



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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. 2015-0010
OWNER: LEJ, LLC c/o LAURENCE
WINTERSTEEN
794-796 HEATH STREET, BROOKLINE, MA

Petitioner, LEJ, LLC c/o Laurence Wintersteen, applied to the Building Commissioner for permission to demolish an existing two-family structure and construct two attached single-family dwellings at 794-796 Heath Street. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed September 17, 2015 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 3, 2015 and September 10, 2015 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:

794-796 HEATH ST – DEMOLISH EXISTING TWO-FAMILY STRUCTURE AND CONSTRUCT NEW TWO-FAMILY STRUCTURE in a T-5 Two-Family and Attached Single Family, residential district, on September 17, 2015, at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: LEJ, LLC c/o Laurence Wintersteen) *Precinct 7*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and additional zoning relief as needed:

- 1. Section 4.07: Table of Use Regulations Use #5**
- 2. Section 5.10: Minimum Lot Size**
- 3. Section 5.30: Maximum Height of Building**
- 4. Section 5.60 Side Yard Requirements**
- 5. Section 5.70: Rear Yard Requirements**
- 6. Section 5.91: Minimum Useable Open Space**
- 7. Section 6.04.5.c.2: Design of All Off-Street Parking Facilities**
- 8. 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, Chair
Christopher Hussey
Jonathan Book*

Publish: September 3, 2015 & September 10, 2015

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Zoning Board Chair Johanna Schneider and Board Members Christopher Hussey and Jonathan Book. The Petitioner's attorney, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Brookline, MA, waived a reading of the public hearing notice for the record and presented project details to the Board.

Attorney Allen introduced project architect David O'Sullivan, and property owners Laurence Wintersteen, Eric Drysdale, and Jason Gell. Mr. Allen stated that 794-796 Heath Street consists of an existing two-family structure that was deemed to be historically non-significant by the Brookline Preservation Commission. He stated that the Petitioner is proposing to demolish the current structure and build a three-story structure containing two attached single-family dwellings. Attorney Allen explained that the proposal before the Zoning Board of Appeals was revised several times as a result of input by the Planning Board and residents in the neighborhood. He noted that these revisions include reducing the height and massing of the dwelling, as well as increased useable open space located at the rear of the property. In turn, these changes reduced the amount of zoning relief required.

Attorney Allen noted that 11 neighborhood residents submitted written support for this proposal. He stated that the Planning Board recommended denial of project plans due to the design, parking configuration, and overall massing. In Attorney Allen's opinion, these critiques are beyond the scope of the requested zoning relief, specifically comments pertaining to design and massing. Attorney Allen confirmed that this proposal requires special permit relief for the non-compliant side-yard setback along the western property line (2.5 feet) and for the attached two-family use within a T-5 zoning district. He noted that design review was not cited in the denial letter.

Attorney Allen stated that the abutting resident at 790 Heath Street deeded approximately 150 square feet of land to the subject property, allowing the proposed structure to be located further away from the side property line in question. Mr. Allen stated that this action improved vehicular parking and maneuverability within the driveway in an effort to further address Planning Board concerns. Attorney Allen concluded his comments by reviewing overall property improvements including increased usable open space, compliance with off-street parking requirements, a 2.5 foot buffer between the proposed driveway and a parallel driveway at 798-800 Heath Street, and the general improvement of a deteriorating property.

Project Architect David O'Sullivan (508 Main Street, Reading, MA) further described project details. Mr. O'Sullivan explained that the proposed access driveway will be located approximately 2.5 feet from the side property line. The Zoning By-Law requires a side-yard setback of 5 feet for all parking surfaces. Mr. O'Sullivan stated that the non-compliant setback is existing and a direct result of the narrow condition of the subject lot. He stated that unlike the existing site, the proposal will provide adequate "swing space" for vehicles to enter and exit the garage and surface parking space. He continued that the attached single-family units will be separated by vertical walls and provide garage parking for four vehicles in 2 garage bays that are perpendicular to Heath Street. An additional required surface parking space will be located directly to the rear of these garage bays. Mr. O'Sullivan concluded by restating that required amount of usable open space will be provided in the rear yard along the eastern property line, that the structure was reduced in height and measures below 35 feet from the average grade at the front of the lot along Heath Street.

Zoning Board Chair Schneider referenced the Planning Board concern about the provided turning radius for vehicles and requested that Mr. Sullivan describe the turning radii diagram. Ms. Schneider also questioned if any options to further widen the driveway are possible.

Mr. O'Sullivan stated that the lot presents a turning radius challenge, but the driveway and parking dimensions provide adequate space for vehicle maneuverability for all 5 proposed parking spaces. Mr. O'Sullivan acknowledged that multiple point turns may be required if larger vehicles utilize this parking; however, he stated that the 18-foot wide garage bays also provide additional maneuverability within the garage space itself. Despite the narrow proposed turning area, Mr. O'Sullivan believed that the proposed driveway configuration represents an improvement from the existing parking conditions.

In response to Chairwoman Schneider, Attorney Allen stated that required minimum parking stall dimensions detailed in Zoning By-Law Section 6.04 are not applicable for parking areas that contain six or fewer off-street parking spaces. He stated that the Petitioner explored the option to create an easement for a shared driveway with 798-800 Heath Street property, but the agreement did not materialize.

Board Member Hussey questioned if shrub removal along the side lot line in question may improve vehicle back out and turning. Mr. Hussey also requested that Mr. O'Sullivan further review garage dimensions.

Mr. O'Sullivan confirmed that two bays are proposed for the four garage parking spaces. These bays are both 18 feet wide and expand to approximately 21 feet wide at the interior. Mr. O'Sullivan agreed that shrubs along the side lot line are limited so it is possible for vehicles to hang over the green space buffer while maneuvering out of the driveway.

Board Member Book questioned if all vehicles are intended to maneuver on the property itself in order to exit onto Heath Street in a front facing manner. Mr. O'Sullivan confirmed that the parking and driveway design is intended to eliminate the need for vehicles to back out onto Heath Street in order to exit the property.

Counsel for the Petitioner next discussed zoning relief required from the Board. Mr. Allen stated that Sections 5.10, 5.30, 5.60, 5.70, 6.04.5.c.3 and 5.91 of the Zoning By-Law do not require relief where the lot size complies with the 5,000 s.f. requirement, the height is under the 35 ft. limit, the proposed side yard setback meets the 10 ft. requirement, the rear yard setback is in excess of the 30 ft. requirement, the driveway is a minimum of 8.5 ft. between the side and rear lot lines, and the usable open space calculation is approximately 1,595 s.f., which is above the 1,456 s.f. requirement. Mr. Allen stated that the Petitioner seeks special permit relief from Section 4.07, Use #5 for the vertical party walls between units, Section 6.04.5.c.2 where the required side yard setbacks for off-street parking is 5 ft., existing is 0 ft., and proposed 2.5 ft, and Section 8.02.2 for alteration of the existing non-conforming side yard setback.

Finally, Attorney Allen discussed relief under Section 5.43 of the Zoning By-Laws where a special permit is required under Section 9.05 of the Zoning By-Law: (1) the specific site is an appropriate location where the existing structure is a two-family dwelling and the district is designed for two-family occupancy; (2) there will be no adverse effect on the neighborhood where the immediate neighbors at 790 and 798 Heath Street and 11 Lyon Road are in full support, along with at least 11 immediate abutters signed individual letters and/or a petition in support; (3) no nuisance or serious hazard to vehicles or pedestrians will be created where the parking plan allows vehicles to exit the driveway facing the street, brings the parking into compliance with the by-law, and removes most of the vehicles from the view of the streetscape; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Attorney Allen further stated that the Petitioner has continually communicated plans for the property with abutting residents. In Attorney Allen's opinion, the project has been improved from a zoning relief standpoint, and also in terms of parking, provided open space, and vehicular safety. In addition, Mr. Allen discussed the side yard setback relief pursuant to Section 5.43 of the Zoning By-Law. Mr. Allen stated that the Petitioner proposes landscaping features subject to the review of the Assistant Director of Regulatory Planning.

Board Member Book requested further comment regarding the unfavorable recommendation from the Planning Board.

Attorney Allen reiterated Planning Board concern regarding the perceived density and massing of the proposed structure as compared to surrounding existing structures in the neighborhood, the feasibility of the parking "swing space", and the size of the building footprint on the narrow lot.

Zoning Board Chair Schneider called for public comment in favor of the Petitioner's proposal.

Adam Morris, of 798 Heath Street, stated that he is a long time resident of the neighborhood and the 794-796 Heath Street property owners have been responsive to all concerns raised by his family. The subject property is in poor condition currently and the proposal before the Board provides structural, open space, and driveway buffer improvements. Mr. Morris believed that he is the most impacted abutter if this project is approved and he fully supports the proposal.

Irv Frankel, of 790 Heath Street, stated that he is the direct abutter to the east of the subject property and deeded the additional land to the Petitioner, as referenced by Attorney

Allen. Mr. Frankel agreed that the current structure at 794-796 Heath Street is in poor condition. Mr. Frankel also believed that more permanent residents of the property will improve the neighborhood.

Tom Glazer, of 802-806 Heath Street, agreed that the proposed development is positive for the neighborhood. Property improvements have been completed throughout the immediate neighborhood and this project will continue to improve the area. Robert Lucas, of 9 Craftsland Road, stated that he is a 30 year resident of the neighborhood and agreed that this proposal is an adequate improvement for this deteriorating property. Tom Savage, of 789 Heath Street, agreed with prior comments and stated support for the proposed structure.

Kayla Morris, of 798 Heath Street, spoke in favor of the proposed project. Ms. Morris stated that she is a direct abutter to the subject property and she is happy with the owner's progress. Ms. Morris felt that the project will immediately improve the 794-796 Heath Street living space and the wider neighborhood.

Board Chair Schneider called for public comment in opposition to the Petitioner's proposal.

Janice Kahn, of 63 Craftsland Road and Precinct 15 Town Meeting Member, noted that traffic is a significant concern along Heath Street and construction work at this site will adversely impact the current traffic. Ms. Kahn felt that, although zoning requirements for massing are met, the structure is too large for the actual site itself. Ms. Kahn agreed that parking, snow removal, and the narrow nature of the lot are problematic. Ms. Kahn urged the Board to deny the proposal because the structure is not appropriate in terms of scale and the Planning Board was unanimously unsupportive of the proposal.

Marian Lazar, of 32 Craftsland Road, stated that the proposed structure is nearly four stories when viewed from the side and rear. This height will exceed 35 feet. This will be one of the largest structures in the immediate neighborhood and may force abutters to consider re-zoning the area. Ms. Lazar specifically referenced inappropriate development scale in Brookline's Buttonwood Village.

Mary Murphy, of Craftsland Road, stated that she respects developer efforts to improve the project but still believed that the proposed massing of the structure is not consistent with the surrounding neighborhood. Ms. Murphy specifically referenced shading issues, the feasibility of parking on the site, and adverse impact on ongoing traffic calming measures along Heath Street.

Rosilda Santos, of 800 Heath Street, agreed that property improvements to 794-796 Heath Street are needed but the proposal before the Board is too large for such a small lot. Ms. Santos stated that she has been a resident of 800 Heath Street for seven years, and it is difficult for her to access two deeded parking spaces on her own property due to the narrow nature of these abutting lots. In Ms. Santos' opinion, the developer should build in a manner that fits the existing lot rather than maximizing what is permitted within the Zoning By-Law. Ms. Santos reiterated the fact that parking access will continue to be a problem.

Zoning Board Chair Schneider questioned if Attorney Allen wished to comment in response to this resident feedback.

Attorney Allen noted abutter support, particularly amongst immediate abutters to the proposed project. Attorney Allen recognized resident concern but reiterated the fact that the proposal before the Board is largely compliant with zoning requirements. In Attorney Allen's opinion, the public and Board review process was effective because the project before the Board certainly represents an improvement from prior submitted development plans for the subject

property. Attorney Allen restated that the proposal before the Board meets the standards for special permit relief and a driveway easement between the 794-796 and 798-800 Heath Street properties is “probably in everyone’s best interests” moving forward.

Zoning Board Chair Schneider requested that Jay Rosa deliver the findings of the Planning Board and Building Department.

FINDINGS

Section 4.07 – Table of Use Regulations Use #5

A special permit is required to create an “Attached dwelling occupied by not more than one family in each unit between side walls, provided that in T districts no row of such units shall consist of more than two such units.”

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 6.04.5.c.2– Design of All Off-Street Parking Facilities

Section 9.05.2.c – Conditions for Approval of Special Permit

“In approving a special permit, the Board of Appeals may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as but not limited to the following:
2.c. Modification of the exterior features or appearances of the structure”

Dimensional Requirements	Required	Existing	Proposed	Finding
Lot size	5,000 sf	5,000 sf	5,000 sf	Compliant
Height	35 feet	+/-18 feet	35 feet	Compliant See Note 1
Usable Open Space	1,437 sf	0 sf	1452 sf (1440 sf measured by Planning—ok)	Compliant See Note 2
Off-Street Parking, setback side yard in front yard	5 feet	0 feet	2.5 feet	Special Permit* Pursuant to Sec. 5.43
Off-Street Parking, rear yard setback	5 feet	0 feet	8.5 feet	Compliant
Side Yard Setback (left) Table 5.01, Footnote 2	10 feet	8.5	10 feet [7.5 feet to French doors]	Compliant Building Comm. will consider bump out under balconies a permitted projection into side yard under Sec. 5.61

Rear Yard Setback	30 feet	21.75 feet	30.67 feet (28 feet to bay; bay projection does not exceed 3.5 feet)	Compliant (Building Comm. will treat projection as a bay, per Sec. 5.71)
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Under Zoning By-Law **Section 5.43, the Zoning Board of Appeals by special permit may permit, in lieu of the requirements for yards or setbacks specified in this By-law, the substitution of such other dimensional requirements if counterbalancing amenities are provided. The applicant is introducing approximately 1200 square feet of open space where previously there had been driveway paving.*

Note 1: "Height shall be measured from the record grade of the street opposite the midpoint of the street frontage of the lot [Sec 5.30(1)(a)]."

Note 2: Plans clarified to show that area of sunrooms on ground level counts toward the usable open space calculation, pursuant to Sec 5.91(2)(b).

Section 8.02.2 – Alteration or Extension

A special permit is required to alter this pre-existing non-conforming structure.

Mr. Rosa stated that The Planning Board unanimously recommended denial of these proposed attached single-family homes. The Planning Board Member’s concern specifically focused on vehicular circulation and turning radii as well as the overall massing of the proposed structure. Mr. Rosa confirmed that Planning Board Members did not feel that the 90 degree turn into garage spaces was feasible without crossing over onto the adjacent property at 798-800 Heath Street. He stated that in general, the Planning Board also felt that the massing of the proposed structure is out of scale with the surrounding neighborhood that primarily consists of ranch-style and two-and a half story structures.

Therefore, the Planning Board recommended denial of the plans, by David O’Sullivan and dated as follows: Open Space Diagram with setbacks revised 9/9/2015, floor plans dated August 19, 2015, and elevations dated August 20, 2015. If the Board of Appeals does find that the standards for special permit relief are met, the Planning Board recommended the following conditions:

1. Prior to the issuance of a Building Permit, the applicant shall submit to the Assistant Director for Regulatory Planning for review and approval (a) site plan with dimension labels, stamped and signed by a registered land surveyor, including setbacks, open space, parking area layout, fencing; and (b) floor plans and elevations. The applicant shall also include; (c) an illustration of the auto-turn radius on the driveway.
2. Prior to the issuance of a Building Permit, a landscaping plan shall be submitted 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 elevations stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa further commented on behalf of the Building Department. The Building Department does not object to the side-yard setback and use relief as requested. The applicant has worked with the Building Department, and the Planning Board to a lesser extent, to reduce the amount of zoning relief required for this project. It is the opinion of the Building Department that counterbalancing amenity, in the form of increased open space and landscaped screening, is proposed in accordance with the provisions of By-Law **Section 5.43**. Mr. Rosa also confirmed that design review is not triggered in this instance because the proposed project complies with floor area ratio requirements for the T-5 zoning district.

Mr. Rosa addressed the vehicular maneuverability issue by stating that parking feasibility and safety are always important evaluation factors, but Zoning By-Law **Section 6.04.11** releases parking lots and parking areas of 6 vehicles or less from many off-street parking design requirements including minimum width dimensions for parking stalls and aisles. For these reasons, Mr. Rosa believed that approval of this project is primarily contingent upon a By-Law **Section 9.05** evaluation in which the Building Department defers to the findings of the Board of Appeals. Mr. Rosa commented the if the Board does find that the standards for special permit

relief are met, the Building Department will work with the applicant to ensure compliance with all imposed conditions and building codes.

The Board deliberated on the merits of special permit relief as requested. Board Member Book agreed that requested side-yard setback relief is modest. Mr. Book appreciated the design specific comments of the Planning Board, but believed that several aspect of their objection are beyond the scope of the relief requested before this Board. Mr. Book noted that the subject property is located within a two-family and attached single-family zoning district and the proposal before this Board aligns with those use based requirements. Mr. Book was also satisfied with the Building Department's interpretation and methodology to determine project compliance with the stated 35 foot maximum height requirement. Mr. Book concluded his comments by noting favorable support for the project by a "majority" of impacted abutters. For these reasons, Mr. Book concluded that the proposed project is worthy of requested relief.

Board Member Book recommended that proposed conditions be modified to prohibit vehicles from backing out of the property on to Heath Street. Mr. Book conceded that a condition of this nature is challenging to enforce but should be included for the record and communicated through condominium documents. Mr. Book also suggested that the fifth parking space located to the rear of the structure should be constructed of permeable material.

Board Member Hussey restated that the submitted plans conform to massing, height, and floor area requirements. Mr. Hussey believed that the Board does not have the authority to deny a project based on structural dimensions that comply with the established requirements of the zoning district. Mr. Hussey agreed that traffic is a concern in this immediate neighborhood, similar to almost all neighborhoods in Brookline. Mr. Hussey agreed that the provided turning radius for vehicles is tight but the extended garage width does make the turning radius feasible.

Mr. Hussey noted that difficulty with site turning radius, particularly for large vehicles, is a difficulty assumed by the property owners. Mr. Hussey also agreed that snow removal is improved based on these proposed alterations. For these reasons, Mr. Hussey believed that the proposal before the Board is worthy of requested relief.

Zoning Board Chair Schneider thanked residents for commenting on the project. Ms. Schneider noted that support and critique is important during the Board evaluation process. Ms. Schneider described the proposal before the Board as an as-of-right development requiring minimal setback relief. Ms. Schneider stated that the proposed structural dimensions, and the attached single-family use itself are permitted under current zoning regulations for the T-5 zoning district. Additionally, Ms. Schneider stated that the as-built project will not increase the number of residents or vehicles in the neighborhood from the existing activity on the property. Ms. Schneider acknowledged the narrow nature of the lot and therefore supported Member Book's suggested modifications to proposed conditions. Ms. Schneider concurred with other Board Members' conclusions that the application qualifies for zoning relief as requested.

Attorney Allen requested that special permit conditions be further modified to strike requirements to submit floor plans and an auto turn radius diagram. Board members unanimously supported these requested modifications but noted that final construction plans must be submitted to the Building Commissioner prior to the issuance of a Building Permit.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 5.43** and **9.05** of the Zoning By-Law, granting relief from the provisions of **Section 4.07 – Table of Use Regulations Use #5** and **6.04.5.c.2** of the Zoning By-Law. The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- The specific site is an appropriate location for such a use, structure, or condition. The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board voted unanimously to grant special permit relief, subject to the following revised conditions:

- 1. Prior to the issuance of a Building Permit, the applicant shall submit a final site plan indicating building dimensions, setbacks, open space, parking area layout, and fencing, 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 a final landscaping plan indicating all counterbalancing amenities and permeable materials for the surface parking space, subject to the review and approval of the Assistant Director for Regulatory Planning.**
- 3. No vehicles shall back out of the property onto Heath Street. Language confirming this restriction shall be included in all condominium documents.**
- 4. 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; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

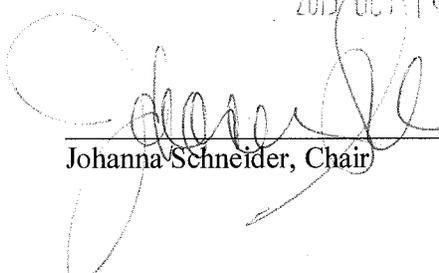
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Unanimous decision of the
Board of Appeals

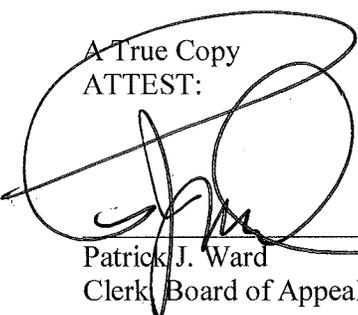
Filing Date:

10/19/15



Johanna Schneider, Chair

A True Copy
ATTEST:



Patrick J. Ward
Clerk Board of Appeals