



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT

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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS NO. BOA 070015

Petitioner, Rona Lischinsky, in case No. 040071, was granted Special Permits and a Variance in connection with her request to convert a portion of the basement at 1476 Beacon Street into a residential unit, thereby converting the three family dwelling into a four family dwelling. The petitioner failed to commence construction within one year of the grant of relief, and the Special Permits and Variance became invalid. Petitioner has resubmitted the same plans to the Building Department in order to begin the approval process again. The Building Department denied the petitioner's application and an appeal was taken to this Board. On February 8th, 2007 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed the date of April 19th, 2007 at 7:30 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of 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 April 5th and April 12th, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
NOTICE OF HEARING
PETITIONER: Rona Lischinsky

LOCATION OF PREMISES: 1476 Beacon Street BRKL

DATE AND PLACE OF HEARING 04/19/2007

TIME OF HEARING

07:30 p.m.

PLACE OF HEARING

Selectman's Hearing Room on
the sixth Floor

A public hearing will be held for Special Permits from Section 4.01.3.a Permitted Uses; Section 4.03; Pre-Existing Special Permit Uses; Section 4.07, Table of Use Regulations, Use #6; Section 5.05; Conversions; Section 5.09.2.a; Design Review; Section 8.02.2; Alteration or Extension; and for Variances from Section 5.20; Floor Area Ratio; Section 5.50; Front Yard Requirements; Section 5.51; Projections Into Front Yards; Section 5.52; Fences and Terraces in Front Yards; Section 5.60; Side Yard Requirements; Section 5.61; Projections Into Side Yards; Section 5.62; Projections Into Side Yards; Section 5.70; Rear Yard Requirements; Section 5.91; Minimum Usable Open Space; and Section 6.02.1; Table of Off-Street Parking Space Requirements.

at 1476 Beacon St. BRKL
Said premises located in an M2 District

The Town of Brookline does not discriminate on the basis of disability in admission to, or access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Diane R. Gordon
Harry Miller
Bailey Silbert

At the time and place specified in the notice a public hearing was held by this Board. Present were Diane Gordon, Chair, Bailey S. Silbert and Harry S. Miller.

Petitioner was represented by Attorney Jacob Walters of Goldenberg & Walters of Seven Harvard Street in Brookline. Mr. Walters began by informing the Board that the petitioner had regrettably failed to secure a building permit and commence construction or contact counsel to seek an extension of time. Mr. Walters stated that the proposal before the Board is exactly the same as that unanimously approved in December of 2004. Mr. Walters then stated that Special Permits under Section 4.01.3.a, Section 4.03, Section 4.07 and 5.09.2, were all required because the subject property was within 100 feet of Beacon Street. Mr. Walters stated further that all the dimensional relief could be granted by a Special Permit under Section 5.05, which provides that in cases of a conversion of a dwelling to create

additional housing, the Board could waive any dimensional requirements except minimum lot size, provided that no previously existing nonconformity is increased and all other requirements for such conversions are met. Mr. Walters pointed out that the 1476 Beacon Street footprint was not going to change as a result of the addition of the basement as a dwelling space and no previously existing nonconformity would be increased. Mr. Walters stated that a variance from Section 6.02.1 would be required, as the building has no parking nor was it built with access for any parking. Mr. Walters stated that grounds for the grant of a variance exist, namely the structure itself, the topography of the lot and the size of the lot.

As for the 1476 Beacon Street structure, Mr. Walters pointed out that it is a 3-family dwelling attached to 2 other 3-family dwellings, which is unique in the zoning district. The building is the only one in the zoning district that has no access to parking from the street. In addition, the subject building extends farther to the rear of the lot than any other in the zoning district. As to the topography, Mr. Walters stated that there is a severe slope at the rear of the building, sufficient that a retaining wall separates the subject building from those behind it. All other buildings in the district have room either at the side or the rear for parking, but because of the slope of the land at the rear, this property has no space for automobile parking. Mr. Walters then addressed the issue of lot size. The lot is undersized, and is unlike most others in the district which are quite large. Mr. Walters stated that if the lot were 5,000 square feet, and if access were feasible, it would be able to provide adequate parking spaces but it is only 4,123 square feet. Mr. Walters stated that the only other relief required was a special permit under Section 8.02.2, Alteration or Extension, as the applicant's proposal would extend a pre-existing nonconformity. Mr. Walters concluded by stating that none of the neighbors were opposed to the project and urged the Board to approve the Petitioners application.

The Chair then called upon Polly Selkoe of the Brookline Planning Department to present the Planning Board report. Ms. Selkoe stated that the Planning Board recommends approval of the requested zoning relief, provided the applicant was able to establish grounds for a variance from Section 6.02.1 Off Street Parking Requirements. Ms. Selkoe indicated that all other relief could be granted by Special Permits and noted that the property was located near public transportation. In closing, Ms. Selkoe stated that the Planning Board's suggested conditions were as follows: (1) Final facade review and site plans, including landscaping, shall be subject to the review and approval of the Planning Director prior to the issuance of a building permit, (2) The applicant shall lease four off street parking spaces for this property on a permanent basis and provide proof of the spaces to the Planning Department prior to the issuance of an occupancy permit, (3) No more than one dwelling unit shall be allowed in the basement space, and (4) prior to obtaining a building permit, the applicant shall submit to the Director of Planning and Community Development for review and approval for conformance to the Board of Appeals decision, (a) a final site plan stamped and signed by a registered architect or land surveyor, (b) final building elevations, and (c) a final landscaping plan.

The Chair then called upon Frank Hitchcock of the Brookline Building Department. Mr. Hitchcock stated that the Building Department has no objection to the applicant's proposal. Mr. Hitchcock noted that the existing basement met all code requirements for habitation, and stated that the basement contains large windows and that living space is useful and functional. Mr. Hitchcock added that building looks as if, when built, the architect intended the basement, or some portion thereof, to be used for habitable living space. Mr. Hitchcock concluded by stating that the Building Department had no objection to the grant of the proposed relief.

The Board, having heard all testimony, and after review of the plans submitted, found that the topography of the lot, specifically the severe slope at the rear of the property, was adequate grounds for the grant of a variance and voted unanimously to grant special permits under Sections 4.01.3.a, 4.03, 4.07, Use #6 Section 5.05, Section 5.09.2.a, Section 8.02.2, and a Variance from Section 6.02.1, with the following conditions:

1. Final facade review and site plans, including landscaping, shall be subject to the review and approval of the Planning Director prior to the issuance of a building permit,
2. The applicant shall lease or purchase four off street parking spaces for this property on a permanent basis and provide proof of the spaces to the Planning Department prior to the issuance of an occupancy permit,
3. No more than one dwelling unit shall be allowed in the basement space, and
4. Prior to obtaining a building permit, the applicant shall submit to the Director of Planning and Community Development for review and approval for conformance to the Board of Appeals decision, (a) a final site plan stamped and signed by a registered architect or land surveyor, (b) final building elevations, and c) a final landscaping plan.

Unanimous decision of
the Board of Appeals

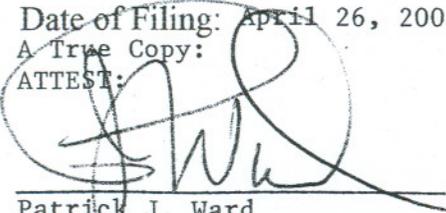


Diane Gordon, Chair

Date of Filing: April 26, 2007

A True Copy:

ATTEST:



Patrick J. Ward
Board of Appeals