



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. 2014-0056
BABCOCK 240, LLC

Petitioners, Kenneth and Helen Hoang, applied to the Building Commissioner for permission to convert structure from a single-family dwelling and daycare to a three-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 November 6, 2014 at 7:30 pm, 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 October 16, 2014 and October 23, 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:

240 BABCOCK ST – CONVERT STRCUTURE FROM MIXED USE TO 3 FAMILY in a G-2.0 (CA), General Business district, on

November 6, 2014, at 7:30 PM in 6th Floor Selectmen's Hearing Room Brookline Town Hall (Petitioner: ROBERT ALLEN; Owner: BABCOCK 240 LLC C/O CONDON BREEN O) – Precinct 8

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

- 1. Section 6.01.2.a: General Regulations Applying to Off Street Parking Facilities**
- 2. Section 6.02, Paragraph 1: Table of Off-Street Parking Requirements**
- 3. Section 8.02.2: Alteration or Extension**

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 Mark Zuroff and Avi Liss. 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 were the Petitioners, Kenneth and Helen Hoang and architect Lisa Hoang, 72 Manchester Road, Newton, MA 02461.

Chairman Jesse Geller called the hearing to order at 7:30pm. Attorney Allen stated that the Petitioners propose to convert the structure from a single-family dwelling with a daycare to a three-family dwelling.

Attorney Allen presented to the Board a background of the Petitioners and the property, stating the following: 240 Babcock Street was built in 1899 as a three-family dwelling near the intersection of Commonwealth Avenue and is now in the G-2.0 District. Mr. Allen stated that the property was converted into a lodging house and nursery in 1943 and that the Brookline Board of Health granted a license to operate a kindergarten school on the first and second floor in 1945. He stated that the owner-occupied building will be renovated and the first and second floor units rented.

Mr. Allen noted that the Planning Board voted unanimously in support of the proposal and commented that the proposed three-family use was less parking intensive than the existing day care.

Attorney Allen stated that **Section 6.02, Paragraph 1** of the Zoning By-Law requires a three-family dwelling to provide 2.3 parking spaces per dwelling unit and therefore a three-family dwelling requires 7 parking spaces. Mr. Allen identified 2 on-site parking spaces located on the Petitioners' property in the alleyway to the immediate right of the front entrance of the structure. Mr. Allen stated that the Petitioners request special permit relief for 5 parking spaces.

Mr. Allen stated that **Section 6.01.2.a** of the Zoning By-Law permits the Board of Appeals to waive up to one-half of the required parking spaces by special permit. Attorney Allen stated that the Board of Appeals may waive up to 3.5 parking spaces, which necessitates relief for 1.5 parking spaces.

Board of Appeals Member Zuroff inquired about the theoretical parking credit for the existing day care use utilized by the Building Department.

Mr. Allen stated that the Building Department calculates the existing parking pursuant to **Section 4.07** and **Section 6.02, Paragraph 1** of the Zoning By-Law and that under the Zoning By-Law a day care requires 1 parking space per 550s.f. of floor area which in this case is 6.6 parking spaces. Therefore, the total required parking for the existing uses at the property is 8.9 parking spaces.

Mr. Yanovitch stated that the conversion to a three-family dwelling does not negate the existence of the 8.9 theoretical parking spaces; instead, the theoretical parking spaces are considered a credit that may be applied to a future use. Attorney Allen stated that the Building Department applied the theoretical parking credit to the remaining 1.5 parking spaces.

Board of Appeals Member Mark Zuroff asked whether the daycare pre-existed the Zoning By-Law. Attorney Allen confirmed that to be the case.

Attorney Allen discussed relief under **Section 8.02.2** of the Zoning By-Law where a special permit is required under **Section 9.05** of the Zoning By-Law to alter and/or extend this non-conforming structure. As for **Section 9.05**, in looking at this conversion, Mr. Allen argued: (1) the specific site is an appropriate location because the neighborhood consists of multi-family uses including three-family dwellings at 179, 189, and 191 Babcock Street; (2) there will be no adverse effect on the neighborhood because the additional floor area exists within the building's footprint and the proposed use will significantly reduce the occupancy of the first and second floors; (3) no nuisance or serious hazard to vehicles or pedestrians will occur because the change of use will minimize the congestion due to pick up and drop off times; (4) adequate and appropriate facilities will be provided for the proper operation where the property will be outfitted with three new kitchens, a new bathroom, and upgraded wiring; and (5) development will increase the supply of housing and create housing in this neighborhood.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of this application. No one spoke in favor.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in opposition to this application. No one spoke in opposition.

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

FINDINGS:

1. Section 6.01.2.a – General Regulations Applying to off Street Parking Facilities
2. Section 6.02 – Paragraph 1: Table of Off-Street Parking Requirements

	Required	Existing	Proposed	Relief
Parking Required*	7	2	2	Special Permit*

* Under Section 6.01.2.a, the Board of Appeals may waive up to one half of the required parking by special permit.

3. Section 8.02.2 – Alteration or Extension
 A special permit is required to alter a non-conforming structure.

Mr. Richard stated that the Planning Board is supportive of the conversion from a single-family and day care use to a three-family dwelling. Mr. Richard stated that the surrounding uses are primarily multi-family and the property is adjacent to the rapid transit line. Mr. Richard stated that the Board is supportive of granting parking relief triggered by the conversion. Mr. Richard stated that two parking spaces are located on the north side of the building, but there is not enough room for other parking on the site. Mr. Richard stated that the Planning Board feels that the day care use is more parking intensive than the proposed use. Mr. Richard stated that the Board feels that the change in use will create needed housing in this neighborhood. Mr. Richard stated that the proximity of the MBTA Green Line will diminish the need for additional parking. Therefore, the Planning Board recommends approval of the plans by The Architects Forum, Inc., dated 7/11/14 subject to the following conditions:

1. Prior to issuance of a building permit, final floor plans shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final site plan, indicating the proposed parking spaces with dimensions, 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 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.

The Chairman then called upon Tim Richard to deliver the comments of the Building Department. Mr. Richard stated that the Building Department had no objections to the relief sought under this application. Mr. Richard stated that if the Board grants special permit relief, the Building Department will work with the Petitioners to ensure the proposal is built in accordance with the Building Code.

In deliberation, Zoning Board of Appeals Member Avi Liss stated support of the relief requested. Mr. Liss stated concern with fire prevention due to the property's location next to a restaurant, but felt the three-family use would be a less intensive use than a day care. Mr. Liss recognized the policy and past practice of the Building Department's enforcement of theoretical parking credits. Zoning Board of Appeals Member Mark Zuroff stated that the plans should include fire protection measures. Mr. Zuroff stated support for the parking relief where the property is within close proximity to the MBTA. Chairman Jesse Geller echoed support for the relief requested and, while noting that application by the Building Department of a theoretical parking credit is consistent with prior cases, he commented that the Building Department's policy concerning the theoretical parking credit should be codified in 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 Sections **6.02, Paragraph 1** and **Section 8.02** of the Zoning By-Law pursuant to **Sections 6.01.2.a** and **9.05** of the Zoning By-Law. 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 special permit relief subject to the following conditions:

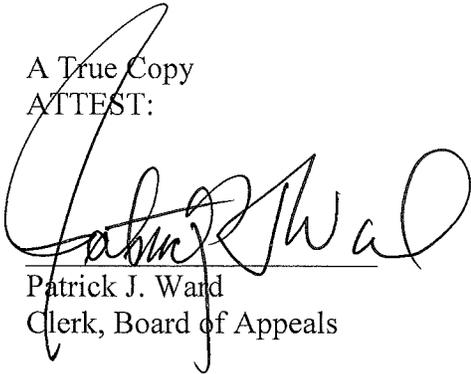
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Unanimous Decision of
The Board of Appeals

Filing Date: 12/30/14


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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2014 DEC 30 A 10:21