



BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark G. Zuroff

# *Town of Brookline*

## *Massachusetts*

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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0033  
33 POND AVE UNIT NR-04, BROOKLINE, MA

Petitioner, Pond View Realty Trust, applied to the Building Commissioner for permission to convert a unit with general office space to medical/ dental office space. 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 May 30, 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 (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 May 16, 2019 and May 23, 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:

**33 POND AVENUE, #NR-4, BROOKLINE, MA 02445 - Change the use of Unit 33-NR-04 from general office to a medical or dental office use in a(n) M-2.0 APARTMENT HOUSE on May 30,**

2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 4

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:

**§6.02, Paragraph 1 - TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS**

**§8.02.1 – 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  
Mark G. Zuroff*

**Publish: 5/16 & 5/23**

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested that the hearing be continued. The hearing was continued to June 6, 2019 at 7:00 p.m. in the Select Board's Hearing Room. Present at the continued hearing were Chairman Mark G. Zuroff and Board Members Lark Palermo and Steve Chiumenti. Also present at the hearing were Senior Planner, Maria Morelli and 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.

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

Attorney Allen then described the proposal stating that the Petitioner proposes to convert Unit NR-04 of 33 Pond Avenue from general office use to medical/ dental office use. He noted that this unit was a part of the Brook House. He summarized the prior Board of Appeals decisions for the Brook House, stating that they allowed for a maximum of 23,125 s.f. of medical or dental office space. Right now the building is at 20,135 s.f. The Petitioner proposes to add 2,272 s.f. of gross floor area to be used as a dental office. Attorney Allen stated that the proposed s.f. of additional dental office space kept the total below the 23,125 s.f. allowed by a prior Board of Appeals decision. The use of a dental office requires three spots per dentist, for six parking spaces total with two proposed dentists. The proposal is to have two full time dentists and a floating third dentist. Attorney Allen noted that there are six spaces deeded to the unit. He continued that there are sixty-seven visitor spots on site, fourteen of which are in the garage, right outside of the door of the unit and can be used by patients. Attorney Allen noted that any change in the use of the unit required modification of the prior decisions. He further noted that because the entire building was a non-conforming use, the Petitioner required relief from Section 8.02.1 for alteration or extension of a non-conforming use. Mr. Allen noted that there are other dentists and doctors in the existing units and noted that this proposal was not any different than those currently operating.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed use as a dental office as there are other medical and dental offices on the premises and the proposed office space is within that allowed under prior Board of Appeals decisions; the use will not adversely affect the neighborhood because it is consistent with the

existing use; there will be no nuisance or serious hazard to vehicles or pedestrians because ample parking will be provided for employees and patients; adequate and appropriate facilities will be provided for the proper operation of the unit as a dental office; and there will be no effect on the supply on housing available for low and moderate income people as this unit was previously used for commercial use.

Board Member Palermo inquired as to whether nine spaces would be required for three dentists. Attorney Allen answered affirmatively and recalled the abundance of guest parking. Attorney Allen argued that with the amount of guest parking spaces and the six deeded spaces, there would be adequate parking for the employees and patients. The Board was satisfied that with the deeded spaces and the guest parking adequate parking would be provided for either two or three dentists.

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. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Maria Morelli, Senior Planner, to deliver the findings of the Planning Board. Ms. Morelli noted the following:

**FINDINGS**

**Section 6.02-- Table of Off-Street Parking Regulations**

	<u>Required/Allowed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Parking Spaces	6*	6	6	<u>Complies</u>

\*Applicant states that there will only be two dentists on-site at one time. Each dentist requires 3 parking spaces, ie 6 spaces; that is the same amount that was designated by management for the previous general office space.

**Section 8.02.1 – Alteration or Extension**

A special permit is required to alter or enlarge any pre-existing non-conforming use or structure.

Modification of Board of Appeals Decisions - Cases #1375 (9/65), #1375A (6/67), #2021 (1/76), #2357 (1/80), #2759 (1/86), #2760 (3/86), #2880/2881 (3/88), and #3055 (1/91), #040023(8/04).

**PLANNING BOARD COMMENTS**

The Board had no concerns with this proposal for new dental office space.

**Therefore, the Planning Board recommends approval of the plans, by Henry Stein and dated 3/20/19, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final parking plan and floor plans, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final parking plan; 2) final floor plans 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 the Building Department had no objections to the relief requested.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a modification of prior decisions and a special permit from Section 8.02.1 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.
- 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 special permit relief subject to the following conditions:

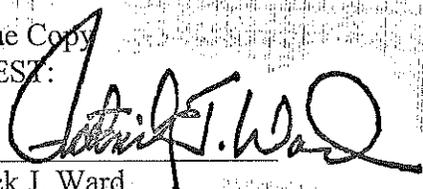
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Unanimous Decision of  
The Board of Appeals



Mark G. Zuroff

Filing Date: 6/21/19

A True Copy  
ATTEST:  
  
Patrick J. Ward  
Clerk, Board of Appeals

2019 JUN 21 A 9:13