



Town of Brookline

Town of Brookline, Massachusetts

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

Town Hall, 1st Floor
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0069

Petitioner, Ronald Simons applied to the Building Commissioner for permission to demolish existing structures and build a new 27 unit residential complex with underground and surface parking at 321 Hammond Pond Parkway. The application was denied and an appeal was taken to this Board.

On 2, December 2010, 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 16, December 2010, at 7:15p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney 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 25, November and 2, December 2010, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

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

Petitioner: RONALD SIMONS

Owner: GLENLAND ROAD, LLC

Location of Premises: 321 Hammond Pond Parkway

Date of Hearing: December 16, 2010

Time of Hearing: 7:15 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th. floor

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

- 1. 4.08.4; Affordable Housing, Special Permit Required.**
- 2. 5.09.2.d; Design Review, Special Permit Required.**
- 3. 5.31.2; Exceptions of Maximum Height, Special Permit Required.**
- 4. Modification, as required to Board of Appeals Decision case #060029 as modified by case #090022, dated 10-07-09.**

Of the Zoning By-Law to **demolish existing structures and build a new 27 unit residential complex with underground parking at 321 Hammond Pond Parkway.**

Said premise located in a **M-1.0** (apartment house) and **T-5** (single and two-family) residence district.

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

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

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Christopher Hussey and Jonathan

Book. The petitioner was represented by Attorney Jeffrey Allen of Denner Pellegrino, L.L.P., Four Longfellow Place, 35th Floor, Boston, MA.

Attorney Allen reviewed the history of the project. He said that on 9, August 2006, case #060029, the Board of Appeals approved 29 residential dwelling units, including 2 single family homes, and 59 parking spaces. This was a two phase project for the applicant, Chestnut Hill Realty. Phase 1 consisted of two single family homes on Glenland Road, which have since been built. Construction of the multi-family building (Phase 2) was delayed because a drain and a sewer pipe under the proposed building necessitated that the existing grade be raised about 3.75' requiring special permit height relief.

Later, on 7 October 2009, case #090022, the Board of Appeals approved a modification to reduce the number of residential dwelling units to 18 and to reduce the parking to 48 spaces. The developers were Chestnut Hill Realty and Ron Simons', Bodwell Pines. In addition to decreasing the number of units, they proposed to raise the height of the building slightly (3.75') due to an underground drain and sewer pipe. They also decreased the length of the building by 30'5" and made other minor changes to the design of the building.

More recently in reaction to changing market conditions, the petitioner sought to again modify the project. Since it was a Major Impact Project a Design Advisory Team was assigned to address architectural design issues of the revised plan.

Mr. Allen said that 311-327 Hammond Pond Parkway consisted of four two-family homes located on the east side of the parkway between Heath Street and Route 9. To the rear are 36 and 39 Glenland Road, two newly built single-family homes at the end of Glenland Road, off of Heath Street, which were built in Phase 1 of this project. 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; Hammond Park Condominiums, three, six-story buildings with 144 condominium units; and 310 Hammond Pond Parkway, a new multi-family of 11 units and 5 townhomes at 767-775 Heath Street. 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 condominium units in Newton. Two small portions of the site are within the boundaries of Newton.

Mr. Allen said that his clients, Bodwell Pines and Chestnut Hill Realty, are proposing a modification to increase the number of units in the multi-family building from 18 to 27 units (the same number in the initial case, which was approved in 2006). Two single family dwellings have already been built. The number of parking spaces was initially proposed to increase from 48 to 65 spaces, but the applicant has agreed to remove 3 outdoor parking spaces for a total of 62. (This figure includes 8 parking spaces on the Glenland Road side of the property for the two single families -- 2 garaged spaces and 2 visitor spaces each.) Proposed changes to the massing of the building and the site plan have also been made, including:

- Reduction of the garage footprint by approximately 33' on the east (rear) side of the building resulting in four parking spaces covered under the rear of the building, since the building footprint above remains the same.
- Addition of 16 exterior parking spaces to the approved 5 spaces, totaling 21 exterior parking spaces. (Eleven spaces are located to the north (left side) of the building and 10 spaces are located to the east (rear) of the building.)
- Extension of a small portion of the garage on the north or garage entry side of the building resulting in a roof terrace at the ground floor level.
- Addition of two rows of balconies and windows on the east (rear) elevation to respond to the additional units.

- Extension of third floor massing to match second floor on south side of building, with a material change from siding to masonry.

Since this is a major impact project, the Design Advisory Team reconvened and met two times to work with the development team. In response to this, the applicants made changes to the building materials from modular precast to all brick on the south elevation where a massing change to the building was proposed, have reduced the number of exterior parking spaces by two, and have indicated additional landscaping and screening.

Chairman Geller asked whether anyone in attendance wished to speak in support or in opposition to the proposal.

Don Provost, a direct abutter to the project, explained his concerns regarding his views of the parking lot but wanted to emphasize his support for the project.

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

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, one of which is in a townhouse, and has worked with the Housing Advisory Board to revise the floor plans.

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 paragraph (d) have been discussed and comments on the most relevant follow:

b) Relation of Buildings to Environment – Two DAT meetings have been held on these revised plans. Changes were made to facade materials, where the massing was changed, in response to suggestions by the DAT and neighbors. (See DAT minutes.)

c) Open Space – Proposed landscaping includes plantings, decorative wood fencing and improvements to the Hammond Pond sidewalk to make it more pedestrian friendly. If DCR allows, additional landscaping will be added to DCR land. The landscaped and usable open space requirements have been met. The east side of the property will provide 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). 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. 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 more efficient traffic operations for the site driveway compared to the operations at the two existing site driveways due to the existing gaps in the traffic stream, the proposed curb cut, and other planned improvements.

There is public bus transportation that serves the site, and the Chestnut Hill 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 stormwater pipe and sewer pipe, with a new, redesigned manhole, subject to the review and approval of the Transportation Director, thereby improving the public storm and sewer drainage system.

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, and protect downstream environmental resource areas. The drainage system will be a closed system containing pre-cast leaching basins collecting runoff from roofs, canopies and the proposed paved areas.

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, if needed, 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 5.31.2 – Exceptions to Maximum Height Regulations – No New Relief Required

The applicant received a special permit from the maximum height of the structure due to the need to raise the placement of a drain and sewer pipe under the property. The building had already been approved for a height of 43.5' due to the topography and non-typical shape of the lot, and because it fronts on DCR property. The building is located approximately 37 ft. from the street and height is measured from the street. The new proposed height is 47.25'.

Modification, as required to BOA decision 060029, as modified by BOA decision 090022 (10/07/09).

Ms. Selkoe said that the Planning Board supported the proposed change to this residential project to increase the number of units in the multi-family building from 18 to 27 units to respond to market demand for smaller units. The changes to the massing of the building are minimal and the addition of the bays and balconies to the rear of the building are an improvement. The exterior parking should have minimal impact on the rear abutters because of the change in grade and the provision of landscape screening, which should be primarily evergreen and installed at a significant height to block the view of the outdoor parking. The applicant will be providing one additional affordable unit (four, rather than three), and as in the previous proposals, making improvements to the streetscape and DCR property, and to the drain and sewer flow in the area.

The applicant has responded to the suggestions of the Design Advisory Team (DAT) and Planning Board by changing the materials on the revised east elevation and by reducing the number of outdoor parking spaces. Therefore, the Planning Board voted unanimously to recommend approval of the plans entitled "Proposed Modifications to 321 Hammond Pond Place," dated November 24, 2010, and prepared by Nunes Trabucco Architects, subject to the following conditions:

1. Prior to the issuance of a building permit, final design of facades, rooftop details, colors, materials, and facing of the driveway retaining walls shall be subject to the review and approval of the Planning Board.

2. A mock up of the finished details shall be provided on site for the Planning Board review.
3. Prior to the issuance of a building permit, a final certified site plan, including landscaping, screening of 36 Glenland Road, 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.
4. 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 (4) units containing 15 percent of 69 (10) bedrooms as follows:
 - (i) two two-bedroom units and two three-bedroom units shall be designated as affordable in accordance with the preliminary Affordable Housing Plan dated October 25, 2010, 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 unit shall be sold to a family with an income less than or equal to 100 percent of area median income;
 - b. sales prices or, if necessary, rents shall be established in accordance with guidelines issued by the Department of Planning and Community Development;
 - c. each affordable unit shall be sold or rented 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 and the Housing Advisory Board has approved, a final Affordable Housing Plan which shall include a final schedule of units, including locations, 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 or, if necessary, rents for the affordable units, condominium documents if any, 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.(ii) 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 or rented, if necessary, subject to a restrictive covenant or affordable housing agreement with the Town of Brookline, permanently controlling the cost and turnover of units.
5. 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.
 6. Two temporary construction and/or development signs, not to exceed 20 s.f. each, 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 of Regulatory Planning.
 7. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval to ensure conformance with the Board of Appeals decision: 1) a final site plan, prepared by a registered engineer or land surveyor; 2) final elevations and floor plans, stamped by a registered architect, and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.
 8. The building permit for the Hammond Pond Parkway building shall be issued in two phases. First, a foundation permit shall issue, and upon a certification by a registered professional engineer or land surveyor that said foundation has been built in accordance with the approved site plan, then the building permit for the remainder of the building may issue.
 9. 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.
 10. Prior to the issuance of the final 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 of 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.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard suggested a change to condition #9 to better reflect the requirements of the Building Code. He also suggested an additional condition relative to an agreement with engineering for the removal of an existing pipe and construction of new stormwater and sewer pipes.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to modify the relief granted in case #060029 and 090022 to allow the construction of the proposed project in accordance with the revised proposal. The Board found that the petitioner has satisfied the requirements of **Section 5.09** and **Section 9.05** of the Zoning By-Law and made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

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

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

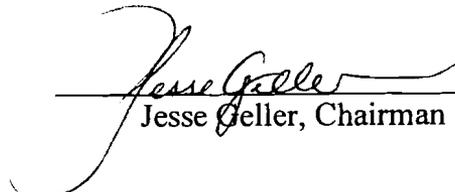
- 1. Prior to the issuance of a building permit, final design of facades, rooftop details, colors, materials, and facing of the driveway retaining walls shall be subject to the review and approval of the Planning Board.**
- 2. A mock up of the finished details shall be provided on site for the Planning Board review.**
- 3. Prior to the issuance of a building permit, a final certified site plan, including landscaping, screening of 36 Glenland Road, 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.**
- 4. 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 (4) units containing 15 percent of 69 (10) bedrooms as follows:**
 - (i) two two-bedroom units and two three-bedroom units shall be designated as affordable in accordance with the preliminary Affordable Housing Plan dated October 25, 2010, 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 unit shall be sold to a family with an income less than or equal to 100 percent of area median income;**
 - b. sales prices or, if necessary, rents shall be established in accordance with guidelines issued by the Department of Planning and Community Development;**
 - c. each affordable unit shall be sold or rented 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 and the Housing Advisory Board has approved, a final Affordable Housing Plan which shall include a final schedule of units, including locations, 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 or, if necessary, rents for the affordable units, condominium documents if any, 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.(ii) 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 or rented, if necessary, subject to a restrictive covenant or affordable housing agreement with the Town of Brookline, permanently controlling the cost and turnover of units.**
- 5. 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.**
- 6. Two temporary construction and/or development signs, not to exceed 20 s.f. each, 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 of Regulatory Planning.**
- 7. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval to ensure conformance with the Board of Appeals decision: 1) a final site plan, prepared by a registered engineer or land surveyor; 2) final elevations and floor plans, stamped by a registered architect, and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**
- 8. The developer shall secure a foundation-only permit in accordance with the Building Code. This permit may issue before conditions 1-3 are satisfied. Upon completion, he shall submit a certified "as-built" site plan showing with the approved plans. Upon building staff verification, a permit may issue for balance of the project.**

9. 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.
10. Prior to the issuance of a building permit, the developer shall submit plans for improvements to the public storm and sewer systems to the Director of Transportation for review and approval.
11. Prior to the issuance of the final 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 of 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.

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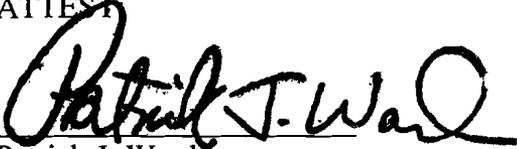
Unanimous Decision of
 The Board of Appeals



 Jesse Geller, Chairman

Filing Date: February 25, 2011

A True Copy
 ATTEST



 Patrick J. Ward
 Clerk, Board of Appeals