

Brookline Board of Appeals
July 21, 2016, 7:00 PM
Public Meeting & Hearing
333 Washington Street
6th Floor Selectmen's Hearing Room

Board Members Present – Jonathan Book (Chairman), Steve Chiumenti, Christopher Hussey
Staff Present – Michael Yanovitch (Building Department), Ashley Clark (Planning Department)

14 Fairbanks Street (2016-0023)

Proposal: Construct a driveway and install parking under the existing structure.

Zoning District: M-1.0 Apartment House

Board Vote: Permission to withdraw application without prejudice **granted**.

201 Summit Avenue (2016-0015)

Proposal: Construct a second story addition

Zoning District: S-7 Single Family

Board Vote: Relief request **granted**, subject to conditions

44 Coolidge Street (2016-0026)

Proposal: Convert a single-family dwelling into a two-family dwelling

Zoning District: T-5 Two-family & Attached Single-family

Board Vote: Relief request **granted**, subject to conditions

**Brookline Board of Appeals
July 21, 2016, 7:00 PM
Public Meeting & Hearing
333 Washington Street
6th Floor Selectmen's Hearing Room**

7:00PM

14 Fairbanks Street (2016-0023)

Board Chairman Book opened the hearing and called case #2016-0023. Mr. Book confirmed with Attorney Jeffrey Allen he is requesting to withdraw the case for 14 Fairbanks without prejudice.

Mr. Book reviewed the standard hearing procedure.

Mr. Allen waived a reading of the public hearing notice and stated the condominiums sold quicker than they could schedule an appearance before the Board of Appeals. Since the units have sold the owner no longer wishes to pursue the parking proposal and would like to withdraw without prejudice in case at some point the new condo association or new owners would like to pursue a parking plan.

Board Member Hussey motioned to recommend approval.

Chairman Book seconded the motion.

Board Member Chiumenti was in favor.

The Board voted unanimously to grant the Applicant permission to withdraw the case without prejudice.

201 Summit Avenue (2016-0015)

Board Chairman Book called forward case #2016-0015 and reviewed standard hearing procedure.

Attorney Robert Allen (300 Washington Street, Brookline, MA) waived a reading of the public hearing notice and introduced Lindsay Baden. Mr. Allen stated Mr. Baden and his wife have lived in Brookline since 2003 and have children in the nearby elementary school. The family feels they are beginning to outgrow their single-family home and need to add a second story. Mr. Allen stated because they are in an S-7 district this creates some restrictions. Mr. Allen then stated the majority of single-family homes in the Corey Hill Neighborhood are two story structures with a few multi family structures. Mr. Allen described the neighborhood housing analysis and FAR range from .28 to .46, in a district that requires an FAR of .35. 201 Summit Avenue is currently at an FAR of .36.

Mr. Allen stated the applicant has gone through the Preservation Commission's demolition process and the stay expired in June 2016.

The proposal is to construct a second story to provide an additional 928 square feet to the house. Mr. Allen stated since the house is already over the allowed FAR, the Applicant is seeking a special permit under Chapter 40A Section 6, as they are increasing a preexisting non-conforming condition without creating a new non-conforming condition or creating a substantial detriment to the neighborhood.

The project designer Tom Robinson presented the design for the second story addition. Mr. Robinson described the slope on the site and floor plans of the home. Mr. Robinson described the proposed elevation of the house and demonstrated how the proposed design relates to other homes in the neighborhood.

There was a discussion between Mr. Robinson and the Board regarding Preservation's determination the ranch style house was significant.

Attorney Allen submitted letters of support for the project from 188 Summit Avenue and 194 Summit Avenue. Mr. Allen stated they have reached out to the immediate abutting neighbors and no one spoke out against the project during the Planning Board hearing. Mr. Allen stated he did not anticipate anyone speaking in opposition to the project during this evening's hearing.

Mr. Allen reviewed the most relevant design review sections under Section 5.09. Mr. Allen stated in regards to Section 5.09.4.a Preservation of Trees and Landscape, this project does not require the removal of trees and the existing plantings would be maintained. No additional landscaping is proposed. For Section 5.09.4.b. Relation of Buildings to Environment, Mr. Allen stated the 2nd story addition does not alter existing foot print or add to the height. Mr. Allen stated though the addition is visible, the materials used are consistent with the streetscape. For Section 5.09.4.e Circulation, Mr. Allen stated the current drive will not be altered by the proposal.

Mr. Allen stated in regards to Section 5.20 Floor Area Ratio, the Applicant is currently at 104% of the allowed FAR (.36) and while the Planning Board initial relief required stated a variance was needed, relief may be granted by special permit. Mr. Allen stated alterations and extensions to a preexisting single and two-family dwelling as analyzed by the court ruling in the Gale case determined that only a special permit was required for the extension of a preexisting nonconforming residential structure as long as it is not substantially more detrimental than the existing nonconforming structure to the neighborhood. Mr. Allen cited several relevant court cases and stated 40A is meant to give special protection to single and two family homeowners. Mr. Allen stated as long as they do not create any new nonconformities or a substantial detriment to the neighborhood, a Section 6 finding can be found. Mr. Allen enumerated the reasons the Applicant meets the requirements for a special permit under Section 6.

Board Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Mr. Rothman (188 Summit Avenue) stated there are a number of structures [in the neighborhood] that are higher than the proposed addition on the street. Mr. Rothman felt the plans are excellent and felt the addition would be very well liked in the neighborhood.

Board Chairman Book called upon Zoning Coordinator Ashley Clark from the Planning Department to review the findings of the Planning Board.

Ms. Clark stated the Planning Board is not opposed to the 928 square foot second story addition. Although, the resulting maximum height of 32.2 feet is inconsistent with the adjacent ranch structures, this height is not uncommon within the wider Corey Hill neighborhood. The design of the addition itself maximizes natural light and views, particularly at the rear of the structure, and the increased floor area would improve the interior functionality of the home. The Board does have concern regarding the design deviation from "duplicate" ranches located at 195 and 189 Summit

Avenue; however, they do not feel that the resulting FAR of .45 is significantly out of character with the surrounding S-7 district. Board Members did recommend that the Petitioner work with the Building Department to determine the most appropriate beam size and material to best support rear decks and patios detailed on the proposed north elevation (sheet A10).

Additionally, the proposed gross floor area increase represents an extension of the pre-existing nonconforming floor area that may be permitted following a M.G.L., c40A, Section 6 finding by the Board of Appeals. The Planning Board does not find the proposed exterior addition to be substantially more detrimental to the surrounding neighborhood and therefore supports a potential Section 6 finding.

Should the Board of Appeals find that the statutory requirements for a Section 6 finding, or a variance, are satisfied, the Planning Board recommends approval of the site plan submitted by Brice Bradford, dated 5/12/14, and the architectural plans by Linda Hamlin, dated 1/27/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans including existing and proposed gross floor area calculations, and elevations, subject to the review and approval of the Assistant Director for 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 site plan stamped and signed by a registered engineer or land surveyor; 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.

Board Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that this is a Section 6 finding proposal. Mr. Yanovitch stated that there was a concern over FAR and through committees they have developed a plan that Planning Board would opine whether a proposal fits into the neighborhood. Mr. Yanovitch reiterated the Planning Board's comments the resulting FAR of .45 is not significantly out of character for the neighborhood. Mr. Yanovitch concluded his remarks by stating the Building Department has no objection to the request.

Board Deliberation

Board Chairman Book felt the proposal before the Board fit within what Section 6 is supposed to protect. The application is not creating any new nonconformity; it is addressing the single nonconformity that exists, the FAR. The proposal does not alter the footprint. The house is not, in terms of massing and size, any more detrimental to the neighborhood and is consistent with other homes in the neighborhood. Mr. Book stated he would support a finding that the relief would not be detrimental to the neighborhood and further stated he was in favor of granting a special permit pursuant to Section 6 Chapter 40A.

Member Chiumenti concurred with Chairman Book. Mr. Chiumenti did not feel this proposal was detrimental to the neighborhood and felt the massing was in the back and out of view from the street and was in favor of granting relief subject to the conditions put forth by the Planning Board.

Board Member Hussey stated for strict interpretation of law he defers to fellow members of the Zoning Board.

**Unanimous Board grant of requested relief, subject to conditions stated for the record.
44 Coolidge Street (2016-0026)**

Board Chairman Book opened the hearing and called case #2016-0026 and reviewed standard hearing procedure.

Attorney Jeffrey Allen waived a reading of public hearing notice and described the history of the house as a single-family home and two-family home. Mr. Allen described the portions of the project that are currently under construction. Mr. Allen stated nothing in terms of zoning is changing and there is no issue with FAR. Mr. Allen stated part of the issue is regarding the parking in the front yard which is a preexisting condition of parking though relief is required.

Mr. Allen stated the Planning Board is in favor by a vote of 4-2. Mr. Allen stated the Planning Board was concerned about the parking. Mr. Allen described the phases the design has gone through to accommodate for parking and respond to abutters concerns. In order to address the parking situation Mr. Allen stated he proposes to have two garage parking space and two in front of the garage. Mr. Allen asked if the Board would include a condition that the fifth parking space not to be sold with either unit. Mr. Allen also proposed the space be built with pavers to allow for grass to grow through so it would not look like a parking space.

Board Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal. There was no public comment.

Board Chairman Book called upon Zoning Coordinator Ashley Clark from the Planning Department to review the findings of the Planning Board. Ms. Clark stated the Planning Board was disappointed that the additions and new garage hadn't been designed to allow parking that would not be located within the front yard setback. However, the Planning Board is sympathetic to allowing the conversion to a two-family, since the work on the house was commenced with a valid building permit. Subsequently, it was realized that the house had been used as a single-family for many years and the previous two-family use had been abandoned. The Planning Board would recommend approval of the conversion and two front yard parking spaces if the Board of Appeals grants relief for the property to provide four cars on the site, not five. This would allow two cars in the garage and two immediately outside the garage, which is a fairly typical condition found in many neighborhoods. The Board found that it was a safer condition if the parking was reduced and that more green space would be provided in the front yard if the driveway is not widened. The Board also would have no objection to a "green" parking area (pavers with grass growing in between) for a fifth car as long as the applicant agreed to lease only two spaces to each of the two unit owners. The Planning Board also recommends that the curb cut be aligned with the entrance to the garage.

Therefore, the Planning Board (4-2) recommends approval of a revised site plan submitted by Peter Nolan, dated 6/30/16, and floor plans and elevations submitted by Richard Volkin, dated 7/7/15. Should the Board of Appeals find that the standards for the grant of a variance are satisfied, the Planning Board recommends the following conditions:

1. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit final floor plans and elevations stamped and signed by a registered architect, and a final site plan that includes paving materials, a relocated curb cut aligned with the garage, and the elimination

of the drive and new curb cut on the left side of the property, stamped and signed by a registered engineer or land surveyor, subject to review and approval by the Assistant Director for Regulatory Planning.

2. Prior to the issuance of a Certificate of Occupancy, the Applicant shall submit a final landscape plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a Certificate of Occupancy, 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 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.

Board Chairman Book asked Mr. Allen to address counterbalancing amenities.

Mr. Allen stated the parking situation seems to be a preexisting nonconforming use as cars have always been parking in the side yard setback. Mr. Allen stated they will do substantial landscaping both in the right hand side of the property and left hand side.

Board Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch reviewed the permits that have been issued for the construction taking place now. Mr. Yanovitch stated everything is being done as of right for a large single family home. Mr. Yanovitch stated the issue is whether the dwelling is single-family or a two-family by way of abandonment. Mr. Yanovitch stated reviewing Section 5.05 and the need to rectify any nonconforming issues by a special permit. Mr. Yanovitch stated looking at special permit relief for the preexisting nonconformities. The structure itself is in compliance except for the rear yard. Mr. Yanovitch stated the Building Department has no objection to the relief sought.

Board Deliberation

Board Member Chiumenti stated he was inclined to go with the Planning Board with the added condition the fifth parking space be constructed out of materials that allow grass to grow through it and that it not be sold with the units, in addition to the other conditions laid out by the Planning Board.

Board Member Hussey concurred with Board Member Chiumenti.

Board Chairman Book stated the application is worthy of relief and meets the requirements of the zoning bylaw, particularly Section 9.05. Mr. Book stated in favor of granting the relief subject to the added condition that the fifth spot nearest the right hand lot line be paved in permeable covering and not be conveyed or leased and is for the common use of the whole building.

Unanimous Board grant of requested relief, subject to conditions stated for the record.

Board Chairman Book moved to approve the hearing minutes from 6/23/2016 and 7/7/2016. Board Member Hussey seconded and the Board unanimously approved the submitted minutes.