will eliminate one curb cut and move the other approximately 400 feet north of the Heath Street signal and this will be controlled by a stop sign. The location was designed to minimize conflicts with the Heath Street signal and, at the same time, not create an offset intersection with existing driveways on the other side of Hammond Pond Parkway. If requested, the applicant is willing to improve the signage on the approaches to the intersection of Hammond Pond Parkway/Heath Street and along the Site frontage. Proposed landscaping along Hammond Pond Parkway will not obstruct sight lines for vehicles exiting the site, and the sidewalk along the frontage will be reconstructed. Sufficient off-street bicycle storage will be provided in accordance with Town of Brookline guidelines and ordinances. The Traffic Study demonstrates the existing gaps in the traffic stream within the Hammond Pond Parkway traffic flow, the proposed Project curb cut, along with planned improvements to be made as part of the Project and other

nearby developments, would facilitate improved, more efficient traffic operations for the Site driveway compared to the operations at the two existing site driveways.

Access to the two single family homes will continue to be provided via Glenland Road with no vehicular connection between it and Hammond Pond Parkway, thus minimizing increased traffic on Glenland Road, Woodland Road and Heath Street.

There is public bus transportation that serves the site and the Chestnut Hill Green Line rapid transit stop is within walking distance.

e. Surface Water Drainage - There is currently an old public storm water (and sewer) pipe within an easement that bisects the site on an east west axis. This pipe was built in the early 1930's and frequently causes isolated flooding to the rear of the property. In order to mitigate this condition, the developer has agreed to remove the pipe and construct a new storm water pipe to run down Hammond Pond Parkway into the Saw Mill Brook, thereby improving the public storm drainage system. AvalonBay, as part of mitigation for its nearby 208 unit project is responsible for preparing the engineering plan for the new storm water pipe.

Capping the old storm water pipe at the rear of the site or at Heath Street will help to alleviate additional surface water issues, which are the result of a pipe connection further down Woodland Road that causes storm water runoff to back up onto the site. Additionally, the grade on the site will be raised approximately eight feet to help divert surface water from the site to the new storm water pipe in Hammond Pond Parkway.

The project's stormwater management system will meet or exceed the requirements of the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policy to maintain existing drainage patterns, limit peak rates of runoff rates to at or below the existing peak rates and protect downstream environmental resource areas. The drainage system will be a closed system containing deep-sump hooded catch basins collecting runoff from roofs, canopies and the proposed paved areas. Water quality units will help clean the stormwater; and, if feasible, put the treated water back into the ground.

f. Utility Service - All electric, telephone, cable TV and other such lines and equipment for the project will be underground. The location and screening of the transformer is shown in the northwest corner of the property. Trash removal/pick-up will occur via roll out dumpsters from the trash room located near the rear basement of 321 Hammond Pond Parkway via a dedicated door to the exterior. Snow storage will be accommodated on site. Air-conditioning condensers and an elevator penthouse on the roof of the main building are located and screened so as to be unseen from surrounding properties.

g. Advertising Features - Two permanent signs with the name of the building located as shown on the Landscape Plan are being contemplated for the Project.

Section 5.30 – Maximum Height of Buildings

Section 5.31.2 – Exceptions to Maximum Height Regulations -

The applicant is requesting a special permit from the maximum height of the structure due to the non-typical shape of the lot, the topography of the parcel, and because its frontage is MDC property, so that the building itself is located approx. 37 ft. from the street. Measuring the height from the street, which would be appropriate for a site with a property line directly on the street, would be an anomaly here where the DCR land lies between the property lines and the street proper, and thus not serve the purpose of the height requirements of the Bylaw.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.44.4 – Accessory Underground Structures

Section 5.50 – Front Yard Requirements

Section 5.51 – Projections into Front Yards

Section 5.70 – Rear Yard Requirements

Section 6.02.1 – Table of Off-Street Parking Space Requirements

Section 6.02.2.d – Off-Street Parking Space Regulations (parking waiver for affordable units)

Section 7.02.1.a – Signs in M Districts; as regulated by 7.01.1.f; Signs in S, SC, and T Districts

	<u>Required</u>	<u>Proposed</u>	<u>Finding</u>
Height			
- HPP Building	40'	43.6'	<u>Special Permit+</u>
- Town Houses	35	33'	Complies
- Single family	35'	21.2'	Complies
Accessory Underground Structures			
- Front Setback	10'	0'	<u>Special permit++</u>
- Rear Setback	10'	0'	<u>Special permit++</u>
Front Yard Setback			
- HPP Building	15'	5.1' to 8.5'	<u>Variance+++</u>
- Single Family (39 Gld)	15'	11'-17'	<u>Special Permit</u>
Rear Yard			
- HPP Building	30'(Assumed Lot Line)	14.8'	<u>Special Permit*</u>
Design of Off Street Parking (HPP Building)			
- Number of Spaces	57	59 (55 if 1 for ea. Aff. Unit)	<u>Special Permit**</u>
- Minimum Aisle Widths	23' (20' compact)	23' (20' compact)	Complies

+ **Section 5.31.2** - The Board of Appeals may through special permit, agree to a greater height than permitted, for a non-typical lot shape topography or building alignment or configuration, as long as the same standard of amenity is provided to nearby properties has been provided.

++ **Section 5.44.4** - The Board of Appeals may waive by special permit setback requirements for underground parking structures if the modification is counterbalanced by landscaping and screening to assure the same standard of amenity to nearby properties.

+++ **Section 5.50** - Because the DCR owns a wide right-of-way along Hammond Pond Parkway, the actual setback of the building from the street is 40 feet.

* **Section 5.43** – The Board of Appeals may waive yard and setback regulations subject to the provision of counterbalancing amenities.

** **Section 6.02.2.d.** – Allows by special permit a waiver of parking for affordable housing units if the applicant can demonstrate the need for parking will be below that required. Each of the four affordable units are being provided one parking space.

Section 6.04.3-Tandem Parking – A special permit is required to modify the requirement that parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle. The parking garage in the proposed project contains tandem parking spaces.

Richard Holworth of the firm of Vanasse Hangen Brustlin, Inc., the site engineer, described the unique conditions of the site which relate to the soil conditions and the high groundwater table as well as the existence of a sewer main and main drain which crosses the site. Mr. Holworth noted that all the surrounding roadways are at a higher elevation than the site and the low spot on the site is roughly in the center of the site which is subject to periodic flooding during certain rain events. He said the soil conditions are such that the ground water is in some locations approximately one foot below grade. This results in the requirement that the main drain and the sewer line be relocated and that the building be raised several feet from the current grade to not only allow for the structure to be supported properly from an engineering point of view, but to also permit the roadways entering and exiting Hammond Pond Parkway to be at a safer grade differential than currently exists. Mr. Holworth also indicated that a change in the sewer line in the main drain presents an opportunity to relocate those lines and to improve the drainage system in the general vicinity of the site.

The architectural design, layout and site plan as well as shadow studies were presented to the Board by Spagnolo/Gisness & Associates, Inc., the project architects, by Michael Tulipani. Mr. Tulipani presented the Board with plans showing existing site conditions and various reiterations of the design of the project through the Design Advisory Team process to the point where the proposal, as presented to the Board, won the unanimous support and of the Planning Board and the Design Advisory Team. The shadow studies presented by Mr. Tulipani showed virtually no new impacts by the proposed project.

The landscape architect, Hines Wasser Associates presented the Board with the landscaping plan which showed substantial new plantings and screening along the boundary between Glenland Road and the multi family dwelling site and along the boundaries of the property and the Heath Street residential properties. Also provided, as noted, as a counter balancing amenity is the increase over the requirement of open space, including landscaped open space, and new sidewalks along Hammond Pond Parkway from Heath Street to the northerly property boundary. The landscape architect also described improvements proposed for Hammond Pond Parkway, including improvements intended to dress up the land owned by the Commonwealth of Massachusetts as part of Hammond Pond Parkway. These proposed improvements, which are subject to approval by the Commonwealth, consist of a low stonewall which is intended to create a safe pedestrian environment separated from the Parkway and to activate the streetscape along the Hammond Pond Parkway property line. He also described the intention by the applicant to improve the sidewalks along Hammond Pond Parkway from Heath Street to the northern boundary of the applicant's premises.

The applicant submitted to the Town a traffic evaluation prepared by its Traffic Consultant, Vanasse Hangen, Brustlin, Inc., which traffic evaluation was dated March 10, 2006.

In a communication to the Chief Planner of the Planning and Community Development Department of the Town, David J. Friend, Assistant Director of Transportation and the DPW Engineering/Transportation Division of the Town, submitted on May 4, 2006, a memorandum which is quoted as follows:

“The project will have an insignificant impact on area traffic operations, including the operations of the intersection of Hammond Pond Parkway/Heath Street” and that, “Overall, it is the finding of this evaluation that the existing transportation infrastructure in the area can support the minimal site-generated traffic.”

The Chair of the Board called for any comments from the public. Three occupants of Hammond Gardens in Newton acknowledged that they had received notice of the hearing although had little other information about design specifics and thus had questions about the project, particularly the need for new housing in the area and expressed concerns about landscaping, construction duration. They questioned whether the residents of the new project would use public transportation as suggested by the applicant. Also speaking was Diane Baker of 731 Heath Street, Brookline, who lauded the developer for the inclusionary process that allowed substantial neighborhood input. She said she had initially opposed the project, but now was fully supportive.

The Planning Board through Polly Selkoe, the Assistant Director for Regulatory Planning, presented the comments of the Planning Board as contained in its report dated May 11, 2006, which comments are as follows:

The Planning Board supports this proposed residential project, which will provide the Town with four additional affordable units, improvements to the streetscape and DCR property, and replacement of the combined sewer and drain pipe in Glenland Road.

The applicant has worked with the Glenland Road residents, Hammond Pond Parkway neighbors, and the Design Advisory Team (DAT) to make significant improvements to the design of the new building and the two single families to ensure that they fit with the buildings in the surrounding area. The applicant, although not requesting any relief from the allowed FAR of 1 and 1.3 (for the townhouses), is seeking special permit relief from the 40' height limit, due to the site topography, the wet soil conditions, and the setback of the building approximately 40

feet from the actual street. Although the highest point of the Hammond Pond Parkway building is 48', the four townhouses are only 35' and the distance from Hammond Pond Parkway minimizes the massing of the building. The front yard setback deficiency for the multifamily building on Hammond Pond Parkway is caused by the lot being odd-shaped and is technical in nature only, since the building is actually setback 40 feet from the street. If the building were moved further back on the lot, there would be greater impact to the residential properties on Heath Street without any appreciable gain in the setback amenities on the Parkway. Also, an increase in the proposed setback would affect the alignment of the proposed building as it relates to the residential buildings (Hammond Gardens) to north of the site.

Therefore, the Planning Board voted unanimously to recommend approval of the site/landscape plan entitled "Hammond Pond Place, dated May 1, 2006 by Hines Wasser Associates, and elevations, dated May 1, 2006, and prepared by Spagnolo/Gisness & Associates, subject to the following conditions below.

1. Prior to the issuance of a building permit, final design of facades, rooftop details, colors, materials, and finished facing of the driveway retaining walls shall be subject to the review and approval of the Planning Board. A mock up of the finished details shall be provided on site for the Planning Board review.
2. Prior to the issuance of a building permit, a final certified site plan, including landscaping, streetscape and DCR improvements, subject to DCR approval, fencing, mechanical equipment location, exterior lighting, shall be subject to the review and approval of the Planning Board.
3. Pursuant to the provisions of Section 4.08 Affordable Housing Requirements of the Zoning By-law, the petitioner shall:
 - a. provide, as affordable, 15 percent of 29 (four) units containing 15 percent of 62 (nine) bedrooms as follows:
 - (i) one one-bedroom, one two-bedroom unit and two three-bedroom units shall be designated as affordable in accordance with the preliminary Affordable Housing Plan dated March 8, 2006, attached to and made part of this decision;
 - (ii) three units shall qualify as low and moderate income housing under the Comprehensive Permit Law (Chapter 40B), including that they shall be sold to households with incomes less than or equal to 80 percent of area median income, and one units shall be sold to a family with an income less than or equal to 100 percent of area median income;
 - b. sales prices shall be established such that a hypothetical household with 1.5 persons per bedroom and with an income set at 10 percentage points less than the applicable income limit would be paying 30 percent of gross income toward mortgage, mortgage insurance, condominium fee and property taxes for a standard thirty-year mortgage at 95 percent of sales price;

- c. each affordable unit shall be sold with the exclusive use of one parking space;
 - d. floor plans, finishes and appliances shall be the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for specific floor plans, finishes or appliances which differ;
 - e. no building permit shall be issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan which shall include a final schedule of units and references to specific floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;
 - f. no certificate of occupancy shall be issued for any market rate unit until
 - (i) the Town has approved initial sales prices for the affordable units, condominium documents, and a marketing and selection plan for the affordable units which provides that priority, as permitted by law or regulation (including Chapter 40B guidelines, for units listed in a.(i) above) to Brookline residents, employees of the Town and the Brookline Housing Authority, and families with children in Brookline Public Schools, and
 - (ii) all of the affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development; and
 - g. the affordable units shall be sold subject to a restrictive covenant to the Town of Brookline, permanently controlling the resale price and process for such units.
4. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles and rodent and dust control, shall be submitted for review and approval by the Transportation Director, and an approved copy submitted to the Planning and Community Development Department.
 5. Prior to the issuance of a building permit, a final traffic and parking management plan if required by the Transportation Director, shall be submitted and subject to the review and approval of the Transportation Director, with a copy of the approved plan to the Planning and Community Development Department.
 6. Two temporary construction and/or development signs, not to exceed 20 s.f., shall be allowed on Hammond Pond Parkway during the construction and initial sales period, with the design and colors of the sign subject to the review and approval of the Chief Planner.
 7. The location of the foundation of the Hammond Pond Parkway building shall be certified by a registered professional engineer or land surveyor to be in accordance with the

approved site plan, prior to issuance for a building permit for the remainder of the building.

8. Prior to the issuance of any occupancy permits, complete as-built plans for the Hammond Pond Parkway building shall be prepared and certified by a registered professional engineer and/or registered architect to be in conformance with the approved plans and filed with the Building Commissioner,.
9. Prior to the issuance of a Certificate of Occupancy for the Hammond Pond Parkway building, all landscaping on the site, subject to seasonal planting conditions, shall be completed, subject to the review and approval of the Chief Planner. If seasonal planting conditions do not allow completion of landscaping at the time the certificate of occupancy is sought, the applicant shall issue a bond or deposit in accordance with Section 9.04 of the Zoning Bylaw to assure such completion when seasonal conditions first permit such work. Landscaping, street trees, sidewalk and other planned improvements on DCR owned land shall be completed upon approval of the same by DCR in conjunction with site landscaping or if DCR approval is delayed, as soon as practical after such approval is granted.
10. Prior to the submission of construction drawings to the Building Commissioner for purposes of obtaining a building permit, the applicant shall submit to the Zoning Administrator 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, including fencing, lighting, and location and screening of utilities; 2) building elevations and floor plans stamped and signed by a registered architect; and evidence of submittal of the Board of Appeal decision to the Registry of Deeds.
11. The project may be constructed in phases, the first phase being the construction of the single family houses on Glenland Road and related improvements and the second phase the multifamily and townhouse building on the Parkway. Occupancy permits for phase I may be granted upon completion of the first phase, prior to completion of construction of phase II.

The Building Commissioner through Frank Hitchcock on the Commissioner's behalf, expressed support for the project stating that the Building Department had no concern with respect to the proposed conditions as contained in the Planning Board report. Mr. Hitchcock noted that this a unique project in that there are three different types of residential units, multi-family building, townhouses and two (2) single family houses on the same site. Notwithstanding the different housing types, Mr. Hitchcock indicated that all perimeter dimensions comply with the Zoning Bylaw and that it is noteworthy that each of the housing types is located in the

appropriate zone and therefore allowed in that zone as of right. He indicated that the parking requirements are met with no waiver being required or sought and that there is a special permit for height as a result of the fact that the existing grades of the site are lower and different than the topography of the site and grades of the surrounding properties. He said that the height of the proposed building may be a little higher than the two family homes in the surrounding area, but are certainly not higher than the surrounding multi-family buildings.

The Petitioner concluded its presentation by listing community benefits that the project will provide. Those community benefits are as follows:

- New Storm Water and Sewer lines on Hammond Pond Parkway
- Activate Hammond Pond Parkway Streetscape
- Replace Sidewalks on Hammond Pond Parkway
- Elimination of Surface Parking
- One Hammond Pond Parkway Curb Cut (reduced from 2)
- Replace 100 yr. old, ½ inch water pipe on Glenland Rd.
- Repave Glenland Rd.
- Install Fire Hydrant on Glenland Road
- Site Screening and Landscaping
- Substantial increase in overall Green Space on the site
- Construction using so called “green principles”
- 4 Affordable Units
- Accessible Modifiable units

Mr. Matthew Zucker addressed the Board and expressed appreciation for the work that the DAT did on the project and of the efforts on behalf of all of the Town agencies to guide the project to successful approval.

The Board having considered the foregoing information, having reviewed the plans and the relief required, fully supports the proposed residential development as being consistent with good redevelopment of an existing site and finds that the project is appropriate in the context of surrounding properties and notes that the relief is granted by special permit with the one exception of the variance required for the front yard setback of the Hammond Pond Parkway multi-family building. The setback required is 15 ft. and the average setback is between 5.1 to 8.5 ft. Given the roughly triangular shape of the parcel, if the building was moved farther back to meet the setback minimum on Hammond Pond Parkway, it would impact the required setbacks along the Heath Street abutters and along the northern angle of the triangular shaped lot at Glenland Road. Moreover, the applicant was urged to move the project as close to Hammond Pond Parkway as possible so that the landscaping and open space to the rear of the project, where the greatest opportunity to maximize new landscaped open space exists, can be increased. Given the fact that the actual distance between the building and the curb of Hammond Pond Parkway is in excess of 30 ft., well above the minimum setback requirement as measured from the property line, the practical effect of the variance will not impact the quality of the front yard along Hammond Pond Parkway and allows the building to be more closely aligned with buildings on either side of the project, including the multi-family properties known as Hammond Gardens to the north. Absent the variance, the rear open space requirements and the setbacks along the sides of the property lines would be compromised and thereby limit the reasonable use of the land that otherwise meets the FAR requirements of the By-law for building volumes and dimensional requirements. Accordingly, the Board grants the relief set forth below, subject to the enumerated conditions:

Special Permits

Section 4.08.4 – Affordable Housing Requirements

Section 5.03 – Spacing of Residential Buildings on the Same Lot

Section 5.09.2.d – Environmental Impact and Design Review

Section 5.30 – Maximum Height of Buildings

Section 5.31.2 – Exceptions to Maximum Height Regulations

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.44.4 – Accessory to Underground Structures

Section 5.51 – Projections into Front Yards

Section 5.70 – Rear Yard Requirements

Section 6.02.1 – Table of Off-Street Parking Space Requirements

Section 6.02.2.d – Off-Street Parking Regulations (parking waiver for affordable units)

Section 7.02.1.a – Signs in M Districts; as regulated by 7.01.1.f; Signs in S, SC, and T Districts

Section 6.04.3 – Tandem Parking

Variance

Section 5.50

1. Prior to the issuance of a building permit for (a) the two single family houses on Glenland Road, final elevations of the houses shall be approved by the Assistant Director for Regulatory Planning and (b) the multifamily building, final design of facades, rooftop details, colors, materials, and finished facing of the driveway retaining walls shall be subject to the review and approval of the Planning Board. A mock up of the finished details for the multifamily building shall be provided on site for the Planning Board review.
2. Prior to the issuance of a building permit for (a) the two (2) single family houses on Glenland Road, a final certified site plan, including landscaping, shall be approved by the Assistant Director for Regulatory Planning, and (b) the multifamily building, a final certified site plan, including landscaping, streetscape and DCR improvements, subject to DCR approval, fencing, mechanical equipment location, exterior lighting, shall be subject to the review and approval of the Planning Board.
3. Pursuant to the provisions of Section 4.08 Affordable Housing Requirements of the Zoning By-law, the petitioner shall:
 - a. provide, as affordable, 15 percent of 29 (four) units containing 15 percent of 62 (nine) bedrooms as follows:
 - (i) one one-bedroom, one two-bedroom unit and two three-bedroom units shall be designated as affordable in accordance with the preliminary Affordable Housing Plan dated March 8, 2006, attached to and made part of this decision;

- (ii) three units shall qualify as low and moderate income housing under the Comprehensive Permit Law (Chapter 40B), including that they shall be sold to households with incomes less than or equal to 80 percent of area median income, and one units shall be sold to a family with an income less than or equal to 100 percent of area median income;
 - b. sales prices shall be established such that a hypothetical household with 1.5 persons per bedroom and with an income set at 10 percentage points less than the applicable income limit would be paying 30 percent of gross income toward mortgage, mortgage insurance, condominium fee and property taxes for a standard thirty-year mortgage at 95 percent of sales price;
 - c. each affordable unit shall be sold with the exclusive use of one parking space;
 - d. floor plans, finishes and appliances shall be the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for specific floor plans, finishes or appliances which differ;
 - e. no building permit shall be issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan which shall include a final schedule of units and references to specific floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;
 - f. no certificate of occupancy shall be issued for any market rate unit until
 - (i) the Town has approved initial sales prices for the affordable units, condominium documents, and a marketing and selection plan for the affordable units which provides that priority, as permitted by law or regulation (including Chapter 40B guidelines, for units listed in a.(i) above) to Brookline residents, employees of the Town and the Brookline Housing Authority, and families with children in Brookline Public Schools, and
 - (ii) all of the affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development; and
 - g. the affordable units shall be sold subject to a restrictive covenant to the Town of Brookline, permanently controlling the resale price and process for such units.
4. Prior to the issuance of a building permit for the multi-family building, a construction management plan, including parking locations for construction vehicles and rodent and dust control, shall be submitted for review and approval by the Transportation Director, and an approved copy submitted to the Planning and Community Development Department.

5. Prior to the issuance of a building permit for the multi-family building a final traffic and parking management plan if required by the Transportation Director, shall be submitted and subject to the review and approval of the Transportation Director, with a copy of the approved plan to the Planning and Community Development Department.
6. Two temporary construction and/or development signs, not to exceed 20 s.f., shall be allowed on Hammond Pond Parkway during the construction and initial sales period, with the design and colors of the sign subject to the review and approval of the Assistant Director for Regulatory Planning.
7. The location of the foundation of the Hammond Pond Parkway building shall be certified by a registered professional engineer or land surveyor to be in accordance with the approved site plan, prior to issuance for a building permit for the remainder of the building.
8. Prior to the issuance of any occupancy permits, complete as-built plans for the Hammond Pond Parkway building shall be prepared and certified by a registered professional engineer and/or registered architect to be in conformance with the approved plans and filed with the Building Commissioner,.
9. Prior to the issuance of a Certificate of Occupancy for the Hammond Pond Parkway building, all landscaping on the site, subject to seasonal planting conditions, shall be completed, subject to the review and approval of the Assistant Director for Regulatory Planning. If seasonal planting conditions do not allow completion of landscaping at the time the certificate of occupancy is sought, the applicant shall issue a bond or deposit in accordance with Section 9.04 of the Zoning Bylaw to assure such completion when seasonal conditions first permit such work. Landscaping, street trees, sidewalk and other *planned improvements on DCR owned land shall be completed upon approval of the same by DCR in conjunction with site landscaping or if DCR approval is delayed, as soon as practical after such approval is granted.
10. Prior to the submission of construction drawings to the Building Commissioner for purposes of obtaining a building permit, the applicant shall submit to the Zoning Administrator 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, including fencing, lighting, and location and screening of utilities; 2) building elevations and floor plans stamped and signed by a registered architect; and evidence of submittal of the Board of Appeal decision to the Registry of Deeds.

11. The project maybe constructed in phases, the first phase being the construction of the single family houses on Glenland Road and related improvements and the second phase the multifamily and townhouse building on the Parkway. Occupancy permits for phase I may be granted upon completion of the first phase, prior to completion of construction of phase II.

Unanimous Decision
Of the Board of Appeals

Filing Date: August 9, 2006



Diane R. Gordon, Chairperson

A True Copy:
ATTEST:

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TOWN CLERK

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Patrick J. Ward
Board of Appeals