



# *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

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0017  
603, 605, 619 BOYLSTON STREET, BROOKLINE, MA

Petitioner, Boylston Brookline LLC, applied to the Building Commissioner for permission to develop a cluster subdivision for thirteen (13) total units, which would include the existing home and garage at 619 Boylston Street and twelve (12) new single-family dwellings. 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 11, 2019 at 7:00 PM., 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 Petitioners, to their attorney of record, Robert L. Allen, Jr., 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 28, 2019 and April 4, 2019 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:

**619 BOYLSTON STREET, BROOKLINE, MA 02445 - Develop a cluster subdivision for 13 total units, which includes the existing home and garage at 619 Boylston Street and 12 new attached single-family dwellings in a(n) S-15 SINGLE-FAMILY on April 11, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Boylston Brookline LLC) Precinct 14**

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:

**§4.07 – TABLE OF USE REGULATIONS, USE #01A**

**§4.08 - AFFORDABLE HOUSING REQUIREMENTS**

**§5.09.2.C – DESIGN REVIEW**

**§5.11 - CLUSTER SUBDIVISIONS, DESIGNED GROUPS OF SINGLE-FAMILY DWELLINGS, AND ESTATE CONVERSIONS**

**§5.11.2 – CLUSTER SUBDIVISIONS, DESIGNED GROUPS OF SINGLE-FAMILY DWELLINGS, AND ESTATE CONVERSIONS**

**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  
Mark G. Zuroff*

**Publish: 3/28 & 4/4**

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 Randolph Meiklejohn. Also present at the hearing were Assistant Director of Regulatory Planning, Polly Selkoe and the Deputy Building Commissioner, Joseph Braga.

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 Petitioners, Merrill Diamond of Diamond Sinacori, LLC, members of Urban Spaces LLC, and the architect for the proposal, Steve Tise of Tise Design Associates

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

Attorney Allen opened by noting that the Petitioners are before the Zoning Board of Appeals with close to unanimous support from the residents of Fisher Hill. Mr. Allen then introduced Merrill Diamond to discuss the design and development process. Merrill Diamond, Diamond Sinacori, 231 West Canton Street, Suite 1, Boston, MA 02116, introduced himself and discussed his experience. Mr. Diamond noted that he was working with Paul Ognibene and other members of Urban Spaces LLC on this proposal, which is their third proposal together. He noted the importance of working with the community throughout the development process. Mr. Diamond then introduced the architect for the proposal, Steve Tise, to present the proposal.

Mr. Tise, Tise Design Associates, 246 Walnut Street #303, Newton, Massachusetts, presented the plans. Mr. Tise stated that the proposal was presented to the Planning Board at two meetings – a preliminary meeting and a formal meeting as a part of the appeal process. He stated that the proposal has the strong support of the Planning Board. Mr. Tise then walked the Board through the plans. He described that the property is located across from the Reservoir and carries a steep topography. He noted

that one lot is the site of an existing house and four car garage. Mr. Tise stated that the proposal is made up of four, three-unit buildings. He noted that the four separate buildings were each attached town houses, and he noted that there are different layout options, ranging from 3,000 to 3,400 square feet. Mr. Tise stated each unit would have two garage parking spaces attached. He also pointed out a small amenity building that would be located near the entrance to the development. Mr. Tise noted the proposal significantly exceeds the required landscaped open space. He stated that the Petitioner seeks the twenty-five percent bonus in allowed units per the criteria including additional landscaped open space, concealed parking, and superior site design. Mr. Tise continued to show the engineered layout for the proposal as well as the tree survey. Board Member Meiklejohn asked how the existing house gains access. Mr. Tise stated that the existing house and the four-car garage currently utilize and will continue to utilize an existing shared driveway.

In summation, Mr. Tise explained that the four buildings would have different designs while sharing uniform features. He further explained that the buildings step with the changes in elevation and noted that the garages are hidden in the back and not visible from Boylston Street. Finally, Mr. Tise showed the remaining diagrams and described the compliance with the requirements of Section 5.11. He particularly noted that the buildings comply with the length regulations, the setbacks from lot lines, and distances between buildings. Mr. Tise stated he would explain the data if the Board preferred. Chairman Zuroff saw no reason for Mr. Tise to read the data out loud, as it was previously provided to the Board. Board Member Meiklejohn asked whether the property with the existing dwelling and garage was a part of the total size of the property. Mr. Tise noted affirmatively and stated that it was also used in calculations of open space and other dimensional requirements. Mr. Meiklejohn inquired as to whether that portion of the property was changing Mr. Tise noted that it would remain largely the same with

minor remedial changes. Mr. Tise then asked whether the Board had any questions, which the Board did not.

Attorney Allen then stated that the Petitioner seeks relief via special permit for **Section 4.07 – Table of Uses, Use #01A** for a cluster subdivision in an S-15 Zoning District, **Section 5.09.2.C** for design review, **Section 5.11**, **Section 5.11.2**, and **Section 5.11.2.d** for cluster subdivisions, all pursuant to **Section 9.05** of the Zoning By-Law. He noted that the Petitioner met with the Fire Department to ensure the hammer head would work, the Tree Warden, the Engineering Department, and the Building Department. He again stated that the Petitioners met with the neighborhood and listened to the neighbors' concerns as a part of this proposal.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for a cluster subdivision with a series of terraced, single-family town homes. While the topography was the cause of much concern when the church was being sited on the property, here the architect was able to use the topography to his advantage along with the property's overall orientation which is south facing and overlooking the Brookline reservoir. The site is large enough to be setback sufficiently from Boylston Street, Catlin Road, and other neighboring structures. The use will not adversely affect the neighborhood as the proposal has been presented to and supported by much of the Fisher Hill community. The design and orientation of the new residences take into consideration the existing Reservoir views for neighboring properties and will not cause substantial shadowing. It also takes advantage of passive solar design and green roof opportunities. There will be no nuisance or serious hazard to vehicles or pedestrians because vehicular and pedestrian site access will be restricted to Boylston Street, with no access to Catlin Road. Sufficient parking for all of the residences will be provided in enclosed garages. Furthermore, a curb cut permit has been preliminarily negotiated with DOR for connection to Boylston Street and plans have been submitted to the state in support of this.

Adequate and appropriate facilities will be provided for the proper operation of a cluster subdivision with a series of terraced, single-family town homes; each residence will have private curbside pick-up of trash and no dumpsters are proposed on site. Furthermore, all condensing units will be screened with acoustic enclosures at grade adjacent to each residence and no rooftop equipment is envisioned at this time. There will be no effect on the supply of housing available for low- and moderate-income people; the Petitioner will be making a payment to Brookline Housing Trust as required by Section 4.08. Attorney Allen suggested that as outlined the standards under Section 9.05 were met and asked for the Board's approval.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. David Weinberg, owner and resident of Fisher Hill Estates, 547 Boylston Street, Brookline, Massachusetts, spoke in favor of the proposal. Mr. Weinberg spoke positively of the Petitioner's interaction with and concern for the neighbors. He stated he was also attending as a Trustee of Fisher Hill Estates and on behalf of fellow residents regarding their support of the proposal. He noted that the neighborhood is very excited for this proposal to become a reality.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. Pankaj Merchia, 617 Boylston Street, Brookline, Massachusetts, spoke in opposition to the proposal. Mr. Merchia presented a Power Point and stated his opinion relative to the zoning requirements that "most of the lot lines on the subject property were rear lot lines." Mr. Merchia continued to opine on his interpretation of the Zoning By-Law. Polly Selkoe, Assistant Director of Regulatory Planning, noted that the information presented by Mr. Merchia was not provided to the Planning or Building Departments for review ahead of the hearing. Mr. Merchia opined that the developed plans do not comply with the floor area ratio, required setbacks, and additional dimensional requirements of the by-

law. Ms. Selkoe noted that there was a denial letter issued by the Building Department which did not raise the issues now being raised by Mr. Merchia with respect to the plans.

Chairman Zuroff suggested that the hearing could be continued in order to give the appropriate departments and the Petitioner more time to review the materials provided by Mr. Merchia. Joseph Braga, Deputy Building Commissioner, noted that with respect to zoning it would have been necessary for him to review Mr. Merchia's statements ahead of time. Chairman Zuroff asked Mr. Merchia to summarize his opposition. Mr. Merchia stated in summation that he believed the development as proposed violated the requirements of the Zoning By-Law. He noted that **Section 5.01** states that the dimensional requirements are different for attached structures as opposed to detached structures. Mr. Braga stopped Mr. Merchia and noted that Mr. Merchia was neglecting to review **Section 5.11.2.c** which states that dwellings in cluster subdivisions can be attached, detached, or a combination of the two. Deputy Building Commissioner Braga noted that whether the townhouses were attached, detached, or a combination of the two, the dimensional requirements would not be impacted. Mr. Braga disagreed with Mr. Merchia's analysis of the by-law, because he was looking at the wrong section.

Attorney Allen addressed the concerns of the opposition. He noted that Mr. Merchia admittedly has no expertise with respect to the Zoning By-Law. Mr. Allen objected to Mr. Merchia's contention that the pivotal section of the Zoning By-Law is **Section 5.01** and opined, as is consistent with the Deputy Building Commissioner, that the pivotal section is **Section 5.11**, which is why **Section 5.01** directs the reader to **Section 5.11**. He noted that the Petitioner met with the Building Department ahead of this proposal. He stressed that the Petitioner has worked on a strict timeline and went through great efforts to meet with the neighborhood, including Mr. Merchia, and all necessary departments ahead of time in addition to the zoning appeal process. Attorney Allen also noted that Mr. Merchia attended the Planning Board meeting without stating any of these objections to the proposal. Mr. Allen suggested that the

Board of Appeals rely on the professional staff in place to evaluate the proposal, particularly with respect to the Zoning By-Law. Chairman Zuroff noted the Board's responsibility to hear the public. Attorney Allen suggested that members of the public have the opportunity to appeal if they object to the Board's decision.

Chairman Zuroff noted that Mr. Merchia was raising these issues very late in the process and made numerous statements regarding zoning matters which Mr. Merchia himself did not understand. Chairman Zuroff continued, noting that the Petitioner went through a public process where Mr. Merchia could have objected. He noted that the Board relies on the Building Department and Planning Department to assist with interpretation of the by-laws and that Mr. Merchia was both late in providing this information and Chairman Zuroff further noted that Mr. Braga clearly disagrees with Mr. Merchia's zoning analysis.

Board Member Schneider asked whether both the Planning Department and the Building Department reviewed the zoning requirements of the proposal. Ms. Selkoe and Mr. Braga responded affirmatively. Board Member Schneider asked whether the departments found that what was captured in the denial letter was correctly reflective of the zoning calculations for the proposal. Ms. Selkoe and Mr. Braga responded affirmatively. Board Member Schneider asked whether they believed that what was done was correct and in accordance with Town practice. Mr. Braga noted that he checked the numbers and was comfortable with the analysis, and Ms. Selkoe also answered affirmatively. Board Member Schneider stated that the Board is entitled to rely on the Planning and Building Departments, as is consistent with the Board's practice. She noted that if members of the public disagree with the interpretation then they should file an appeal when the decision is filed.

Mr. Merchia spoke again regarding rear lot lines and the property. Chairman Zuroff noted that Mr. Merchia was speaking about a section of the code which did not apply to the present proposal. Joe

Braga, Deputy Building Commissioner, noted that many calculations, sections, and definitions go into the determination of lot lines. Board Member Schneider asked whether Mr. Merchia had anything to add that was not related to the calculations for the dimensional requirements of the proposal. Mr. Merchia requested that his power point be admitted to the record. The Board agreed. Mr. Merchia then stated concern regarding conservation land. Chairman Zuroff noted that the Board was not charged to analyze conservation land.

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 4.07 – Table of Use Regulations, Use #01A**

A special permit is required in S and SC districts for cluster subdivisions, designed groups of single-family dwellings and estate conversions permitted pursuant to the regulations and conditions of **Section 5.11**.

**Section 5.09.2.c – Design Review**

The most relevant sections of the design review standards are described in the impact statement below provided by the applicant:

a.) **Preservation of Trees and Landscape** - The site in question consists of three contiguous parcels with different landscape characteristics. The easternmost parcel, referred to as the LDS Parcel, abuts Catlin Road and is virtually devoid of vegetation, with a few mature trees at the top of the slope. The next two parcels, both previously owned by Richardson Family members, are wooded. The petitioner has commissioned an arborist survey and report by Carl Cathcart (registered arborist) that is included in this proposal as drawings (Tree Removal Plan - sheets 1 and 2). Out of approximately 83 trees with 8" calipers, all but 27 are recommended by Mr. Cathcart for removal immediately, due to variety of botanical criteria. The most significant trees are a cluster of large beech trees in the southwestern corner of the site, one of which is on the petitioners' parcel and a number are located on the neighboring property to the west. The proposal retains the large beech tree on the parcel and construction of the proposed improvements will not jeopardize adjacent off- site tree growth. The landscape plan being prepared by Katherine Schreiber RLA integrates any retained trees into an overall landscape vision for the property.

b.) **Relation of Buildings to Environment** - The proposed design borrows from European hill town typology by utilizing a winding driveway that traverses the site with townhouses woven in that are three levels on the lower elevation and two levels on the upper elevation. A full floor grade change is accommodated in the building section. Our A Type townhouse is limited to one and two levels on the uphill side (see exhibits) which allows for a direct view of the reservoir from other townhouse clusters

uphill of A and C Type townhouses. In addition, the roofs of the A Type townhouses are a combination of Sedum green roofs and river stone ballast, providing both important microclimatic benefits, a reduction in heat island effect, and pleasant roofscapes for uphill neighbors and residents.

The proposed buildings are extremely horizontal and will be a maximum of 35' on the downhill face and 23' on the uphill face, for an average cross slope height of 29'. Neighboring houses to the east and west are similarly scaled residential structures, not impacted by the proposed development. Homes to the north on Leicester as well as homes on Catlin are well above and behind the proposed buildings, negating any noticeable shadow impact. The proposed buildings are set well back from Catlin Road to allow the abutter at 30 Catlin Road an enhanced view corridor to the south. No other abutting homes have their views impacted by the proposal.

The overall building design will borrow heavily from "passive house" technology with heightened thermal envelopes and passive heating from south facing glass expanses. North elevations will have a minimum of fenestration. Window systems will provide R Values and sound transmission characteristics well above stretch code requirements. All mechanical systems will employ the latest technology and technical efficiencies. Roof and pavement storm water will be harvested for site irrigation. Each townhouse will be offered with a vacuum lift elevator interconnecting the floors and ensuring the ability to accommodate different generations and encourage aging in place. A limited number of Type A townhouses will also offer a master bedroom and bath suite on the same level as the garage, entry, living and dining level, further expanding demographic options.

c.) **Relation of Buildings to the Form of the Streetscape and Neighborhood** - The application of 5.11 Cluster Zoning by nature implies a different typology and streetscape from an existing single-family neighborhood. This is offset by enhanced setbacks, concentrated green space, and expanses of lawn and yard areas in keeping with the estate areas of Fisher Hill. As stated above, the design prospectus calls for low, linear modernist buildings with natural wood siding that recede into the landscape.

d.) **Open Space** - The proposed site plan has a building coverage of 17% and a roadway/hardscape coverage of 17%, for a combined lot coverage of 34%. This low ratio of lot coverage allows for much open space, both usable and landscaped. The challenge is to meet the requirement for usable open space with a gradient less than 8% or approximately 20,070 s.f. The attached plan diagram illustrates where and how this will be met below 8% gradient UOS totaling 23,200 s.f., and this is predominantly apron area associated with the townhouses for the full use and enjoyment of the residents, as well as open space associated with the amenity building and pool. The balance of usable open space required, approximately 3,560 s.f., is shown on the attached plan. The landscaped open space requirement is 4,460 s.f. and 71,384 s.f. is provided, 16 times the requirement.

e.) **Circulation** - The circulation proposed is a very simple 20' private drive that starts mid-frontage on Boylston Street and winds up the hill. A curb cut permit has been preliminarily negotiated with DOT for connection to Boylston Street and plans have been submitted to the State in support of this. Our plan intentionally does not rely on Catlin Road in any way. Every residence in the planned community has a two-car driveway in front of a two-car garage, providing adequate turning space as well as parking for guests. All proposed residences have enclosed two car parking garages. Fire Department access is also accounted for, and we are providing an emergency hammerhead at the top of the proposed drive to allow

larger fire and emergency vehicles to turn around to exit. Hydrants will be provided as needed. Pedestrian circulation on site is limited to a walkway and stair sequence that links the different site levels with the proposed amenity building. Sidewalks are minimized as the level of traffic is extremely low and attempts are being made to keep hardscape (and heat island effect) to a minimum. Bicycles will be stored in individual private garages.

f.) **Stormwater Drainage** - Best management Practices (BMPs) to control and treat stormwater runoff include deep sump catch basins, grassed swales, water quality units, and subsurface infiltration systems. These BMPs will improve the quality of stormwater runoff and reduce the peak flows to the MassDOT's storm drain system. The townhome driveways will incorporate porous surfaces. The project will also use rainwater harvesting for irrigation around the site.

The existing drainage patterns will not change significantly as the runoff will continue to drain to the surrounding MassDOT storm drain system. Roof water runoff and driveway runoff will be collected and directed into 4 subsurface infiltration systems. The onsite stormwater management system will have an overflow connection to the 12-inch drain line in Catlin Rd. that connects to the MassDOT storm drain system in Route 9.

All storm drain system improvements are designed in accordance with the Town of Brookline's design standards "Requirements for Site Plans" and MassDEP Stormwater Standards. Erosion and sediment controls will be used during construction to protect adjacent properties and the MassDOT storm drain system.

g.) **Utility Service** - All utilities, both private and public, will be underground. No dumpsters are proposed. Each residence will have access to private curbside pickup. All condensing units will be screened with acoustic enclosures at grade adjacent to each residence. No rooftop equipment is envisioned. See plans for utility design.

h.) **Advertising Features** - No advertising features are proposed. There will be a small project sign adjacent to the entrance that is internally illuminated, maximum 24" x 48".

i.) **Special Features** - The proposal does not include any service areas or loading facilities.

j.) **Safety and Security** - refer to e above.

k.) **Heritage** - The site is currently vacant except for a single-family home and a 4-car garage. The proposed site plan utilizing clustered and attached single family homes in lieu of detached homes on small lots is a model used successfully on other sites in Brookline, most obviously next door with Fisher Hill Estates. The design for Richardson will similarly result in large lawn areas and landscaping in keeping with the general topographical character of Fisher Hill. The site plan also respects the view of the original main house and preserves significant trees within the Boylston Street frontage. The historic stone wall that extends along Boylston Street will be preserved with the exception of a new curb cut required for site access.

l.) **Microclimate** - The proposed lot coverage is quite low at 34% including all driveways and roofs.

Driveway dimensions are dictated by the Zoning By-Law at 20'. The design utilizes porous pavement in each individual driveway for an apron area running 18' from the garage doors or approximately 4300 s.f. of the hardscape. As mentioned earlier, the roofs of at least six townhomes will integrate Sedum systems to foster improved local air quality and to expand the microclimate for birds and insects. Shade trees will minimize heat island effect during warm seasons and the engineering schematic integrates cisterns for storm water retention that will be used for site irrigation. All individual condensing units will be enclosed with solid fencing and the equipment specifications will stress DB ratings less than 65, more likely in the 50-60 DB range. Component selection will be carefully considered, as efficiencies (consumption) are the inverse of noise generation with current technology. Certainly, the development will comply with Brookline's Noise Control Standards. Building interiors (and resulting air quality) will be specified with an emphasis on LBC Red List Free materials.

m.) **Energy Efficiency** - This development will stress energy efficiency and sustainability. The design team is currently exploring the integration of Passive House standards in whole or in part for the basic construction. In addition, we are investigating the potential for renewable strategies using solar hot water systems.

At a minimum, the homes will exceed Stretch Code requirements by a significant margin, and will incorporate state of the art healthy home features such as dedicated fresh air through residential ERVs. Insulation systems that do not utilize foam-based products such as wood-fiber or mineral wool exterior insulation are being investigated, and PVC containing materials will be minimized. The basic building design maximizes glazed areas on south facing facades and minimizes them on north facing facades. Clerestories or recessed light wells bring natural light to the middle section of the upper floors. All lighting will be LED, all appliances will be Energy Star certified (or equivalent). The development casts no shadows on adjoining properties and has no adverse effects on neighbors.

### **Section 5.11 – Cluster Subdivisions**

#### **Section 5.11.2 – Cluster Subdivisions**

The Board of Appeals by special permit may authorize the development of designed groups of single-family dwellings in S and SC Districts subject to the conditions and procedures of this section.

#### **Section 5.11.2.d – Cluster Subdivisions:**

The Board of Appeals may grant a number of dwelling units higher than permitted in §5.11, **paragraph 2, subparagraph b.** where any of the following conditions obtain, provided that the increase shall not exceed 25% in total beyond what is permitted in §5.11, **paragraph 2, subparagraph b.**

1. Open Space—A 1% bonus for every 20% increase in landscaped open space over the minimum amount of landscaped open space required by Table 5.01 and a 1% bonus for every 20% increase in usable open space over the minimum amount of usable open space required by Table 5.01.
2. Concealed Parking—A 1% bonus per 5% of required parking concealed below grade, within or under a residential structure.
3. Superior Site Design—Up to 10% bonus for superior site design, which may include, without limitation: public open space, either accessible to the public or within public view;

historically appropriate building materials; preservation of existing dwellings or other architecturally significant structures; preservation of significant trees; street improvements such as wider sidewalks, underground wiring, lighting, landscaping, and pedestrian walkways and benches; provision of active and passive recreational facilities that are appropriate to the proposed development and to its immediately surrounding neighborhood; maintenance of Town open space; creation, restoration and preservation of access to existing Town open space; preservation and protection of environmentally sensitive areas; sensitivity to the surrounding neighborhood; support for neighborhood facilities and services; and preservation of historical structures significant to the Town. Any such element of site design which usefully and substantially exceeds the applicable minimum requirement for such element, if any, shall be deemed to contribute to the superiority of such site design.

### **PLANNING BOARD COMMENTS**

The Planning Board offered enthusiastic support for this project and commended the applicant on a thorough presentation. The Board noted that the proposal is appropriate for this vacant site, that the proposed density is comparable to surrounding condominium developments and that the applicant has met the zoning requirements for a cluster subdivision. Additionally, the Board is pleased that the majority of the nearest abutters came out in support of the project. The Planning Board did suggest that improvements be made to the landscaping plan that would make the proposed tree plantings appear less rigid and linear and added a proposed condition for a planting plan to the second condition.

**Therefore, the Planning staff recommends approval of the site plan by Norman Lipsitz dated 2/21/19 and the floor plans and elevations by Tise Design Associates dated 12/18/18, 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 indicating façade design, colors, materials, windows, rooftop details, and placement of utilities for HVAC and transformers, subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit final site and landscaping plans, indicating landscaping, fencing, lighting and drainage details and a planting plan, subject to the review and approval of the Planning Board.
3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of portable toilets, and a rodent control plan, shall be submitted for review and approval by the Building Commissioner, with a copy of the approved plan submitted to the Planning and Community Development Department.
4. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction, subject to the review and approval of the Assistant Director for Regulatory Planning.

5. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding “Cash Payments in Lieu of Affordable Units,” approved October 30, 2014, 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 upon the sale of each unit:

A sum equal to 7.5% of the adjusted sales price of the unit (actual sales price, including the cost of all parking, less an exemption deduction of \$125,000 per unit) shall be deducted from the net proceeds due the seller for each of the twelve units at 603-619 Boylston Street, and provided to the Town 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, along with a copy of the unit deed and HUD Settlement Statement.

The check shall be mailed, accompanied by a copy of the HUD settlement statement, signed by the seller and buyer, and a copy of unit deed, 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.

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 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, including landscaping, walls, grading, and location of utilities; 2) building elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Joseph Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated that he had no objection to the proposal,

particularly noting the requested relief from Sections 4.07, 4.08, 5.09.2.C, 5.11, 5.11.2, and 5.11.2.c and d.

During deliberation, Board Member Schneider opined that the proposal was well designed and developed. She stated her determination that the application meets the criteria for a special permit as outlined in the presentation and the plans, and she congratulated the applicant on working with the neighborhood. She further noted that the site was appropriate for the proposed use. Board Member Meiklejohn agreed. He stated that he has previously seen the Petitioner's work and his belief that the proposal will mix well into the changing Fisher Hill neighborhood. Chairman Zuroff echoed the other Board members and noted that he believed the proposal to be worthy of relief and in compliance with the requirements of the Zoning By-Law.

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 4.07 – Table of Uses, Use #01A for a cluster subdivision in an S-District, Section 5.09.2.C for design review, Section 5.11, Section 5.11.2, and Sections 5.11.2.c and d for cluster subdivisions, 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 a cluster subdivision with a series of terraced, single-family town homes because the site is large enough and setback sufficiently from Boylston Street, Catlin Road, and other neighboring structures.
- b. The use as developed will not adversely affect the neighborhood as the proposal has been presented to and supported by much of the Fisher Hill community, and the design and orientation of the new residences take into consideration existing views and neighboring properties.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because the pedestrian site access will be restricted to Boylston Street, with no access to Catlin Road, and sufficient parking for all residences will be provided in enclosed garages.
- d. Adequate and appropriate facilities will be provided for the proper operation of a cluster subdivision with a series of terraced, single-family town homes; each residence will have private curbside pickup of trash and no dumpsters are proposed on site.

- 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

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 indicating façade design, colors, materials, windows, rooftop details, and placement of utilities for HVAC and transformers, subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit final site and landscaping plans, indicating landscaping, fencing, lighting and drainage details and a planting plan, subject to the review and approval of the Planning Board.
3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of portable toilets, and a rodent control plan, shall be submitted for review and approval by the Building Commissioner, with a copy of the approved plan submitted to the Planning and Community Development Department.
4. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction, subject to the review and approval of the Assistant Director for Regulatory Planning.
5. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding “Cash Payments in Lieu of Affordable Units,” approved October 30, 2014, 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 upon the sale of each unit:

A sum equal to 7.5% of the adjusted sales price of the unit (actual sales price, including the cost of all parking, less an exemption deduction of \$125,000 per unit) shall be deducted from the net proceeds due the seller for each of the twelve units at 603-619 Boylston Street, and provided to the Town 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, along with a copy of the unit deed and HUD Settlement Statement.

The check shall be mailed, accompanied by a copy of the HUD settlement statement, signed by the seller and buyer, and a copy of unit deed, 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.

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.

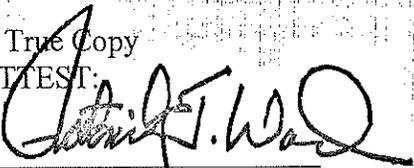
6. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including landscaping, walls, grading, and location of utilities; 2) building elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 05/16/19

  
Mark G. Zuroff, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals