



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark G. Zuroff  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

RECEIVED  
TOWN OF BROOKLINE  
TOWN OF  
2018 MAY 27

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0048  
SCS DEVELOPMENT  
199-201 BOYLSTON STREET, BROOKLINE, MA  
& 15 LEVERETT STREET, BROOKLINE, MA

Petitioner, SCS Development, applied to the Building Commissioner for permission to erect four new townhouse style units on the lot and keep the existing duplex. 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 October 25, 2018 at 7:00 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 October 11, 2018 and October 18, 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:

**199-201 BOYLSTON STREET, BROOKLINE, MA 02445 - Erect 4 new townhouse style units on lot, renovate existing two-family dwelling and add 10 parking spaces in a(n) M-1.0(CAM) APARTMENT HOUSE on October 25, 2018 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: ROBERT ALLEN) Precinct 6**

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:

**§5.09.2.A – DESIGN REVIEW**

**§5.09.2.D – DESIGN REVIEW**

**§5.10 - MINIMUM LOT SIZE**

**§5.20 - FLOOR AREA RATIO**

**§5.30 - MAXIMUM HEIGHT OF BUILDINGS**

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§5.91 - MINIMUM USABLE OPEN SPACE**

**§6.03.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES**

**§6.04.4.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§6.04.5.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§6.04.5.E – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§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 in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals*

*who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer. If you have any questions regarding the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

***Jesse Geller, Chair  
Christopher Hussey  
Mark G. Zuroff***

**Publish: 10/11/18 & 10/18/18**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Lark Palermo. Also present at the hearing were Assistant Director of Regulatory Planning, Polly Selkoe and the Deputy Building Commissioner, Michael Yanovitch.

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 present at the hearing were the Petitioner, Scott Schneider, and the architect for the proposal, Ted Touloukian of Touloukian Touloukian Inc.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described proposal stating that the Petitioner proposes to keep the existing two-family in the front of the property and add four townhouse units. Attorney Allen stated that the proposal has been in development since 2015. He noted that the home is located in the M-1.0 (CAM) Zoning District, next to the Boylston Street Playground. He continued that the lot is in L shaped lot with multiple fronts on Cameron Street and Boylston Street. Attorney Allen noted that the proposal was for

the lots at 199-201 Boylston Street and 15 Leverett Street, noting that 15 Leverett Street would be used for parking. He noted that multiple variances were required because the lot is nearly undevelopable when complying with the required setbacks. Attorney Allen then introduced the architect for the proposal, Ted Touloukian, to present the proposal.

Mr. Touloukian, Touloukian Touloukian Inc., 151 Pearl Street, Second Floor, Boston, Massachusetts, presented the plans. Mr. Touloukian noted that the Petitioner and the team had met with the Parks and Recreation department to guide the development of this proposal. He also mentioned two easements for eight foot and ten-foot paths. The Board asked whether the properties on Leverett Street with the easements were okay with the proposal. Attorney Allen noted the easements have been considered throughout the development of the proposal and that could be further clarified ahead of the issuance of a building permit if necessary. The Board asked additional questions regarding the driveway and parking. Board Member Palermo asked whether the parking spaces exist now. Attorney Allen confirmed that they do and are currently being rented.

Attorney Allen then stated that the Petitioner seeks variances for floor area ratio, as the proposal is to go over the allowed 1.0 with an FAR of 1.64, for front yard setback of zero feet on Cameron Street and the Boylston Street setback, which cannot be waived by special permit in an M District, for the usable open space, as there is currently none and the proposal does not allow for any compliant usable open space. Chairman Zuroff asked whether any thought was given to roof decks for usable open space. Attorney Allen noted that the Petitioner looked for roof decks, but neighbors had privacy concerns. He further noted that the original proposal had space for cars under the units, but the Parks and Recreation Department wanted the building pushed back. Board Member Schneider asked what was on the other side of Cameron Street. Mr. Touloukian stated that the train was on the other side and there was a brand new building across the street.

Attorney Allen reviewed the variance and special permit standards with respect to the proposal. He added that the Petitioner was working with Peter Ditto of the Engineering Department regarding pedestrian access of Cameron Street and storm water management. Board Member Palermo asked a clarifying question regarding the buildable area of the lot. Attorney Allen showed an image of the buildable area on the lot, and illustrated the lack thereof.

Chairman Zuroff asked the Petitioner to address the concerns of the neighbors in their letter to the Board. Attorney Allen stated that Cameron Street is a dead-end street and suggested that Peter Ditto's idea of a pedestrian walkway on that street made sense. He noted that there are areas to put the snow and a plan would be in place.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for a four-unit building and a total of six units, as is allowed in the district and the neighborhood is densely developed; the use will not adversely affect the neighborhood as the proposal will provide sufficient parking and the Petitioner has worked with Parks and Recreation; there will be no nuisance or serious hazard to vehicles or pedestrians because sufficient parking will be provided and the applicant has agreed to create and submit a pedestrian access management plan for the site; adequate and appropriate facilities will be provided for the proper operation of a four unit dwelling and a two unit dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

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

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. Youngik Paik, 60 Cameron Street #2, Brookline, Massachusetts spoke in opposition to the proposal. Mr. Paik provided a letter to the Board ahead of the hearing and spoke at the hearing regarding safety

concerns with the Cameron Street setback and increased car traffic and privacy concerns. Board Member Palermo asked whether the neighborhood desired that the existing two-family be maintained. Mr. Paik noted that the neighborhood wanted the two-family to remain as is with some potential refurbishments to the outside.

Josh Anyaosah, 7 Leverett Street Unit 1, Brookline, Massachusetts, spoke in opposition to the proposal. Mr. Anyaosah raised safety concerns for the proposal and parking concerns for his own property.

Dara Lewis, 22 Leverett Street, Brookline, Massachusetts, spoke in opposition to the proposal. Ms. Lewis addressed safety concerns for her children and noted a strong preference to maintain and rehabilitate the existing two-family.

Bing Shui, 58 Cameron Street, Brookline, Massachusetts, spoke in opposition to the proposal noting safety concerns and concerns relating to the entrance to the park.

Attorney Allen addressed the concerns of the opposition. He noted that the biggest concern of Erin Gallentine of the Parks and Recreation Department was that the residents would complain about the noise of basketball in the future. Attorney Allen noted that while the structure across Cameron Street was built by right, the project was arguably not by right. Attorney Allen noted that the project across the street took away an entire sidewalk. He articulated that no child had been hurt since that building was constructed. He added that the proposal is compliant with the Town's MIT study and has the full support of the Planning Department and the Parks and Recreation Department.

Chairman Zuroff then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe noted the following:

**FINDINGS:**

**Section 5.09.2.a and d: Design Review**

**Section 5.10 – Minimum Lot Size**

**Section 5.20 – Floor Area Ratio**

**Section 5.30 – Maximum Height of Buildings**

**Section 5.50 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.91 – Minimum Usable Open Space**

**Section 6.04.4.b – Design of All Off-Street Parking Facilities**

**Section 6.04.5.b – Design of All Off-Street Parking Facilities**

<b>Dimensional Requirements</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Minimum Lot Size</b>	8,000	6,920	8,890	Complies
<b>FAR</b>	1.0	.37	<b>1.64</b>	Variance
<b>Building Height</b>	40 feet	25 feet	32.9 feet (Boylston) 38.9 feet (Cameron)	<b>COMPLIES</b>
<b>Front Setback</b>	15 feet	9.75 feet	9.75 feet (Boylston) 0 feet (Cameron)	Variance
<b>Side Setback</b>	$10 + L/10 =$ 21 feet	1.2 feet	6.5 feet	Special Permit*
<b>Usable Open Space</b>	20%	none	none	Variance
<b>Driveway Width</b>	20 feet	n/a	18.5 feet	Variance <b>PRE-EXISTING</b>
<b>Parking Area Setback</b>	15 feet	n/a	none	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 6.03.1.b – General Regulations Applying to Required Off-Street Parking Facilities**

The Board of Appeals may grant a special permit for required parking within the same district in the same ownership within 400 feet of the principle use served.

**Section 6.04.5.e – Design of All Off-Street Parking Facilities**

The Board of Appeals may grant a special permit for owners of adjoining properties to establish a common driveway under mutual easements.

**Section 8.02.2 – Alteration and Extension**

A special permit is required for alterations to a nonconforming structure.

**PLANNING BOARD COMMENTS**

The Planning Board felt very positively about this proposal, particularly in comparison to the previous design iteration and the changes that resulted from collaboration with the Parks & Recreation Committee. The Board discussed issues related to traffic concerns along Cameron Street where cars and pedestrians, particularly children, walk to Boylston Playground. The Board questioned whether it was the Town or the applicant's responsibility to offer traffic mitigation. Ultimately, the Board decided to recommend a condition that the applicant create a pedestrian access plan for the site.

**Therefore, the Planning Board recommends approval of the site plan by David Crispin dated 10/4/2018 and architectural plans prepared by Touloukian Touloukian Inc., dated 10/9/18, subject to the following conditions:**

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, with materials indicated, subject to the review and approval of the Planning Board and the Parks Commission.
- 2) Prior to the issuance of a building permit, the applicant shall submit a pedestrian access plan subject to the review and approval of the Assistant Director of Regulatory Planning and other any Town designees that she deems appropriate.
- 3) Prior to issuance of a building permit, a final landscape and maintenance plan for the planted border between the subject property and the Boylston Street Playground shall be submitted for the review and approval of the Director of Parks and Open Space and the Assistant Director of Regulatory Planning. The plan shall indicate all existing and proposed plantings, including plant type and size, proposed fencing (if any), and include a maintenance schedule, which shall continue in perpetuity, unless otherwise modified with the approval of the Director of Parks and Open Space.
- 4) The planted border between the subject property and the Boylston Street Playground shall be used for landscaping only, and remain free of any outdoor furniture, grills, additional fencing, trash and/or recycling receptacles, or similar items, unless otherwise approved by the Director of Parks and Open Space.
- 5) 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.
- 6) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision and necessary easements have been recorded at the Registry of Deeds.

Chairman Zuroff asked Michael Yanovitch, Deputy Building Commissioner, whether the Town would be able to move foot traffic and incentivize pedestrians to move across the street. Mr. Yanovitch stated that he did not see why it would not be possible if the Petitioner would provide the Town with the funds. Board Member Palermo opined that on a dead end, people always play on the street, and the parents' concerns should be considered. She noted that the Petitioner needs to work further with the neighborhood. Board Member Schneider shared the concern that the focus has been on the Parks and Recreation Department rather than the neighborhood. She noted that she would be okay with almost every variance and does not want to render the parcel as undevelopable, but stated that she shared the concern of the zero-foot Cameron Street setback.

Chairman Zuroff then called upon Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch gave history of the area and the MIT study. He noted that the area is dense and most properties are on the zero-lot line. He noted that the through lot presented further issues with the site. He added that any stormwater concerns would be addressed by Peter Ditto, and he noted that there are some possibilities to provide a better site line by clipping a corner of the building.

Attorney Allen noted that the neighbors' letters were received and the Petitioner would like to review the concerns. He noted that there has been communication with the neighborhood and the Petitioner has been trying to work with the neighborhood. As such, Attorney Allen requested to continue to hearing to January 10, 2019 at 7:00 PM in the Select Board's Hearing Room. The Board granted the request to continue the hearing. At the continued hearing January 10, 2019, the Petitioner requested to continue the hearing so that the Petitioner may return to the Planning Board with a revised proposal that changed the number of units. The Board voted to continue the hearing to February 28, 2019 at 7:00 PM in the Select Board's Hearing Room.

February 28, 2019. Second night of the public hearing.

Present at the continued public hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Lark Palermo. Also present at the continued hearing were Planner, Karen Martin and Deputy Building Commissioner, Michael Yanovitch.

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 present at the hearing were the Petitioner, Scott Schneider, and the architect for the proposal, Ted Touloukian of Touloukian Touloukian Inc.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice. 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:

**199-201 BOYLSTON STREET, BROOKLINE, MA 02445 - Erect 6 new townhouse style units and 8 parking spaces in a(n) M-1.0(CAM) APARTMENT HOUSE on February 28, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: ROBERT ALLEN) Precinct 6**

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:

**§4.08 – AFFORDABLE HOUSING REQUIREMENTS**

**§5.03 – SPACING OF RESIDENTIAL BUILDINGS ON THE SAME LOT**

**§5.09.2.A – DESIGN REVIEW**

**§5.09.2.D – DESIGN REVIEW**

**§5.10 - MINIMUM LOT SIZE**

**§5.20 - FLOOR AREA RATIO**

**§5.43 – EXCEPTIONS TO SETBACK REQUIREMENTS**

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§5.91 - MINIMUM USABLE OPEN SPACE**

**§6.04.5.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§8.02.2 – ALTERATION AND EXTENSION**

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

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*If you have any questions regarding the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Mark G. Zuroff*

**Publish: 2/14 & 2/21**

Attorney Allen described the changes to the proposal and noted that there was no neighborhood opposition at the Planning Board and the Planning Board unanimously voted to approve the proposal. Attorney Allen reminded the Board that a major concern of this Board and the neighbors was the zero

lot line at Cameron Street. He stated that the design team took a look at everything, spoke to the neighbors, and has come up with a plan to balance the neighborhood's concerns with economic feasibility of the project. He explained that the building was moved back ten feet on the Cameron Street side and noted that the proposed number of units is now six units in addition to the existing two units for a total of eight units.

Attorney Allen noted that the revised proposal requires relief via special permit from Section 5.09.2.a and d for design review, Section 4.08 for affordable housing requirements, which is now triggered because of the addition of six units, Section 5.03 for spacing of residential buildings on the same lot, Section 5.60 under Section 5.43 for the side yard setback, Section 6.04.5.b for design of all off-street parking facilities, and Section 8.02.2 for alteration and extension, all pursuant to Section 9.05. He noted that the proposal requires variances for relief from Section 5.20 for FAR, Section 5.10 for minimum lot size, due to the increased unit count for economic feasibility, Section 5.50 for the front yard setbacks on Boylston Street and Cameron Street, which has increased from zero to ten feet, from Section 5.91 for usable open space, and from Section 6.02, Paragraph 1 for table of off street parking requirements because the proposal will provide eight spaces for eight units. Attorney Allen then introduced Ted Touloukian, the architect for the project to present the revised proposal. Mr. Touloukian, Touloukian Touloukian Inc., 151 Pearl Street, Second Floor, Boston, Massachusetts, presented the plans.

Chairman Zuroff asked for clarification on the access to the site. Mr. Touloukian identified the entrances to the units that were facing away from Cameron Street. Board Member Palermo raised concerns regarding drainage. Mr. Touloukian addressed those concerns and noted that the entire site would be improved and the materials would be a great improvement to the existing condition and compliant with the storm water and drainage regulations of the Town.

Mr. Allen then stated that the requested variances should be granted, arguing that the requirements under M.G.L. Ch. 40A, sec.10 were met. Attorney Allen contended that the lot is unique to the district because it is a through lot with multiple front yard setbacks, a major change in grade, and two easements; a literal enforcement of the By-Law would involve substantial hardship to the Petitioner as it would prevent anything from being built on the property. The fact that the property is abutted by the playground requires work with Parks and Recreation, and the existing issues with Cameron Street create further hurdles. Furthermore, Attorney Allen argued that the proposal would significantly enhance the site, would benefit the public and would not substantially derogate from the intent of the By-Law or cause a substantial detriment to the public good.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for a multi-family development, as is allowed in the district, the neighborhood is densely developed, and the proposal will improve the overall appearance of what is currently a gravel area; the use will not adversely affect the neighborhood as the Petitioner has worked with the neighborhood and the Parks and Recreation Department; there will be no nuisance or serious hazard to vehicles or pedestrians because the setback has been increased from the original proposal and an existing curb cut will be utilized; adequate and appropriate facilities will be provided for the proper operation of a multi-family dwelling; and the development will not have a significant adverse effect on the supply of housing for low and moderate income people, as the Petitioner has opted to make a payment in lieu of providing an affordable unit, which will be allotted to the Brookline Housing Trust.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. Youngik Paik, 60 Cameron Street #2, Brookline, Massachusetts, spoke in favor of the proposal. Mr. Paik noted his gratitude for the Members of the Board and Petitioner's willingness to work with the neighborhood and develop this proposal.

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

Chairman Zuroff then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

**FINDINGS:**

**Section 5.09.2.a and d – Design Review** (Revised impact statement provided)

**Section 4.08 – Affordable Housing Requirements**

**Section 5.03 – Spacing of Residential Buildings on the Same Lot**

**Section 5.10 – Minimum Lot Size**

**Section 5.20 – Floor Area Ratio**

**Section 5.43 – Exceptions to Setback Requirements**

**Section 5.50 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.91 – Minimum Usable Open Space**

**Section 6.02, Paragraph 1 – Table of Off-Street Parking Requirements**

**Section 6.04.5.b – Design of All Off-Street Parking Facilities**

<b>Dimensional Requirements</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Setback between Residential Buildings</b>	60 feet	n/a	8.10 feet	Special Permit*
<b>Minimum Lot Size</b>	10,000 (for new additional units)	n/a	8,890	Variance
<b>FAR</b>	1.0	.55	1.46	Variance
<b>Building Height</b>	40 feet	25 feet	33.7 feet max (Boylston) 40 feet max (Cameron)	Complies
<b>Front Setback</b>	15 feet	9.75 feet	9.75 feet (Boylston) 10 feet (Cameron)	Variance

<b>Side Setback</b>	10 + L/10 = 19.8 feet	1.2 feet	6 feet (park) 10 feet (Leverett)	Special Permit*
<b>Usable Open Space</b>	20% (2,600 square feet)	none	none	Variance
<b>Parking Spaces</b>	16	n/a	8	Variance
<b>Parking Area Setback</b>	10 feet	n/a	none	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 6.04.5.e – Design of All Off-Street Parking Facilities**

The Board of Appeals may grant a special permit for owners of adjoining properties to establish a common driveway under mutual easements.

**Section 8.02.2 – Alteration and Extension**

A special permit is required for alterations to a nonconforming structure.

**PLANNING BOARD COMMENTS**

The Planning Board was supportive of this proposal. The Board asked for some minor clarifications on some of the design aspects and offered some small suggestions for improvements but supports this high-density project on this parcel that it feels is in significant need of redevelopment, should the Zoning Board of Appeals grant the required variances.

**Therefore, the Planning Board recommends approval of the site plan by David Crispin dated 01/30/2019 and architectural plans prepared by Touloukian Touloukian Inc., dated 2/22/19, subject to the following conditions:**

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, with materials indicated, subject to the review and approval of the Planning Board and the Parks Commission.
- 2) Prior to the issuance of a building permit, the applicant shall submit a pedestrian access plan subject to the review and approval of the Assistant Director of Regulatory Planning and other any Town designees that she deems appropriate.
- 3) Prior to issuance of a building permit, a final landscape and maintenance plan for the planted border between the subject property and the Boylston Street Playground shall be submitted for the review and approval of the Director of Parks and Open Space and the Assistant Director of Regulatory Planning. The plan shall indicate all existing and proposed plantings, including plant type and size,

proposed fencing (if any), and include a maintenance schedule, which shall continue in perpetuity, unless otherwise modified with the approval of the Director of Parks and Open Space.

- 4) The planted border between the subject property and the Boylston Street Playground shall be used for landscaping only, and remain free of any outdoor furniture, grills, additional fencing, trash and/or recycling receptacles, or similar items, unless otherwise approved by the Director of Parks and Open Space.
- 5) In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units," approved January 7, 2004, and with the choice of the applicant to make a cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation before the Town's issuance of a certificate of occupancy for the project:

A sum equal to 3.00% of the Market Value for the property (as determined by the Assessor's Department of the Town per the Town's guidelines for "Cash Payment in Lieu of Affordable Units") minus \$750,000 provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client's Fund Account, payable to the Brookline Housing Trust.

The check shall be mailed by first class mail or hand delivery to:

Director of Planning & Community Development  
333 Washington Street – 3rd floor  
Brookline, MA 02445

If any condominium unit(s) is/are rented by the owner instead of sold, the cash payments relative to the units being rented shall be immediately due and payable, unless, upon a request by the owner due to a significant change in market conditions, the Director of Planning and Community Development approves a different schedule of payments.

Should the property be subsequently converted and sold as condominiums, the developer, or any subsequent owner, shall make an additional trust payment as a condition of the transfer of each condominium, calculated per the Town's guidelines for "Cash Payment in Lieu of Affordable Units."

Prior to issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

- 6) 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.
- 7) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped

and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision and necessary easements have been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the report of the Building Department. Mr. Yanovitch opined that he agreed with Attorney Allen's listed required relief and noted that the matter was re-advertised with the additional and updated relief. He stated that should the Board find the proposal meets the criteria for the requested relief, the department will work with the Petitioner to ensure compliance with the building code.

During deliberation, Board Member Palermo opined that the proposal was vastly improved and that it would be safer. She noted that she would grant the special permits and variances requested. Board Member Schneider stated that she believed the property meets the standards for a variance, noting that the lot is unique in that it houses a historic building, is abutted by the park, and is a through lot. She stated that she believed the standards for a variance were met and supported the grant of the requested relief. Chairman Zuroff stated that the property was very unique and noted the fact that the neighborhood was deeply involved. He agreed with Ms. Schneider and noted that the constraints of the buildability of the lot rendered the property unique for the zoning district.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for relief via special permit from **Section 5.09.2.a and d** for design review, **Section 4.08** for affordable housing requirements, **Section 5.03** for spacing of residential buildings on the same lot, **Section 5.60** under **Section 5.43** for the side yard setback, **Section 6.04.5.b** for design of all off-street parking facilities, and **Section 8.02.2** for alteration and extension, all pursuant to **Section 9.05** of the Zoning By-Law were met, finding specifically under said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition because the multi-family use is allowed in the district and consistent with the dense neighborhood.

- b. The use as developed will not adversely affect the neighborhood because the Petitioner has worked with the neighborhood and the Parks and Recreation Department to develop a proposal that will enhance the neighborhood and the relationship to the other structures and the park.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as pedestrian and vehicular site access will be upgraded to provide more consistent and attractive materials and an existing curb cut will be utilized.
- d. Adequate and appropriate facilities will be provided for the proper operation of a multiple-family development.
- e. The development will not have a significant adverse effect on the supply of housing for low- and moderate-income people, as the Petitioner has opted to make a payment in lieu of providing an affordable unit, which will be allotted to the Brookline Housing Trust

The Board also determined by unanimous vote that the requirements for a variance from application of Section 5.20 for FAR, Section 5.10 for minimum lot size, Section 5.50 for the front yard on Cameron Street and Boylston Street, from Section 5.91 for usable open space, and from Section 6.02, Paragraph 1 for table of off-street parking requirements were met, finding specifically under M.G.L. Ch. 40A, sec. 10:

1. There are circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; mainly the subject property is an oddly shaped lot that is a through lot from Boylston Street to Cameron Street, yet has a narrow width in its center and a substantial change in elevation; the property has two easements that serve neighboring properties and is abutted on one whole side by a playground; and the buildable area within the required setbacks is nearly non-existent; which all make the lot unique in the zoning district.
2. A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner; mainly literally enforcing the requirements for FAR, front yard setback (Cameron St), minimum lot size, and usable open space would limit the development options so greatly for the project that it would be financially unfeasible to build on the side. Furthermore, the fact that the lot is immediately abutted by the Boylston Street Playground requires working with the Parks and Rec commission and taking a magnified look at public safety. The applicant has been and will continue to work with Town departments to

address and mitigate safety concerns related to Cameron Street. The additional units will balance the costs associated with this project.

3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law, particularly the following aspects: encouraging the most appropriate use of land (the applicant has worked with the Parks and Rec, Planning and Building Departments, and the Economic Development Advisory Board to bring a desirable project to the neighborhood); conserving the value of land and buildings (the applicant is preserving and restoring the existing two-family home); and providing for adequate light and air.

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

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, with materials indicated, subject to the review and approval of the Planning Board and the Parks Commission.
- 2) Prior to the issuance of a building permit, the applicant shall submit a pedestrian access plan subject to the review and approval of the Assistant Director of Regulatory Planning and other any Town designees that she deems appropriate.
- 3) Prior to issuance of a building permit, a final landscape and maintenance plan for the planted border between the subject property and the Boylston Street Playground shall be submitted for the review and approval of the Director of Parks and Open Space and the Assistant Director of Regulatory Planning. The plan shall indicate all existing and proposed plantings, including plant type and size, proposed fencing (if any), and include a maintenance schedule, which shall continue in perpetuity, unless otherwise modified with the approval of the Director of Parks and Open Space.
- 4) The planted border between the subject property and the Boylston Street Playground shall be used for landscaping only, and remain free of any outdoor furniture, grills, additional fencing, trash and/or recycling receptacles, or similar items, unless otherwise approved by the Director of Parks and Open Space.
- 5) In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units," approved January 7, 2004, and with the choice of the applicant to make a cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation before the Town's issuance of a certificate of occupancy for the project:

A sum equal to 3.00% of the Market Value for the property (as determined by the Assessor's Department of the Town per the Town's guidelines for "Cash Payment in Lieu of Affordable Units") minus \$750,000 provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client's Fund Account, payable to the Brookline Housing Trust.

The check shall be mailed by first class mail or hand delivery to:

Director of Planning & Community Development  
333 Washington Street – 3rd floor  
Brookline, MA 02445

If any condominium unit(s) is/are rented by the owner instead of sold, the cash payments relative to the units being rented shall be immediately due and payable, unless, upon a request by the owner due to a significant change in market conditions, the Director of Planning and Community Development approves a different schedule of payments.

Should the property be subsequently converted and sold as condominiums, the developer, or any subsequent owner, shall make an additional trust payment as a condition of the transfer of each condominium, calculated per the Town's guidelines for "Cash Payment in Lieu of Affordable Units."

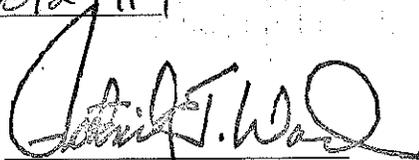
Prior to issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

- 6) 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.
- 7) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision and necessary easements have been recorded at the Registry of Deeds.

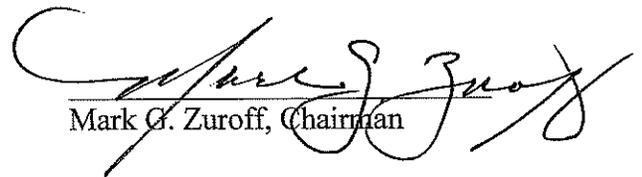
Unanimous Decision of The Board of Appeals

Filing Date: 03/27/19

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals



Mark G. Zuroff, Chairman