

**Brookline Board of Appeals
September 29, 2016, 7:00 PM
Public Hearing
333 Washington Street
6th Floor Selectmen's Hearing Room**

Board Members Present – Jesse Geller (Chairman), Mark Zuroff, Chris Hussey

Staff Present – Mike Yanovitch (Building Dept.), Ashley Clark (Planning Dept.)

7:00PM

40 Aspinwall Avenue

Chairman Geller reviewed standard hearing procedure.

Kathleen Scanlon, project manager for the Brookline Teen Center, waived a reading of the notice. Ms. Scanlon stated they are seeking height relief for a front façade sign located on the addition to the building at 40 Aspinwall Avenue. Ms. Scanlon stated the sign will be placed 28'6" above grade. Ms. Scanlon referenced to a photo demonstrating where the sign will be placed on the building and described the slats on the building which the sign needs to be attached to. Ms. Scanlon stated, as the building is setback from the public way, they would like to raise visibility by putting the sign up.

Mr. Hussey asked why the sign is so modest.

Ms. Scanlon stated they have other signage planned to go up including a street sign and a small hanging illuminated sign that is meant to be more subtle and not the main signage. It includes the logo BTC and will just serve as a wayfinding sign.

Mr. Geller asked for public comment in favor or opposed to the proposal.

There was no public comment submitted.

Chairman Geller called upon Zoning Coordinator, Ashley Clark, to deliver the recommendations of the Planning Board. Ms. Clark stated the Planning Board supported the proposed sign and its placement. The building is set far enough off the street that the height of the sign is not overwhelming within its context. The sign itself is not large in size and blends in with the design and materials of the teen center's exterior. The Brookline Teen Center will benefit from identifying signage that is visible to the public from Aspinwall Avenue.

Therefore, the Planning Board recommended approval of the signage site plans labelled "Brookline Teen Center," by StudioMLA Architects dated 4/28/16, subject to the following conditions:

- 1. Prior to the issuance of a building permit, a final signage site plan shall be 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) signage site plans stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Chairman Geller called upon Deputy Building Commissioner Mike Yanovitch to deliver the recommendation of the Building Department. Mr. Yanovitch stated the Building Department has no objection to this request as it is minor in nature. Mr. Yanovitch stated if the board does find the applicant meets the criteria for the grant of a special permit, the Building Department will work with the application to ensure compliance.

Chairman Geller conferred with Mr. Yanovitch regarding **§7.00.1.b** of the Town's Zoning By-law, specifically, the excerpt: "signs announcing the name of an individual building". Mr. Yanovitch stated that his interpretation allows for Brookline Teen Center to be placed on the building as the name of the building.

Board Deliberation

Mr. Zuroff voted in support of the height relief. Mr. Zuroff stated the sign serves a public purpose.

Mr. Hussey concurred with Mr. Zuroff.

Board Chairman Geller agreed with Mr. Zuroff and Mr. Hussey that it serves a good purpose. Mr. Geller stated subject to the conditions read into record, it is a unanimous grant of the special permit relief.

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

10 Searle Avenue- Remove the roof, construct third floor with higher roof and add dormer

Chairman Geller reviewed standard hearing procedure.

Attorney Robert Allen (300 Washington Street) waived a reading of the notice and introduced Jason Jewhurst and Nurit Zucker, the owners and architects for the 10 Searle Avenue application, to change the roof to a hip roof raise the ridge line about four feet to convert the attic space into 677 square feet of usable, livable space.

Mr. Allen described the T-5 zoning district and described the street conditions. Mr. Allen stated they have 15 letters of support from the street and unfortunately have not been able to reach an agreement with an abutter on Cypress Street. Mr. Allen stated they have reviewed their plan and tried to mitigate the impact of the new addition and spent a lot of time trying to figure out the best solution.

Mr. Allen stated that they have done a detailed analysis on what the impact would be on the neighborhood. Mr. Allen stated that they reviewed several different roof formations and has ultimately decided that the plan proposed fits in with the neighborhood. Mr. Allen stated the tall

shaded trees act as a natural buffer between the two properties. Mr. Allen described why the addition fits in with the neighborhood.

Mr. Jewhurst presented the design at 10 Searle Avenue and reviewed a shadow study done showing the impact the proposal will have on the property at 18-20 Cypress Street.

Mr. Hussey inquired about the design choices for the roof. Mr. Jewhurst explained the pros and cons of the various options they considered.

Chairman Geller asked what methodology Mr. Jewhurst used to do the shadow study. Mr. Jewhurst stated that he used a global positioning location with a tilted model.

Mr. Allen described the zoning relief necessary and how they meet each of the conditions required under design review and stated the Board may grant the relief as a special permit under Massachusetts State General Law Chapter 40A Section 6. Mr. Allen stated there will be no new nonconformities created and believe there is no substantial detriment as a result of the proposal.

Chairman Geller asked for public comment in favor to the proposal.

A resident at 30 Cypress Street stated that this is a densely populated street and felt the design proposed fits in well with the neighborhood and is in support of the application.

Chairman Geller asked for public comment in opposition to the proposal.

Attorney Gladstone stated that he represents the abutters at 18-20 Cypress. Mr. Gladstone stated that it is important to inform the Board that the trees that have been discussed belong to his client. Mr. Gladstone stated that this proposal has a real impact on their lives. Mr. Gladstone reviewed why the proposal is not appropriate for the neighborhood and described the living spaces.

Maria Bellalta, resident at 18-20 Cypress Street, described her history in the home and how they use their yard.

Aiden Ackerman, the abutter's landscape architect, presented digital renderings on the impact the proposal under discussion will have on the residents at 18-20 Cypress Street.

Board Chairman Geller asked Zoning Coordinator, Ashley Clark, to present the Planning Board report. Ms. Clark stated the Planning Board understands the applicants' interest in gaining more living space in this small, 3-bedroom unit.; the lot size is nearly half of the minimum required lot size for this T-5 zoning district. Ms. Clark noted, as a result, there is no open space on the lot that can be counted towards usable open space and the Planning Board would like to see proposed landscaping changes that would show how the minimal open space on the lot can be utilized for the benefit of the residents. Ms. Clark stated that overall, a third story on the home would help improve the appearance of the façade; most homes on the block currently have a partial or full third stories so the addition of a third floor to 10 Searle would not be out of character for the neighborhood.

Therefore should the Board of Appeals find that the statutory requirements for a variance are met, the Planning Board recommends approval of the floor plans and elevations dated 6/10/16, subject to the following conditions:

1. Prior to issuance of a building permit, final elevations indicating all exterior alterations and proposed materials and floor plans shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall submit a final site plan and final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
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; 2) final floor plans and 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.

Board Chairman Geller called upon the Deputy Building Commissioner, Mike Yanovitch, to deliver the recommendation of the Building Department. Mr. Yanovitch stated the main concern is the effect on enlarging structures on the streetscape and neighborhood. Mr. Yanovitch stated that the applicant needed to prove the structure fit within the neighborhood and the abutter provided information that the structure did fit in the neighborhood. Mr. Yanovitch stated that the key word is neighborhood. Mr. Yanovitch stated that the lot size on the chart shows this lot is the smallest lot which lends to the FAR. Mr. Yanovitch stated that a reference was made to the sky is the limit and argued that §9.05 and §8.02 gives limits and conditions on structures that come in for a 40A §6 finding. Mr. Yanovitch stated that if the board finds the proposal meets the criteria for the grant of a special permit and meets the 40A §6 finding criteria, the Building Department will work with the petitioner to ensure compliance and will work with the abutters on the street to make sure any conditions are followed through.

Mr. Hussey asked about the prior expansion in the basement. Mr. Yanovitch stated that this is the first he is hearing about it. Mr. Allen stated any expansion in the basement was done before the client moved in, in 2003. Mr. Yanovitch stated that zoning has changed at the state level regarding statutes of limitation as of November 6th, it will be treated as a preexisting non-conforming condition.

Board Deliberation

Mr. Geller stated that there have been many conversations regarding the very question that Mr. Gladstone asks, which is: How far can you go? Mr. Geller stated that we have hit a point with Deadrick and no one has given the Board guidance other than to say the limitation is what 40A §6 says: *not substantially more detrimental than the existing non-conforming use to the neighborhood*. Mr. Geller stated they interpret the language under §9.05 to establish

if the proposal will be detrimental. Mr. Geller stated that all the Board can do is look at the language and the way it has been interpreted to date.

Mr. Zuroff agreed with Mr. Geller and stated that there is no specific guidance as how to quantify what is substantial [detriment]. Mr. Zuroff stated substantially detrimental to the neighborhood seems to indicate it is an overview from the entire neighborhood and not just on one abutter or two abutters or even three abutters, but it is a neighborhood overview. Mr. Zuroff stated that he felt the applicant has shown the [proposed] change in the structure from an appearance standpoint fits in with the neighborhood; it is not out of character. Mr. Zuroff further explained that though he does not know if there have been other expansions into attics, it is generally acceptable to do so. Mr. Zuroff stated that the proposal is modest in terms of how much space is being added and that he understands the increase in FAR is exacerbating the nonconformity, but under section 6 it is not so detrimental affect the neighborhood as to be in violation of section 6.

Mr. Hussey stated that it sounds reasonable that there is some impact on the immediate neighbor, but only on the immediate neighbor.

Mr. Geller stated that they are not saying this is not impactful on the neighbor and is sure the neighbor is genuine in their feeling of loss for light. Mr. Geller stated that given the language of the statutory section, case law and section 9.05, relief is warranted in this case.

Mr. Zuroff encouraged the applicant and neighbors to discuss conditions they can agree on.

Mr. Gladstone distributed copies of proposed conditions for the abutter at 18-20 Cypress Street.

There was a discussion regarding each of the conditions proposed by Attorney Gladstone with Attorney Allen and the Board.

Mr. Zuroff stated that based on all the arguments heard and conditions proposed, he is in favor of the application. Mr. Hussey concurred with Mr. Zuroff.

Board Chairman Geller stated that as interpreted by recent case law, the proposal meets the standards established under M.G.L. Chapter 40A section 6 as well as section 9.05 sections and reviewed how the proposal meets the enumerated criteria in the town's By-law.

Unanimous grant of the relief requested under chapter 40A section 6 and interpreted through section 9.05 subject to the original conditions read into the record as supplemented by discussion.