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Town of Brookline

Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0061
118 GERRY ROAD/ 121 INDPENDENCE DRIVE BROOKLINE, MA

Petitioner, HV TH LLC, applied to the Building Commissioner for permission to construct a new apartment building and community center for the residents of Hancock Village at 118 Gerry Road and 121 Independence Drive. 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 November 14, 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 October 31, 2019 and November 7, 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 on **11/14/19 at 7:00PM** in the **6th Floor Select Board's Hearing Room, Town Hall, 333 Washington Street, Brookline**, on the following:

118 Gerry Road & 121 Independence Drive, BROOKLINE, MA 02467. *Petitioner/Owner - Robert L. Allen, Jr.* Construct apartment building (36 units) and community center for residents of Hancock Village. M-0.5 APARTMENT HOUSE Zone. Precinct 16.

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

§5.02 - SPACING OF NON-RESIDENTIAL BUILDINGS ON THE SAME LOT

§5.03 - SPACING OF RESIDENTIAL BUILDINGS ON THE SAME LOT

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

§6.02.2.F – OFF-STREET PARKING SPACE REGULATIONS

§6.04.7 - DESIGN OF ALL OFF-STREET PARKING FACILITIES

§8.02 - ALTERATION OR 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.*

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 this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark Zuroff
Johanna Schneider*

Publish: 10/24/2019 & 10/31/2019

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Kate Poverman and Board Members Paul Bell and Randolph Meiklejohn. Also present at the hearing were Zoning Planner & Coordinator, Charlotte Leis, and Deputy Building Commissioner, Joe 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 representatives for the Petitioner, Andy Martineau and Mark Levin and Theo Kindermans of Stantec.

Chair Poverman called the hearing to order at 7:20 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen presented the background of the proposal to the Board and stated that the proposal is completely separate from the 40B proposal known as Puddingstone. He noted that it was really the Town's design peer reviewer and ZBA during the process for the Puddingstone 40B that drove the applicant to pursue this proposal. He then explained that the Petitioner proposes to demolish the existing Gerry Garage and Independence Garage and construct a new 36-unit apartment building (the "Gerry Building") and a community center for the residents of Hancock Village. Mr. Allen further noted that the Gerry Building triggered a major impact review because of the number of units, thus the Petitioner appeared before the Planning Board in October 2018 and then participated in a year-long Design Advisory Team process; he further stated that the community center did not trigger a major impact proposal, however, the applicants felt it prudent for the DAT to include it in their review. He noted that the proposal came to this Board with the unanimous approval and support of the Planning Board. He then introduced Andy Martineau, the project manager, to present the proposal to the Board.

Andy Martineau, Chestnut Hill Realty, 300 Independence Drive, Brookline, Massachusetts, presented the proposal to the Board. He first explained the development of the proposal and the relationship to the site of the 40B Puddingstone proposal. Chair Poverman asked about electric charging stations. Mr. Martineau noted a plan is required by the Town to show where the electric charging spaces would be located. Chair Poverman requested that be added as a condition to the decision. Mr. Martineau

further described the proposal; he presented elevations and multiple viewpoints. He also showed the proposed pool house and the proposed recycling center. The parking plan, landscape plan and the tree removal and replacement plans for the site were reviewed. Mr. Martineau noted that discussions with the Chestnut Hill Realty's arborists resulted in a plan that diversifies the species of proposed trees, which would also be used as screening. Chair Poverman inquired as to the requested relief.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 4.08**, affordable housing provision, **Section 5.02** for the spacing of non-residential buildings on the same lot; **Section 5.03** for the spacing of residential buildings on the same lot; **Section 6.02, Paragraph 1** for the off-street parking requirements; **Section 6.04.7** for the design of off-street parking facilities; and **Section 8.02.2** for alteration or extension, all pursuant to **Section 9.05**. He explained that many of the conditions were pre-existing non-conforming. Board Members asked where **Section 6.04.7** was violated. Attorney Allen noted that because the Community Center is considered habitable space under the Zoning By-Law whereas the Independence Garage was not, a special permit is required for the parking within ten feet. He noted the Petitioner intends to provide landscaping as a counterbalancing amenity for the relief under **Section 5.43**.

Attorney Allen then described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed apartment/multifamily use, as such is allowed in the M-0.5 district and the look and feel are consistent with the surrounding buildings of Hancock Village; the use will not adversely affect the neighborhood because new units and a new community center for residents will be added and required parking will be replaced; there will be no nuisance or serious hazard to vehicles or pedestrians because inefficient parking garages will be replaced with surface parking which will improve the overall circulation of Hancock Village; adequate and appropriate facilities will be

provided for the proper operation of the multi-unit apartment complex and accessory building; and there will be a positive effect the supply of housing available for low and moderate income people, as there will be five affordable units located on site.

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

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

Chair Poverman then called upon Charlotte Leis, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Leis noted the following:

FINDINGS

ZONING: M-0.5	Required/ Allowed	Existing	Proposed	Relief
Use		Multifamily	Multifamily	None
Lot Size	649,000sf, based on units proposed	998,188sf	998,188sf	None
Floor Area Ratio	0.50 / 100%	0.36/ 72%	0.42 / 84%	None
Lot Width	None	n/a	n/a	None
Height	35'	25'	35'	None
Setbacks: F/S/R Gerry Building	15/10'+L+10/30	42/190/426	29/376/201	None
Setbacks: F/S/R Community Center	15/10'+L+10/30	21/297/434	21/276/389	None
OS: Landscaped/Usable	10%/30%	168%/150%	158%/125%	None
Parking Spaces	648	433	500	None

Other Zoning Requirements

Section 5.02 and 5.03 – Spacing of Residential/ Non-Residential Buildings on the Same Lot

This section requires that, where multiple residential buildings are proposed on a lot under the same ownership, setbacks are provided between buildings as required under the dimensional requirements (see above). The Gerry Building lacks the required rear yard setback from a residential building to its rear. The Board of Appeals may waive this requirement by Special Permit if *“it is demonstrated that there will result light, air, sunlight, and amenity of a standard no lower than would result from such requirements.”*

Section 6.02.1 - Table of Off-Street Parking Space Requirements

This section states that two or more uses may provide for required parking in a common parking lot if the total spaces are not less than the sum of the spaces required for each use individually. This number of spaces may be reduced by Special Permit if it can be demonstrated to the Board of Appeals that the hours or days of peak parking need for the uses are so different that a lower total will provide adequately for all uses served by the facility.

Section 6.02.2.F – Off-Street Parking Space Regulations

This section requires that ten percent of all required parking spaces be designed and marked for use by visitors and tradespeople. For mixed use developments, the number of visitor spaces shall be based on the residential use alone. The plans have not yet explicitly designated spaces for such uses.

Section 6.04.7 – Design of All Off-Street Parking Facilities

This section states that no parking stall shall be located within 10 feet of that part of a building having windows of habitable rooms at the basement or first-floor level **Section 8.02: Alteration or Extension** A Special Permit is required to alter and/or extend this non-conforming structure.

Section 5.09.3b – Design Review

The project is subject to the requirements and procedures for a Major Impact Project, as detailed in this section. See also the applicant’s statement addressing this section’s Community and Environmental Impact and Design Standards.

PLANNING BOARD RECOMMENDATION

The Planning Board would have preferred to see a more sustainable approach to the site planning and the building construction, but is otherwise supportive of the proposal. The Board recognized that the building design had gone through several previous meetings with both the Planning Board and a Design Advisory Team as part of the Major Impacts Project process and that all issues related to architecture and site planning had essentially been resolved as part of that process. The Board felt that the community center would prove to be very successful and a very welcome amenity for the neighborhood.

The Planning Board recommends approval of the site plans by Stantec, dated 9/18/19, and architectural plans by Lowe Associates Architects, Inc., dated 9/16/19, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, parking plan, floor plans, elevations and landscaping plan subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Pursuant to the provisions of Section 4.08 Affordable Housing Requirements of the Zoning By-law, the petitioner shall:
 - a. Provide five permanently affordable units, which would be monitored for compliance on an annual basis by the Town:
 - i. three(3) two-bedroom units and two (2) one-bedroom units shall be designated as affordable in accordance with the affordable housing plan approved by the Housing Advisory Board at its meeting of 5/28/2019;
 - ii. no less than four units shall qualify as low and moderate income housing under the Comprehensive Permit Law (Chapter 40B), including that they shall be rented to households with incomes less than or equal to 80 percent of area median income, and one unit may be rented to a household with an income less than or equal to 100 percent of area median income;
 - b. Rents shall be established in accordance with the Zoning By-Law and Guidelines;
 - c. floor plans, finishes and appliances shall be the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for specific floor plans, finishes or appliances which differ;
 - d. no building permit shall be issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan which shall include a final schedule of units, including locations, and references to specific floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;
 - e. no certificate of occupancy shall be issued for any market rate unit until:
 - i. the developer has provided proof that all affordable units serving households up to 80% of area median income are subject to a DHCD Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Rental Projects as well as other DHCD requirements to ensure that those units are included in the Town's Subsidized Inventory (SHI), and
 - ii. the Town has approved initial rents for the affordable units and a marketing and selection plan for the affordable units which provides for a local preference, as permitted by law or regulation (including Chapter 40B guidelines), for up to 70% of the affordable units be given to Brookline residents, employees of the Town, Families with Children in the Brookline Public Schools, and employees of the Brookline Housing Authority, and
 - iii. all of the affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor, and 2) final floor plans and 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.

Chair Poverman then called upon Joe Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated that the building department is pleased with the

proposal as currently presented and has no objections to the relief sought under the zoning bylaws for the project.

During deliberation, Board Member Meiklejohn stated that he believed the proposal seemed to have benefited from the DAT feedback and noted support for the proposal along with the intentions for landscaping. Board Member Bell agreed and noted that he believed the apartment and community center were welcomed additions. Chair Poverman agreed and stated that the relief requested was minor.

In reliance on the above referenced plans, the Board then determined, by unanimous vote, that the requirements for a special permit for relief from **Section 4.08**, affordable housing provision, **Section 5.02** for the spacing of non-residential buildings on the same lot; **Section 5.03** for the spacing of residential buildings on the same lot; **Section 6.02, Paragraph 1** for the off-street parking requirements; **Section 6.04.7** for the design of off-street parking facilities; and **Section 8.02.2** for alteration or 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 proposed apartment/ multi-family use is allowed in the M-0.5 district and the look and feel of the structures are consistent with the surrounding buildings of Hancock Village.
- b. The use as developed will not adversely affect the neighborhood because the proposal replaces two outdated and inefficient parking lots with new units and a new community center while replacing all required parking.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as on-site circulation will change only in that additional cars will be parked in surface spaces and circulation for the site as a whole will be improved.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use as a multi-unit apartment complex and accessory buildings for the same; the amenities provided for residents will be significantly improved.
- e. Development will have a positive effect on the supply of housing available for low and moderate income people, as the Petitioner will comply with the requirements of Section 4.08 and provide five affordable units.

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, parking plan indicating EV charging stations as required by the Town's TAP, floor plans, elevations and landscaping plan subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Pursuant to the provisions of Section 4.08 Affordable Housing Requirements of the Zoning By-law, the petitioner shall:
 - a. Provide five permanently affordable units, which would be monitored for compliance on an annual basis by the Town:
 - i. three(3) two-bedroom units and two (2) one-bedroom units shall be designated as affordable in accordance with the affordable housing plan approved by the Housing Advisory Board at its meeting of 5/28/2019;
 - ii. no less than four units shall qualify as low and moderate income housing under the Comprehensive Permit Law (Chapter 40B), including that they shall be rented to households with incomes less than or equal to 80 percent of area median income, and one unit may be rented to a household with an income less than or equal to 100 percent of area median income;
 - b. Rents shall be established in accordance with the Zoning By-Law and Guidelines;
 - c. floor plans, finishes and appliances shall be the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for specific floor plans, finishes or appliances which differ;
 - d. no building permit shall be issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan which shall include a final schedule of units, including locations, and references to specific floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;
 - e. no certificate of occupancy shall be issued for any market rate unit until:
 - i. the developer has provided proof that all affordable units serving households up to 80% of area median income are subject to a DHCD Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Rental Projects as well as other DHCD requirements to ensure that those units are included in the Town's Subsidized Inventory (SHI), and
 - ii. the Town has approved initial rents for the affordable units and a marketing and selection plan for the affordable units which provides for a local preference, as permitted by law or regulation (including Chapter 40B guidelines), for up to 70% of the affordable units be given to Brookline residents, employees of the Town, Families with Children in the Brookline Public Schools, and employees of the Brookline Housing Authority, and
 - iii. all of the affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development.

3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor, and 2) final floor plans and 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



Kate Poverman, Chair

12/3/19
A True Copy
ATTEST


Patrick J. Ward
Clerk, Board of Appeals