



BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

# Town of Brookline Massachusetts

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

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0001  
158 WINTHROP ROAD LLC  
158 WINTHROP ROAD, BROOKLINE, MA

Petitioner, 158 Winthrop Road, LLC, applied to the Building Commissioner for permission to construct a single-family home. 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 April 13, 2016 at 7:10 PM., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on March 30, 2017 and April 6, 2017 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:

**158 Winthrop Road– Construct a five-unit residential building in an M1.0 (Apartment House) Residence District, on April 13, 2016 at 7:10 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner: 158 Winthrop Road, LLC, Victor Sheen, Agent) *Precinct 12***

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

- 1. Section 5.09.2.d: Design Review**
- 2. Any additional relief the Board may find necessary**

*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 Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at [llgellineau@brooklinema.gov](mailto:llgellineau@brooklinema.gov)*

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Christopher Hussey and Kate Poverman.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was a representative for the Petitioner, Victor Sheen, and the project architect, Dartagnan Brown, Embarc Studio, 60 K Street, 3rd Floor, Boston, MA 02127.

Chairman Zuroff called the hearing to order at 7:15 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen stated that the property is located in a M-1.0 District south of Beacon Street. Attorney Allen stated that the neighborhood is a mix of 2.5 story wood framed residential buildings and four-story attached row houses. Attorney Allen stated that a demolition stay was imposed on the property which runs through June 14, 2017.

Attorney Allen then stated that parking, setbacks, and other dimensional requirements have been

met. Mr. Allen stated that the Petitioner seeks relief for design review under Section 5.09.2.d of the Zoning By-Law. Attorney Allen stated that the proposal went before the Planning Board on two occasions and the project architect met with neighbors to discuss design and landscaping. Attorney Allen then stated that a few notable changes were made during the design review process including: (i) the elimination of 2 parking spaces, reducing the parking from 12 spaces to 10; (ii) the retaining wall was shifted in order to preserve three trees at the rear of the building; and (iii) the main building material was changed from fiber cement paneling to stone veneer panels to resemble the brick material seen along Winthrop Road.

The project architect, Dartagnan Brown, then presented the proposed plans to the Board. Mr. Brown reiterated that all zoning requirements have been met. Mr. Brown indicated that an additional 11 feet in height is allowable in a M-1.0 District, but stated that a design objective is to maintain a height consistent with the surrounding context. He stated that the initial proposal included twelve (12) parking spaces which required the underground parking area to recede further into the Petitioner's rear yard. He stated that the abutters were concerned about looking into the exposed garage. Mr. Brown stated that design changes were made so that two sections are now infilled, reducing visibility. He stated that the deck of the rear of Unit 1 is now a hardscape patio enclosing the rear end of parking. Mr. Brown indicated that the new parking design allows the Petitioner to preserve 20 feet which now permits the maintenance of existing grading conditions and the preservation of the root structures of trees in the rear yard. Mr. Brown noted that the parking area provides sufficient turning radii for front facing exit for each vehicle. Mr. Brown indicated that the Petitioner worked with the direct abutter at 152 Winthrop Road to devise a landscape arrangement agreeable to her allergy concerns. In addition to the change in

the original landscape plan, Mr. Brown indicated that drainage was relocated to maintain trees on the property.

Board Member Hussey asked whether the Town of Brookline Engineering Department has approved the proposed plans. Mr. Sheen indicated that the Engineering Department has reviewed the plans but final review and approval is forthcoming.

Board Member Poverman inquired about the rubbish plan. Mr. Brown stated that trash receptacles will be located within the building and that a private waste management company will be utilized.

Attorney Allen Mr. Allen then described relief from the application of the provision of **Section 5.09.2.d** of the Zoning By-Law by special permit under **Section 9.05**: (1) the specific site is an appropriate location for such use because the proposed building is in a multi-family zoning district with varying residential development types, including a large multifamily masonry development immediately to the west of the property; (2) the use will not adversely affect the neighborhood because the proposed building is consistent in height with its neighboring structures; new landscaping is proposed to improve the property's appearance; and increase privacy for both abutters and the site's residents is proposed along the front, side and rear property lines; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because the parking meets all safety requirements, and the garage entrance is set back far enough from the front property line to allow for adequate visibility of pedestrians; (4) there will be adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply of housing available for low and moderate income people.

Chairman Zuroff asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal. Chairman Zuroff asked whether anyone was present to speak in

opposition to the proposal. Megan MacGarvie-Thompson, 21 Addington Road, requested the incorporation of a tree protection plan subject to the review and approval of the Assistant Director of Regulatory Planning. She stated that she hired an arborist review her property and would like to ensure the viability of trees on her property during construction. She also stated that at the suggestion of the arborist, she would like a chain link fence put up during construction. Ms. MacGarvie-Thompson requested clarification on whether the two trees at the rear of the property line would be removed. Mr. Brown assured that the two trees would remain.

Attorney Allen agreed to a tree management plan, but stated that without further review of the arborist's report, he could not agree to a chain link fence. Mr. Brown stated that a construction fence would be used during building to prevent any intrusion on Mrs. MacGarvie-Thompson's property.

Eric McNulty, 20 Claflin Road, Unit #2 stated that he does not think the proposed building harmonizes with the neighborhood because it does not make an effort to preserve the style of the two and three-family homes on Winthrop Road.

Chairman Zuroff called upon Ashley Clark, Zoning Coordinator & Planner, to deliver the findings of the Planning Department.

## **FINDINGS**

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

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

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

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

The majority of mature trees on the property are located at the southeastern corner of the site. Hammer + Walsh Design Inc. have been retained to help determine which existing trees can be saved.

The 24" caliper tree in the front yard will be replaced due to the excavation for the new foundation system. A 20' x 17' landscaped area will be provided in front of the building for replacement specimen trees and understory shrubs and groundcover. The existing garage and driveway will also be replaced with a landscaped area.

Two mature trees on the east property line are scheduled to remain. New perimeter plantings will be added to provide privacy for building occupants and the abutting property. At the rear, three mature trees straddle the south property line will remain. A partially sunken patio buffered from the property line by a retaining wall will be enhanced with climbing vines as well as privacy plantings on the upper tier of the retaining wall. The two trees that are in close proximity to the east property line will be replaced with twelve columnar trees along a planting strip at the top of a retaining wall.

**b. Relation of Buildings to Environment**

The height of the building is lower than both abutting buildings and is in line with the ridge height of the existing structure. The front of the building faces north and casts minor shadows on the public way. (Shadow studies to be provided at the PB meeting). The rear yard setback is 30’.

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

The building heights in this area vary from 2.5 story single and multi-family homes to the immediate left and a 4+ story attached apartment buildings across the street. The proposed building height is similar to the existing structure at 158 Winthrop and slightly lower than the buildings to the immediate left and right. The front yard setback of 20’ complies with zoning.

**d. Open Space**

The project is compliant with the open space requirements for the site with over half of the required open space located in the southeastern portion of the rear yard. Residents will have access to this open space from a walkway located on the left side of the site. The western portion of the side yard also features a green space area abutting a walkway. Private roof decks will be provided for the two penthouses.

**e. Circulation**

The 20’ deep landscaped front yard will provide a buffer between the sidewalk and the building. The site slopes up from Winthrop Street towards the rear. Utilizing the grade change, the parking is cut into the site and therefore is at street level under the first floor residential units. The existing curb cut of 24 +/- feet will be closed and a new curb cut of 20 feet created; this will allow for two-way traffic in and out of the parking area. The parking layout accommodates 12 parking spaces, of which three are compact. The parking area is designed to allow all exiting traffic a front facing departure. [In the event that Warrant Article 19 - Transit Parking Overlay District - is approved by the Attorney General, the parking count will be reduced to 10 spaces and this area will be used for storage.] Bicycle storage will be provided in the hatched area adjacent to parking space 1C on the parking level.

An ADA compliant ramp facing the street will be provided on the opposite side of the building from the parking entry.

**f. Stormwater Drainage**

Stormwater management will comply with Article 8.25. The proposed stormwater management system will be designed to reduce the peak rates of runoff and volume so that there is no increase from the existing conditions for the 2, 10, 25 and 100-year design storms. It is anticipated that the proposed stormwater management system will include infiltration structures under the driveway that will be designed to infiltrate or retain the 25 year, 24-hour event (5.5” of rain). The final size of the infiltration system will be based upon final soil testing results. A potential emergency overflow connection from the subsurface drainage system to the existing drainage system in Winthrop Road may be included in the

final design. This overflow would be set at an elevation above the estimated on site 100-year storage level.

The proposed drainage system will also have a Long-Term Maintenance and Operations Plan that will include measures to be implemented during construction as well as post construction to ensure that the system operates as designed.

**g. Utility Service**

Electric, telephone, cable TV and other such lines and equipment shall be supplied overhead from the public way to the proposed building. All other utilities will enter and exit the building underground. Trash and recycling will be stored in the designated trash room and the property manager will put out bins and store them on pick up days. There will be no dumpster on site.

**h. Advertising Features**

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

**k. Heritage**

The existing building at 158 Winthrop Street will be demolished to construct the proposed project. A demolition permit was applied for in May of 2016 and the demolition delay period expires in June of 2017.

**l. Microclimate**

Roof top condensing units are planned and all units will be screened. All screening will meet Noise Control provisions.

**m. Energy Efficiency**

The project will meet or exceed the “stretch” energy code provisions. Lighting will be high efficiency and most fixtures will use LED bulbs; windows will be energy star rated and have insulated glazing units; plumbing fixtures and mechanical equipment will be high efficiency. Building materials will be sustainably sourced and environmentally friendly where possible.

**n. Shadow Studies**

Comparative shadow studies will be provided for the Winter and Summer Solstice as well as the Spring and Fall Equinox at the times of 9 am, 12 pm, and 6 pm showing both the existing building and the proposed.

**Section 6.02 Off-Street Parking Regulations:**

Approved Article 19 Parking Reqs.	Applicant's Proposal	Finding
10	12	Complies*

**\*NOTE ON PARKING REQUIREMENTS:** The proposed number of parking spaces complies with both the old and recently passed Town Meeting Warrant Article 19 – Transit Parking Overlay District. Under the old zoning, 12 spaces would have been required. [In the event that Article 19 - Transit Parking Overlay District - is approved by the Attorney General, the parking will be reduced to 10 spaces and this area will be used for storage.]

Ms. Clark stated that the Planning Board expressed their regret to see the home demolished; however, the Planning Board acknowledged that the lot is zoned for multi-family use and that there are many similar apartment buildings on the block. Ms. Clark stated that the Board, therefore, does not oppose the construction of a multi-family residential building that is consistent with the scale of the surrounding buildings and the neighborhood. She stated that the Planning Board recommended approval of the site plan prepared by McKenzie Engineering, dated 10/26/16, and the architectural plans by Embarc Studio, dated 3/14/17, subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan and floor plans, 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 elevations with materials indicated, subject to the review and approval of the Planning Board.
- 3) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 4) Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.
- 5) Prior to the 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 the decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the recommendation of the Building Department. Mr. Yanovitch stated that this proposal is designed to the By-Law is compliant. Therefore, Mr. Yanovitch stated, the Building Department has no objections to the proposal and should relief be granted, the Building Department will work with the Petitioners to ensure compliance.



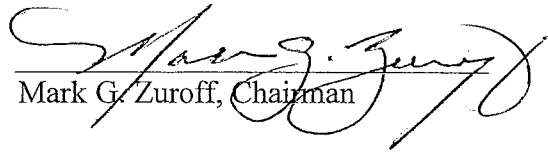
During deliberation, Chairman Zuroff expressed his preference for colonial style architecture but indicated his appreciation for a proposal that is compliant with the Town of Brookline Zoning By-Law. Board Member Poverman echoed Chairman Zuroff's sentiments. The Board then voted unanimously in favor of the relief requested. The Board made the following specific findings pursuant to said **Section 9.05:**

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

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

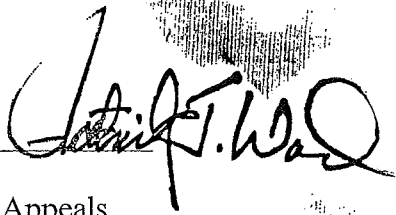
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Unanimous Decision of  
The Board of Appeals

  
Mark G. Zuroff, Chairman

Filing Date: 5/12/17

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals