



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0037
227 TAPPAN STREET, LLC
227 TAPPAN STREET

Petitioner, Mahmood Firouzbakht, applied to the Building Commissioner for permission to convert a single-family dwelling into a two-family dwelling. 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 September 23, 2014 at 7:30 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 September 4, 2014 and September 11, 2014 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:

227 TAPPAN ST – CONVERT TO TWO FAMILY AND CONSTRUCT ADDITION in an SC-10, Single-Family and Converted for Two-Family, residential district, on September 23, 2014, at 7:30 PM in Room 408 of Brookline Town Hall (Petitioner: Mahmood Firouzbakht; Owner: COHEN BARBARA L)

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

- 1. Section 4.07 ; Table of Use Regulations Use #3**
- 2. Section 6.04.5.c.1; Design of All Off-Street Parking Facilities**

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 on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

**Jesse Geller, Chairman
Jonathan Book
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller, and Board Members Christopher Hussey and Mark Zuroff. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance Mahmood Firouzbakht, on behalf of 227 Tappan Street, LLC, Kent Duckham, the Petitioner’s architect, and Katya Podsiadlo, the Petitioner’s landscape architect.

Chairman Jesse Geller called the hearing to order at 7:35 p.m. Attorney Allen stated that the Petitioner proposes to convert the 2,419s.f. single-family dwelling to a 4,631s.f. two-family dwelling in the SC-10 District.

Attorney Allen presented to the Board a background of the Petitioner and the property, stating the following: 227 Tappan Street is a single-family dwelling located in the SC-10 District. Attorney Allen stated that the Petitioner originally proposed a 5,352s.f. two-family dwelling with two driveways. Attorney Allen stated that pursuant to neighborhood concerns about parking, the Petitioner removed the parking from the front yard setback by providing five parking spaces below ground as of right. Attorney Allen stated that the Petitioner appeared before the Planning Board on June 26, 2014 for relief from **Section 4.07 – Table of Use Regulations, Use #3** of the Zoning By-Law. Attorney Allen stated that the hearing was continued to revise the underground garage and reduce the size of the rear addition pursuant to requests by the Planning Board.

Attorney Allen stated that in response to comments by the Planning Board, the Petitioner held a neighborhood meeting on July 17, 2014 to discuss the size of the addition and the parking scheme. Attorney Allen stated that the Petitioner next appeared before the Planning Board on August 21, 2014 with a 64s.f. reduction and a revised parking plan. Attorney Allen stated that the hearing was continued to allow the Petitioner to reduce the rear addition and respond to a memorandum of objection signed by concerned abutters. Attorney Allen stated that the Petitioner held a neighborhood meeting on September 3, 2014 to discuss specific objections to the parking scheme, the floor area of the rear addition, snow removal and drainage, as well as the excavation process. Attorney Allen stated that the Petitioner returned to the Planning Board on September 18, 2014 and presented a proposal for a 4,631s.f. two-family dwelling. Attorney Allen stated that the Petitioner reduced 721s.f. of usable floor area from the original proposal in response to the concerned neighbors and the Planning Board.

Attorney Allen yielded the floor to Mahmood Firouzbakht, 216 Broadway, Cambridge, MA 02139, to discuss the evolution of the proposal and the Petitioner's response to the neighborhood's objections.

Next, Attorney Allen yielded the floor to architect Kent Duckham, 53 Central Ave, Needham, MA 02494, to discuss the floor area calculation of the existing single-family dwelling and the proposed 4,631s.f. two-family dwelling. Mr. Duckham stated that the existing basement has 393s.f. that cannot be decommissioned despite the change of usable living area in the basement to garage parking.

Zoning Board of Appeals Member Christopher Hussey inquired about the width between the retaining walls and whether there would be enough room for vehicles to turn around instead of reverse onto Tappan Street. Attorney Allen stated that the Petitioner does not expect egress from the driveway to change. Katya Podsiadlo, 318 Harvard Street Suite 25, Brookline, MA 02446, responded that there needs to be 20 feet behind the vehicle and 20 feet to the side of the vehicle in order to safely turn around and therefore there is not sufficient space for such a turnaround.

Attorney Allen yielded the floor to Katya Podsiadlo to discuss the landscape plan with specific regard to the layout of the driveway. Ms. Podsiadlo stated that the front steps will be re-arranged and rebuilt, the retaining walls widened, and a plant bed added to right side of the walkway. Ms. Podsiadlo stated that the purpose for widening the retaining walls was to improve driveway safety and vehicle maneuverability. Ms. Podsiadlo stated that the existing single-lane driveway has two tall retaining walls that impair visibility for pedestrians and drivers accessing 227 Tappan Street. Furthermore, Ms. Podsiadlo stated that there is currently no snow storage, but pursuant to neighborhood concerns, the Petitioner plans to include the plant bed to allow homeowners to remove excess snow from the driveway without placing snow onto Tappan Street.

Zoning Board of Appeals Member Christopher Hussey inquired about the location of the retaining wall to the northeast side of the lot line. Ms. Podsiadlo stated that in an effort to improve visibility for drivers and pedestrians, the curb cut will not change and the retaining wall will be relocated 6 feet from the lot line. Mr. Hussey inquired about potential drainage issues as a result of widening the

retaining wall. Attorney Allen stated that the Petitioner is amenable to a condition requiring an engineering and drainage plan subject to the review and approval of the Director of Transportation and Engineering.

Zoning Board of Appeals Member Mark Zuroff inquired about the location of the Japanese maple tree in the front yard and whether it would obstruct the view onto Tappan Street. Ms. Podsiadlo stated that the Japanese maple is relatively slow growing and can be trimmed to ensure adequate visibility.

Counsel for the Petitioner then discussed zoning relief required from the Board. Attorney Allen stated that the Petitioner is requesting special permit relief from **Section 4.07 – Table of Use Regulations, Use #3** of the Zoning By-Law for conversion from a single-family to a two-family in the SC-10 District. Attorney Allen stated that the SC-10 District was created pursuant to Warrant Article 10 at the November 1994 Town Meeting. Attorney Allen stated that the proponents of Warrant Article 10 included the following explanation:

In any case, we do not intend to add restrictions to make it harder to convert from one to two family structures. We mean to restrict as little as possible rights to preserve, improve, convert, or otherwise dispose of property. We propose to keep conversion from one to two family use allowable and to increase the minimum lot size from 7,000 to 10,000 square feet so that future density will stay consistent with present density. (Warrant Article, 10-2)

Attorney Allen stated that in 1994 the Planning Board recommended the change and the Board of Selectmen unanimously recommended favorable action to amend the Zoning By-Law. Specifically, the Board of Selectmen supported Warrant Article 10 where:

Minimal change in density will result in preserving open space and maintaining approximately the same density as currently exists, since 74% of the lots within the zoning change area are already 10,000 square feet or greater; yet, at the same time, will not hamper homeowners from putting additions on their homes because the setback and Floor Area Ratio requirements will remain the same. (Warrant Article, 10-5)

Attorney Allen stated that there is no record of the vote by Town Meeting, but a two-thirds vote is required to approve such a warrant article. Attorney Allen stated that the decision by Town Meeting reaffirmed the notion that the SC district is the appropriate district for a single-family to two-family conversion by adding the SC-10 district, including the use in the table of dimensional requirements, and amending the zoning map (Warrant Article, 10-5).

Attorney Allen stated that pursuant to Warrant Article 10, the Zoning By-Law permits the two-family conversion in the SC-10 District where the lot size is a minimum of 10,000s.f. and the dwelling contains a minimum gross floor area of 2,400s.f. Attorney Allen stated that 227 Tappan Street meets the minimum lot size and gross floor area requirements with a 10,853s.f. lot and a 2,419s.f. single-family dwelling. Attorney Allen stated that the current floor area ratio (FAR) is 0.223.

Attorney Allen stated that **Section 5.01** of the Zoning By-Law permits the Petitioner to increase the floor area ratio from 0.223 to 0.50 for a two-family conversion in the SC-10 District. Attorney Allen stated that the Zoning By-Law would permit the Petitioner to build a 5,426s.f two-family dwelling at 227 Tappan Street. Attorney Allen stated that the Petitioner proposes to build a 4,631s.f. two-family dwelling.

On inquiry of the Board Members, Mike Yanovitch, Chief Building Inspector, confirmed the language of Warrant Article 10 before discussing the permit process for the “as of right” two-family property located at 227 Tappan Street for comparison purposes. Mr. Yanovitch stated that the Petitioner is eligible to convert the structure to a two-family occupancy as long as there is no external evidence of the conversion in conformance with to the Zoning By-Law and complies with the building code.

Attorney Allen stated that the Planning Board voted unanimously in opposition to the revised proposal. Attorney Allen stated that the Planning Board was concerned that a two-family dwelling was not appropriate for the character of the neighborhood. In response, Attorney Allen stated that the homes

in the SC-10 District have a historic right to convert from a single-family to a two-family dwelling and the only requirement under the Zoning By-Law is that there be no external evidence of the conversion. Attorney Allen stated that the Zoning Board of Appeals previously interpreted the requirement that there be no external evidence to mean minimal change to the streetscape.

Attorney Allen stated that the Board of Appeals previously granted relief pursuant to **Section 4.07 – Table of Use Regulations, Use #3** of the Zoning By-Law in the SC district for properties located at 88 Mason Terrace and 23 York Terrace. Attorney Allen stated that conversion relief was granted for a 3,653s.f. rear addition at 88 Mason Terrace where the floor area ratio (FAR) was in compliance and the dimensional and parking requirements satisfied. Attorney Allen stated that the Planning Board supported the proposal for 88 Mason Terrace because “a conversion to a two-family dwelling allows for a higher FAR of 0.50.” Furthermore, Attorney Allen stated that the Board of Appeals legalized a two-family conversion and granted dimensional parking relief at 23 York Terrace where the exterior of the dwelling appeared to remain a single-family dwelling from the streetscape.

Attorney Allen next discussed relief pursuant to **Section 9.05** of the Zoning By-Law to convert a single-family dwelling to a two-family dwelling. Mr. Attorney Allen noted: (1) the specific site is an appropriate location where there are 11 two-family dwellings in the immediate neighborhood and the SC-10 District permits two-family conversions; (2) there will be no adverse effect on the neighborhood where the streetscape will remain relatively unchanged and the Zoning By-Law permits the Board of Appeals to impose conditions to safeguard the neighborhood; (3) no nuisance or serious hazard to vehicles or pedestrians will occur where the Petitioner proposes a safer entranceway with snow storage and improved visibility for pedestrians; (4) adequate and appropriate facilities will be provided for snow removal and drainage; and (5) the development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Zoning Board of Appeals Chairman Jesse Geller asked whether any other structure in the immediate area takes up as much square footage on the lot. The Petitioner stated that 255 Tappan Street is similarly dense and has approximately the same massing in the rear yard. Attorney Allen stated that 255 Tappan Street has a floor area ratio of 0.42. Attorney Allen stated that the houses immediately across the street (234, 238, 244, 254 Tappan Street) are much denser.

Zoning Board of Appeals Chairman Jesse Geller asked if there was anyone present who wished to speak in favor of this application.

Allan Sutfin, 200 Tappan Street, stated that the neighborhood is fearful of change and the Petitioner has diligently responded to each abutter's concerns. Mr. Sutfin stated that he supports the conversion where the Petitioner significantly reduced the size of the addition and the only visual impact to the streetscape relates to improving the driveway.

Zoning Board of Appeals Chairman Jesse Geller asked if there was anyone present who wished to speak in opposition to this application.

Alex Coleman, 244 Tappan Street, discussed relief under **Section 4.07** of the Zoning By-Law relative to principal uses 2, 3, and 4. Chairman Geller inquired as to whether he felt the "as of right" option was a better alternative than the Petitioner's proposal. Mr. Coleman did not comment on which option was the better alternative, but commented that the massing in the rear yard was not in keeping with the style of the neighborhood.

Ricki Hollander, 215 Tappan Street, stated that the proposal urbanizes the district and is an inappropriate expansion of a single-family lot.

Gabriel Bresler, 239 Tappan Street, discussed the adverse effects of parking and vehicular access onto Tappan Street. Mr. Bresler discussed the historic significance of the row houses and the consumption of contiguous green space by the rear addition.

Josh Kopp, 233 Tappan Street, expressed concern with the landscaped open space in the rear yard, the impact on drainage due to widening the retaining walls, and the issue of parking below grade. Mr. Kopp noted that the lot is not a suitable location for the addition due to its topology.

Sungwoo Kim, 223 Tappan Street, opposed the excavation due to the effect it would have on his property's foundation as an immediate abutter.

Lee Cooke Childs, 136 Rawson Road, opposed the proposal and agreed with Mr. Kopp's comments regarding drainage and Mr. Kim's concerns with excavation.

Mabel Kopp, 233 Tappan Street, stated concern about snow removal and compounding an unresolved problem of snow accumulation on Tappan Street due to the lack of snow storage.

Charles Perry, 205 Tappan Street, discussed the risk to the neighborhood due to future development of the SC-10 District in light of a favorable decision by the Board of Appeals.

Tom DeLong, 224 Tappan Street, stated concern with the long term values of the properties located in the SC-10 District.

Judy Lauerman, 266 Tappan Street, and Hal Adams, 224 Tappan Street, stated their opposition..

Timothy Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

1. **Section 4.07 – Table of Use Regulations, Use #3**
In the Table of Use Regulations, Use #3, in the SC-10 District a detached single-family dwelling is allowed to be converted to a two-family by Special Permit, and can have an FAR of .50 with conversion. The house is required to have no external evidence that the dwelling is a two-family use. The applicant revised their plans so there is not external evidence that the dwelling will be a two-family. The current dwelling has an FAR of .186 and the proposed addition will create an FAR of .425.
2. **Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities**
The applicant has revised their original proposal so there will be no parking in the front yard; therefore this section is not applicable.

Mr. Richard stated that the certified plot plan by Boston Survey, Inc. revealed that the existing dwelling has an FAR of 0.223 not an FAR of 0.186 as was indicated by the Planning Board report. Mr. Richard stated that the Planning Board is not supportive of the proposal to convert the dwelling to a two-family and construct a large rear addition, which takes up most of the usable backyard. Mr. Richard stated that the Board concurs with the neighborhood that the scale of the addition is too large and negatively impacts the character of the neighborhood.

Zoning Board of Appeals Chairman Geller next called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch applauded the Petitioner for going through the Board of Appeals process where there is an “as of right” alternative. Mr. Yanovitch defined the “as of right” alternative as a proposal that is compliant with the dimensional, height, and floor area restrictions under the Zoning By-Law. Mr. Yanovitch outlined the building permit process for the as of right alternative. Chairman Geller asked whether the Petitioner could have received a building permit through the process outlined without any conditions by the Planning Board or the Board of Appeals. Mr. Yanovitch stated that the “as of right” alternative would preclude either board from imposing conditions because the Petitioner would not need special permit relief.

Zoning Board of Appeals Member Mark Zuroff asked whether the concerns related to excavation were a threat to immediate property owners. Board of Appeals Member Christopher Hussey stated that he has worked on several properties in this District requiring excavation and there have been no problems. Attorney Allen stated that the Petitioner is willing to work with the Building Department on a construction management plan.

Mr. Yanovitch stated that the Building Department had no objections to the relief sought under this application. Finally, Mr. Yanovitch stated that if the Board of Appeals finds that the Petitioner

meets the requirements of a special permit under **Section 9.05** of the Zoning By-Law, the Building Department will ensure compliance with the plans dated September 11, 2014 by Duckham Architecture & Interiors and any conditions imposed by the Board of Appeals.

In deliberation, Zoning Board of Appeals Member Mark Zuroff stated that he was in support of the relief requested. Mr. Zuroff stated that it is not proper to inquire into the motives of the Town Meeting members who approved the SC-10 District in 1994. Mr. Zuroff stated that Warrant Article 10 was designed to permit single-family dwellings to be converted into two-family dwellings pursuant to **Section 4.07 – Table of Use Regulations, Use #3** if the requirements for a special permit under **Section 9.05** of the Zoning By-Law are met. Mr. Zuroff concluded that the specific site is an appropriate location where the conversion will not adversely affect the visual impact on the neighborhood; the use will not adversely affect the neighborhood where there will be sufficient screening between the neighbors and a safer driveway; no nuisance or serious hazard to vehicles or pedestrians where the parking will not significantly worsen preexisting traffic or safety issues; the building will be in compliance with the building code and enhanced by appropriate amenities and landscaping; and the development will have no effect on the supply of housing for low and moderate income people.

Zoning Board of Appeals Member Christopher Hussey stated support for the relief and concurred with Mr. Zuroff. Mr. Hussey stated that while there is a tension between up-zoning and down-zoning, Warrant Article 10 clarifies that the SC-10 District permits single-family to two-family dwellings. Mr. Hussey stated that the Board should consider conditions requiring a drainage and construction management plan in addition to exploring alternatives for vehicles to exit onto Tappan Street.

Zoning Board of Appeals Chairman Jesse Geller noted his appreciation of the concerns expressed by the neighbors and stated that the SC-10 District is experiencing a pattern of urbanization that was

apparently contemplated by the Town Meeting Members in approving Article 10 and Section 4.07 – Table of Use Regulations, Use #3 of the Zoning By-Law

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Section 4.07 – Table of Use Regulations, Use #3 of the Zoning By-Law pursuant to Section 9.05 of the Zoning By-Law had been met. The Board made the following specific findings pursuant to 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.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions read into the record by Tim Richard:

1. **Prior to issuance of a building permit, final elevations, indicating all proposed materials for the addition, shall be submitted to the Preservation Commission for review and approval, in consultation with the Assistant Director of Regulatory Planning.**
2. **Prior to the issuance of a building permit, the applicant shall submit a final site plan and a final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to the issuance of a building permit, the applicant shall submit an Engineering and Drainage Plan, subject to the review and approval of the Director of Transportation and Engineering.**
4. **Prior to the issuance of a building permit, the applicant shall submit a Construction Management Plan, subject to the review and approval of the Building Commissioner.**
5. **The applicant shall work with the Building Commissioner to investigate alternatives for vehicle turnaround to allow for front exiting capabilities on the site.**
6. **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.

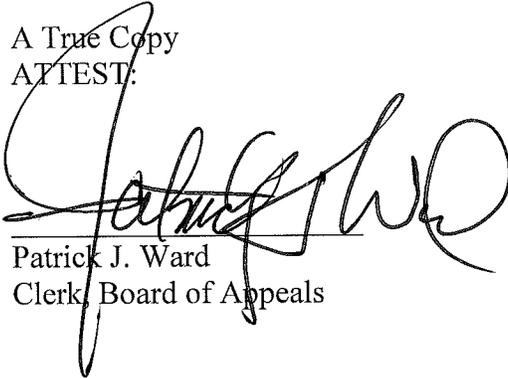
Unanimous Decision of
The Board of Appeals

Filing Date: 10/30/14



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2014 OCT 30 P 1:08