



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0065
78 POWELL STREET NOMINEE TRUST
78 POWELL STREET, BROOKLINE, MA

Petitioner, Daniel Britton, applied to the Building Commissioner for permission to convert the existing carriage house into a single-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 January 14, 2016 at 7:05 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 December 31, 2015 and January 7, 2016 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:

78 POWELL STREET – CONVERT DETACHED CARRIAGE HOUSE TO A SINGLE-FAMILY DWELLING UNIT, in an SC-7, Single-Family and Converted for Two-Family,

residential district, on January 14, 2016, at 7:10 PM in 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Daniel Britton) *Precinct 1*

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

1. **Section 4.07: Table of Use Regulations, Use #1**
2. **Section 5.04: Residential Buildings on Rear of a Lot**
3. **Section 5.20: Floor Area Ratio Regulations**
4. **Section 5.43: Exceptions to Yard and Setback Regulations**
5. **Section 5.60: Side Yard Requirements**
6. **Section 5.70: Rear Yard Requirements**
7. **Section 5.91: Minimum Usable Open Space**
8. **Section 5.09.2.k: Design Review**
9. **Section 8.02.2: Alteration or Extension**
10. **Any Additional Relief the Board May Find Necessary**

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

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Christopher Hussey and Kate Poverman. 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 was the owner, Daniel Britton and the architect of record, Kent Duckham, Duckham Architecture & Interiors, 53 Central Avenue, Needham, MA 02494.

Chairman Zuroff called the hearing to order at 7:35 p.m. Attorney Allen stated that the Petitioner began working with the Town of Brookline in July 2015 because the structure is located within the Cottage Farm Local Historic District. He stated that the main house is a single-family dwelling that was

constructed in 1895 and the detached carriage house was constructed in 1896. Mr. Allen noted that the Petitioner proposes to convert the detached carriage house into a single-family dwelling unit. Attorney Allen stated that all requested zoning relief associated with the conversion concerns the carriage house, not the primary structure.

Mr. Allen introduced the property owner Daniel Britton. Mr. Britton explained the personal nature for the request along with the financial considerations of restoring the historic structure. Mr. Britton stated that a structural engineer evaluated the condition of the carriage house and concluded that significant repair was required to complete the desired conversion. He stated that the repairs include, but are not limited to, the damaged foundation and various wood portions of the structure are anticipated to cost over \$400,000 while the interior fit-out is anticipated to cost over \$50,000. Mr. Britton concluded his comments by stating that he does not wish to rent this unit in the future, but it may be necessary in order to make the conversion financially feasible. Mr. Britton reiterated that his primary motivation to convert the structure at this time is to assist a former neighbor.

Attorney Allen stated that the proposed renovation of the carriage house includes minimal exterior modifications, all of which were supported by the Preservation Commission. Additionally, the Planning Board unanimously supported the design of the renovated carriage house and recommended a condition requiring final approval by the Preservation Commission if the project is indeed supported by the Board of Appeals.

Attorney Allen stated that the carriage house is unique due to the existence of an underground connection between the two structures (shared basement hallway). Attorney Allen also stated that the carriage house appears to be connected to the primary structure when viewed from surrounding public ways. Despite this connection, Attorney Allen stated that the Building Department interprets these structures to be separated, thus requiring a use variance to locate two single-family dwellings on a single lot.

Architect Kent Duckham confirmed that the project is challenging for a variety of reasons, including: (1) the historic nature, (2) the zoning relief required, and (3) the structural condition of the carriage house. Mr. Duckham stated that the ramp leading to the front entry along with the width of the carriage house doors make it inappropriate to store modern vehicles. He stated that portions of the first floor are finished and there is evidence of separate heating, water, and plumbing systems.

Mr. Duckham stated that the proposal is to renovate the first and second floors into living space complete with two bathrooms, three bedrooms, and cooking facilities. He confirmed that first-floor living space would have one bedroom for his former neighbor and the second floor would be utilized by an in-home caretaker (as needed). He stated that a rear-facing shed dormer is proposed to provide adequate head clearance for the second floor bathroom. He noted that special permit relief is requested for the rear and side yard setbacks as a result of the shed dormer and reconfigured front porch. He further stated that variance relief is required to increase the floor area ratio (FAR) and decrease the usable open space.

Mr. Duckham confirmed that all relief stems from pre-existing non-conformities. He stated that the majority of exterior work will restore existing elements and small modifications to window locations are required to lower the interior height of the second floor.

Board Member Hussey stated that a second floor study constitutes a fourth bedroom and variances for FAR and open space would not be required if the Petitioner did not convert the entire second floor of the carriage house to living space. Mr. Hussey calculated the additional floor area to be approximately 720 square feet.

Mr. Hussey questioned why the below grade connection does not result in a two-family attached dwelling rather than two single-family dwellings.

Mr. Yanovitch stated that this interpretation is not specifically cited in the Zoning By-Law but is standard practice by the Building Department. He expressed hesitation in establishing a precedent that a

below grade connection can be interpreted as a two-family dwelling. He stated that in general, a reasonable connection must be covered and include a floor. Mr. Yanovitch stated that the Preservation Commission staff did not support a visible connection between these two structures and he added that the use variance provides a “cleaner” argument for zoning relief in this instance.

Attorney Allen stated that due to the exterior addition on the second floor of the carriage house, **Section 5.09.2.k** of the Zoning By-Law was triggered. He noted the applicable provisions for design review and reiterated the fact that both the Planning Board and Preservation Commission supported the design of the carriage house. Attorney Allen stated that deteriorating structural elements will be repaired, trash facilities will be screened from public view, both structures will be improved from a fire rating standpoint, and radiant heat will be included in proposed walkways to improve snow melt and drainage.

Mr. Allen stated that special permit relief is requested pursuant to **Section 5.60** and **5.70** of the Zoning By-Law for side and rear yard setbacks due to the proposed front porch as well as **Section 8.02.2** of the Zoning By-Law to alter the pre-existing non-conforming nature of the carriage house.

Attorney Allen discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location in the SC-7 district because the district permits two-family dwellings, from a purely visual standpoint the carriage house appears to be attached to the primary structure and similar types of structures are common in the Cottage Farm Local Historic District, specifically along Powell and Amory Streets; (2) there will be no adverse effect on the neighborhood, which is unanimously supportive of the conversion and the roof deck on the main house was scaled back to 15'x15' to address the concerns of an immediate neighbor; (3) no nuisance or serious hazard to vehicles or pedestrians will be created because the existing parking configuration will remain; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and

building on a rear lot in the SC-7 District. Attorney Allen stated that the Petitioners meet the requirements for a variance under Section 9.09.1.d and 9.09.2.a of the Zoning By-Law and M.G.L. Chapter 40A, Section 10 and should therefore be granted a variance.

Specifically, Attorney Allen stated that a use variance may be granted if the proposal preserves or restores a structure of historical or architectural significance. Attorney Allen believed that the Section 9.09.1d threshold is appropriately satisfied because the lot is located in the Cottage Farm Local Historic District, the carriage house is architecturally significant, the gross floor area is excessive for the use permitted, and the Carriage House cannot be reasonably maintained as a visual and taxable asset unless the change of use is permitted. As reasons wherefore, the Preservation Commission unanimously approved this proposal and the Petitioner must spend approximately \$450,000.00 to restore the historic and architectural integrity of the carriage house.

In addition to the requirements of Section 9.09.1d and 9.09.2.a of the Zoning By-Law, Attorney Allen discussed the statutory requirements for a variance. Attorney Allen stated that M.G.L. Chapter 40A, Section 10 states in relevant part:

“The permit granting authority shall have the power . . . to grant upon appeal ... a variance . . . where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

Attorney Allen believed that the carriage house is unique because it is the only lot in the SC-7 District as well as the only lot in the Cottage Farm Local Historic District to have both side lot lines flare out to the rear lot line. He stated that the side yard lot line is significant because an easement was executed in the 1950's to allow for a full driveway because the lot line was drawn impracticably close to the existing structure. Furthermore, Attorney Allen stated that unlike other accessory structures in this

local historic district, this carriage house is a unique structure because it is L-shaped and wraps around the Main House giving the appearance that it is attached. In addition, the underground connection to the carriage house is another unique feature. Attorney Allen continued stating that denial of a use variance will cause economic hardship to the Petitioner causing an inability to maintain the property. He emphasized that the carriage house is currently in a state of extreme disrepair because the beams have experienced water erosion/damage and there is significant animal waste on the second floor.

Attorney Allen noted that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Here, the Petitioner has the unanimous support of the neighborhood, the Planning Board, and the Preservation Commission. In addition, he stated that the Petitioner is in a unique position to improve the dwelling without affecting the footprint of the structure and to provide a safer means of egress from the carriage house.

Attorney Allen believed that these conditions result in the underutilization of the historic structure which will continue to deteriorate without significant financial investment. Attorney Allen stated that the Preservation Commission in no way supports demolition of the carriage house by neglect within local historic districts. For these reasons, Attorney Allen believed that the Petitioner must renovate the structure at a substantial cost, which only becomes financially feasible if the Petitioner is able to capture rental revenue from this investment.

Board Member Kate Poverman requested that Attorney Allen further discuss the appropriateness of a Section 6 finding rather than variance relief pertaining to floor area and usable open space.

Attorney Allen stated that if the Board finds that the statutory requirements for a variance are met for the use variance itself, that standard is applicable for all variance requests before the Board. Attorney Allen believed that this line of thinking is particularly applicable because all triggered zoning non-conformities are a direct result of the restoration and conversion of the carriage house.

Dimensional Requirements (SC-7 District)	Required	Existing	Proposed	Relief Required
Floor Area Ratio (.35)	2,883.7 s.f. .35	8,343.1 s.f. 1.00	9,063.7 s.f. 1.08	Variance
Side-Yard Setback (carriage house – front porch)	7.5'	N/A	4.8'	Special Permit*
Rear-Yard Setback (carriage house – shed dormer)	30'	N/A	3.6'	Special Permit*
Rear-Yard Setback (primary structure – deck)	30'	N/A	21.6'	Special Permit*
Minimum Usable Open Space	2,719.1 s.f. 30%	2,018 s.f. 24.2%	2,018 s.f. 22.3%	Variance
Off-Street Parking Spaces	4	4	4	Complies
Front-Yard Setback (parking)	20'	3.6'	3.6'	Pre-existing
Side-Yard Setback (parking)	7.5'	0'	0'	Pre-existing

* Under Section 5.43, the Board of Appeals may by special permit waive yard and/or setback requirements if counterbalancing amenity is provided.

10. Section 5.09.2.k – Design Review

Any structure for which a variance is requested pursuant to Section 9.09 is subject to design review standards listed under Section 5.09.4 (a-m). The most relevant design review standards are described below:

- b. Relation of Buildings to the Environment
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Proposed exterior modifications to the carriage house have minimal impact on abutting residents, surrounding natural features, and the area streetscape. The proposed dormer and patios are not easily visible from surrounding public ways and architecturally significant elements are maintained insofar as practicable. The proposed third-story deck is partially visible from abutting properties, particularly 72 Powell Street and 265 St. Paul Street. Decks of this size, location, and height are not common in the immediate neighborhood.
- d. Open Space – The subject property does not conform to minimum usable open space requirements. All existing open space will be maintained and the carriage house conversion will enhance resident utility of usable open space located in the rear.
- f. Stormwater and Drainage – The Applicant intends to repair existing carriage house gutters and downspouts to alleviate structural damage cause by water runoff. Proposed pavers with radiant heat are also intended to improve water runoff and resident safety, particularly during winter months.
- g. Utility Service – The carriage house is supplied with electricity directly from a public utility pole located to the rear of the property. The applicant has not indicated if or how additional utilities such as cable or sewage will be provided to the carriage house if not already available. The increased demand for utilities is not anticipated to place undue strain on area services but additional detail should be provided. The Applicant is

proposing to install trash and recycling facilities to be shielded from Powell Street by a 42" high wood picket fence.

- k. Heritage – The Applicant is proposing significant renovations to the carriage house that are supported by the Preservation Commission. Deteriorating features like the foundation, windows, shingles, and the chimney will be restored in a manner that is consistent with the existing architectural style of the property. These modifications will also extend the life and use of this historic structure. Additionally, the incorporation of fire rated materials for interior portions of the carriage house will improve the overall safety of both structures.

11. Section 8.02.2 – Alteration or Extension

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

Mr. Rosa stated that the Planning Board unanimously supported the carriage house conversion to living space. He stated that the Planning Board felt that the project was well designed and did not require significant alteration of the existing structures despite the intensified use of the property. Mr. Rosa stated that the Planning Board agreed that there would be limited visual evidence that the carriage house serves as a separate dwelling unit, and relevant design review standards are satisfied as much as practicable. He noted that the Planning Board also favored final Preservation Commission approval if this proposal is supported by the Board of Appeals.

Therefore, the Planning Board recommends approval of plans by architect Kent Duckham, dated 11/20/2015 and revised 1/7/2016, and the site plan by land surveyor Bruce Bradford, dated 12/8/2015. Should the Board of Appeals find that the statutory requirements for a variance are met, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating all structural and parking space setbacks, as well as carriage house floor plans and elevations, subject to review and approval by the Assistant Director for Regulatory Planning and a Preservation Planner.
2. The carriage house basement space shall remain unfinished, unless otherwise approved by the Board of Appeals.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
4. The two dwelling units shall remain in one ownership.

5. 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) a Certificate of Appropriateness issued by the Preservation Commission; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Yanovitch stated that the scale of renovation may be extensive but is rather minimal in terms of visible exterior modification. He agreed that the majority of complexity arises from the most appropriate evaluation of requested zoning relief. Mr. Yanovitch confirmed that the Building Department reviewed this proposal at length and ultimately felt comfortable with the determination that the property is best evaluated as two detached single-family dwellings necessitating the use variance. Mr. Yanovitch specifically referenced Zoning By-Law Section 5.04.2 and 9.09 to illustrate that the Town generally encourages conversion projects of this type. Mr. Yanovitch further described the so-called double variance standard referenced by Attorney Allen in which the use variance standard relating to the preservation of a historic structure must be established just as the statutory requirements for a variance must be met (uniqueness and hardship). Mr. Yanovitch agreed that the statutory standard is either satisfied or not, providing support for Attorney Allen's assertion that a Board finding is applicable for all variance requests currently before the Board. Mr. Yanovitch stated that case law relating to the modification of non-conforming structures is increasingly refined, but he did believe that the intensified use of the property does force the Board to consider the most appropriate finding.

In deliberation, Board Member Christopher Hussey stated that the Petitioner has the option to not alter carriage house floor area in order to avoid the need for FAR and open space related variance. Mr. Hussey acknowledged that the variance standard for the use and frontage/vehicular access would still remain for Board deliberation.

Chairman Mark G. Zuroff suggested that the Board interpret this proposal in totality in order to consider the overall perspective. Mr. Zuroff generally supported the preservation of the historic carriage house and noted that the majority of abutting residents submitted written support for this project. Mr.

Zuroff was not fully satisfied with the Petitioner's variance argument, but he believed that a nexus between the usability of the carriage house in its current condition and the financial investment required to preserve the structure may exist.

Mr. Hussey further stated that the converted carriage house would clearly provide a taxable asset and the additional floor area helps to alleviate the financial burden associated with restoring the structure.

Board Member Kate Poverman also supported the preservation of the historic structure, but expressed concern about permitting two single-family dwellings on a single lot. Ms. Poverman appreciated Mr. Duckham's review of the physical condition of the structure and agreed that there is an obligation placed on the property owner to avoid demolition of the historic structure through neglect. Ms. Poverman was not convinced that a clear hardship, whether financial or otherwise, was established by the abutter.

Chairman Zuroff stated that the cost associated with preserving the historic structure could be interpreted as a financial hardship. Board Member Hussey concurred and further stated that the carriage house may further deteriorate if zoning relief is not granted. Mr. Hussey believed that the Preservation Commission probably would not permit the Petitioner to demolish the carriage house.

Board Member Poverman stated that preserving a historic structure is significantly different from creating a second residential unit. Ms. Poverman also was not satisfied that fulfilling the best potential use of a structure, as argued by the Petitioner, constituted hardship in this case.

Attorney Allen stated that the underutilized and deteriorating historic structure is a condition that would be afforded to any individual who owns this property. Attorney Allen stated that the conversion is a direct result of the unique carriage house structure that requires financial investment to rectify. Mr. Allen stated that the financial hardship is not necessarily self-imposed because the property owner is prohibited from demolishing, whether deliberate or through neglect, the underutilized structure.

Board Members Zuroff and Hussey agreed that the Petitioner's proposal is perhaps the most practical solution to restore the carriage house in a financially feasible manner for the property owner. Mr. Zuroff specifically stated that the variance standard can be reached regardless of the Petitioner's motivation.

Board Member Poverman reiterated that she did not support the creation of two single-family dwellings located on the same lot but she did believe that the investment associated with maintaining the historic structure that would otherwise continue to deteriorate reached the standard for a hardship. Ms. Poverman supported the argument that the structure itself is a unique condition that is directly related to the financial hardship. For these reasons, Ms. Poverman believed that the statutory requirements for a variance were satisfied.

Board Chairman Zuroff concurred and stated that the standard for special permit relief is satisfied in accordance with Zoning By-Law Section 9.05

The Board then determined, by unanimous vote, that the requirements for special permit relief for Sections 5.09.2.k, 5.60, 5.70, and Section 8.02.2 of the Zoning By-Law pursuant to Section 5.09 and 5.43 of the Zoning By-Law, special permit relief for Sections 5.20 and 5.91 pursuant to M.G.L. c. 40A, Section 6, and variance relief for Section 4.01, Use 1 and 5.14 pursuant to Section 5.04 and 9.09 and M.G.L. c. 40A, Section 10 were 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.
- e. Development will not have any effect on the supply of housing available for low and moderate income people.

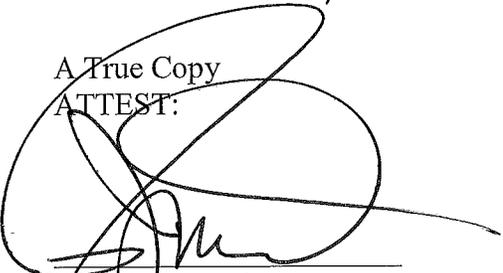
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating all structural and parking space setbacks, as well as carriage house floor plans and elevations, subject to review and approval by the Assistant Director for Regulatory Planning and a Preservation Planner.
2. The carriage house basement space shall remain unfinished, unless otherwise approved by the Board of Appeals.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
4. The two dwelling units shall remain in one ownership.
5. 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) a Certificate of Appropriateness issued by the Preservation Commission; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 2/17/16


Mark G. Zuroff, Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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