

# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Mark Zuroff

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. 2017-0042  
16 WARWICK ROAD #3  
OLDER TRS MICHAEL J  
BLACKBURN PAULA A

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Petitioners, Michael Older and Paula Blackburn, applied to the Building Commissioner for permission to construct a new private roof deck. 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 March 1, 2018 at 7:00p.m., in the Select Board's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on February 15, 2018 and February 22, 2018 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:

**16 WARWICK ROAD, #3, BROOKLINE, MA 02445 - Construct new private roof deck in a(n) M-2.0 APARTMENT HOUSE on 03/01/2018 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Andrew Falkenstein) Precinct 13**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.50 - FRONT YARD REQUIREMENTS**

**§8.02.2 – ALTERATION AND EXTENSION**

**Any additional relief the Board may find necessary.**

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

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in 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  
Mark Zuroff*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Mark Zuroff and Lark Palermo.

The case was presented by Andrew Falkenstein, 7 Kent Street #4, Brookline, Massachusetts 02445. Also in attendance were the homeowners Michael Older and Paula Blackburn.

Chairman Schneider called the hearing to order at 7:00 p.m. Mr. Falkenstein waived the reading of the public notice.

Mr. Falkenstein presented to the Board a background of the Petitioners' proposal and described the surrounding neighborhood. He then presented the proposal to construct four roof decks. He noted

that 12-16 Warwick Road is a row of three attached condominium buildings known as Warwick Arms Condominium, with a total of nine units. Mr. Falkenstein stated that these three-story buildings are located mid-block between Beacon Street and Salisbury Road and the neighborhood consists of similar multi-family dwellings, as well as large two-family homes.

Mr. Falkenstein then described the zoning relief required for the proposal. He stated that they are seeking relief from **Section 5.50** for existing front yard setback nonconformity which is available under **Section 5.43** of the Zoning By-law. He noted that there will be several planter boxes added with landscaping to serve as the counterbalancing amenity.

Zoning Board of Appeals Chairman Schneider asked if anyone wished to speak in favor or opposition to the application. No one spoke in opposition to the proposal.

Ashley Clark, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

**FINDINGS**

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

**Section 5.50 – Front Yard Requirements**

<b>Setback</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Front Yard</b>	15 feet	~4 feet	~4 feet	Special Permit*

*\* Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements, if a counterbalancing amenity is provided.*

**Section 8.02.2 – Alteration and Extension**

A special permit is required to alter a pre-existing non-conforming structure.

**PLANNING STAFF ANALYSIS**

The planning staff is supportive of this proposal for four new roof decks. The decks should have minimal impact on surrounding buildings due to the wide passageways on either side of the buildings and an open parking area at the rear. The closest buildings are about the same height and therefore

residents will not look down on the decks. The staff recommends that landscaping be added at the edges of the decks to screen the decks for privacy and noise control.

Ms. Clark stated that the Planning Board was supportive of the concept of adding outdoor space for the owners of these condominium units and was not largely concerned with any nuisance related issues. The Board did raise questions about the usefulness of four small individual decks versus larger decks that could be shared by numerous units and the design of the decks themselves. The Board advised the architect to incorporate more aesthetic and visual interest to the decks through railings, plantings, etc. to ensure that the decks don't end up having a "corral"-like appearance.

Ms. Clark therefore stated that the Planning Board recommends approval of the site plan dated 4/14/2017 by Michael A. Pustizzi and the roof plans dated 8/1/2017 by Concise Design Group, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and roof plan 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 a landscaping plan for the decks and adjacent roof area subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit 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) a final roof plan stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Deputy Building Commissioner Michael Yanovitch delivered the comments of the Building Department. Mr. Yanovitch stated that should the Board of Appeals find that the necessary requirements for special permit relief are met, the Building Department will work with the Petitioners to ensure compliance with all building codes.

The Board deliberated on the merits of the proposal. Board Members Zuroff and Palermo were in support of granting the relief as requested. Chairman Schneider stated that she thinks the proposal meets the requirements for the requested relief by special permit and was in favor of granting the relief.

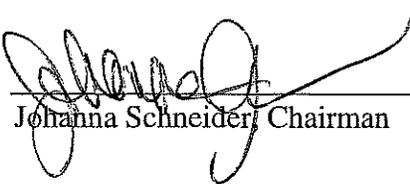
The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Section 5.50, of the Zoning By-Law pursuant to Sections 5.43, 8.02.2 and 9.05 of the Zoning By-Law as requested by the Petitioners were met. The Board made the following specific findings pursuant to said Section 9.05:

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

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and roof plan 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 a landscaping plan for the decks and adjacent roof area subject to the review and approval of the Assistant Director of Regulatory Planning.
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Unanimous Decision of  
The Board of Appeals

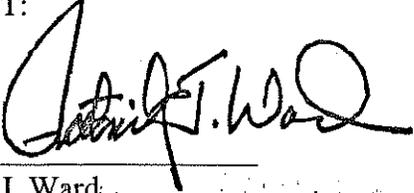


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Johanna Schneider, Chairman

Filing Date: 3/21/2018

A True Copy  
ATTEST:



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Patrick J. Ward  
Clerk, Board of Appeals