



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0053
OWNER: ADA MANAGEMENT SERVICES LLC
c/o ALEX POLITMAN
1616 BEACON STREET, BROOKLINE, MA

Petitioners, ADA Management Services LLC, applied to the Building Commissioner to construct a partial fourth-story sunroom and roof deck on the roof of an existing three-story building at 1616 Beacon 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 March 17, 2016 at 7:15 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the modification. 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 March 3, 2016 and March 10, 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:

1616 BEACON ST – CONSTRUCT A PARTIAL FOURTH STORY AND ROOF DECK in a G-1.75, General Business, zoning district, on March 17, 2016, at 7:30 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: ADA MANAGEMENT SERVICES LLC) *Precinct 11*

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 deems necessary:

- 1. Section 5.09.2.a: Design Review**
- 2. Section 5.07: Dwellings in Business and Industrial Districts**
- 3. Section 5.43: Exceptions to Yard and Setback Requirements**
- 4. Section 5.50: Front Yard Requirements**
- 5. Section 5.90: Minimum Landscaped Open Space**
- 6. Section 5.91: Minimum Useable Open Space**
- 7. 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 Sneurson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneurson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: March 3, 2016 & March 10, 2016

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board Chairman Jonathan Book and Board Members Christopher Hussey and Jesse Geller. The Petitioner’s Attorney, Jeffrey Allen of Lawson and Weitzen, LLP, located at 88 Black Falcon Avenue, Boston, MA, presented project details to the Board on the Petitioner’s

behalf. Attorney Allen stated that the proposed project is a modest fourth-story addition to create a sunroom and roof deck that will not be easily visible from Beacon Street. Attorney Allen stated that requested zoning relief is specifically required for design review because the property fronts on the major Beacon Street thoroughfare. Attorney Allen further stated that zoning relief is also required for minimum usable open space requirements, which Attorney Allen characterized as a pre-existing nonconformity. Attorney Allen stated that the proposed sunroom will increase to gross floor area of the structure by approximately 453 square feet and usable open space requirements are calculated based on a percentage of this gross floor area. Attorney Allen confirmed that relief for both of these matters may be granted by special permit because this residential structure is located within a business district. Attorney Allen stated that the current design before the Board was heard twice by the Planning Board because several design modifications were suggested, which the Petitioner has incorporated into revised plans.

Attorney Allen further described design alterations from the prior iteration including the use of brick veneer and the elimination of a second staircase head house that would be more readily visible from Beacon Street. Attorney Allen clarified that the revised plans submitted to the Board include inaccuracies because the length of the majority of the fourth-story sunroom is approximately seven feet longer than suggested by the Planning Board. Attorney Allen stated that the Petitioner supports any potential conditions that may be imposed by the Board requiring the submission of final floor plans and elevations that accurately depict the 453 square foot sunroom and the elimination of the forward head house if the Board does find that this proposal is worthy of special permit relief.

Board Member Christopher Hussey clarified that initial plans as referenced by Attorney Allen are dated 12/21/2015 and the updated plans that include the inaccurate sunroom length are

dated 3/9/2016. Mr. Hussey also questioned whether or not the proposed roof deck qualifies as usable open space.

Deputy Building Commissioner Michael Yanovitch stated that the dimensions of the uncovered roof deck (6' x 20'-8") do not meet the dimensional requirements necessary to be included in usable open space calculations. Mr. Yanovitch reiterated the fact that the Board may waive minimum usable open space requirements by special permit under Zoning By-Law

Section 5.07.

Attorney Allen further stated that the pre-existing nonconforming open space calculation will not be altered by this proposal, however the new uncovered roof deck is open space that will indeed be utilized by residents of the third-floor apartment.

Mr. Hussey questioned whether or not the Petitioner has finalized proposed building materials for the fourth-story. Mr. Politman stated that the fourth-story addition will be constructed of brick veneer. Mr. Hussey stated his support for the use of clapboard as an attractive contrast to the predominately brick structure.

Board Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal.

No Members of the public commented in favor of, or in opposition to, the Petitioner's proposal.

Mr. Book requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board.

FINDINGS

Section 5.07: Dwellings in Business Districts

Dwellings in business districts shall conform to minimum usable open space and side and rear yard requirements of the M districts (for this case, the M-2 district); however, these requirements may be waived by special permit to promote reasonable development of the site compatible with adjacent buildings and the surrounding area.

Section 5.09.2.a – Design Review

Any exterior alteration or addition to a building with frontage on Beacon Street requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. The relevant sections of the design review standards are described below:

Preservation of Trees and Landscape, Open Space and Circulation – Since the addition is on top of the building landscaping, open space and circulation will not be affected.

Relation of Buildings to Environment, Streetscape and Neighborhood – This building is on the north side of the street on a block between Westbourne Terrace and Washington Street. The building is in an attached row of five buildings, all of which are three and a half stories tall. A lower two story building runs to the west of it to Washington Street. In the surrounding area, there are some taller apartment buildings.

Section 5.90 – Minimum Landscaped Space

No landscaped space is required in a G-1.75 district. Therefore, no relief is needed under this section however there are shrubs and bushes in front of the building facing Beacon Street.

Section 5.91 – Minimum Useable Open Space

	Required	Existing	Proposed	Finding
Usable Open Space	10% of new floor area (45.3 s.f. for additional open space)	0	0	Special Permit *

*Under *Section 5.07*, the Board of Appeals may waive minimum usable open space and side and rear yard requirements by special permit for residential dwellings in business districts.

Section 8.02.2 – Alteration or Extension

An alteration of a non-conforming structure requires a special permit.

Mr. Rosa stated that the Planning Board recommended approval of the partial fourth story and associated roof deck following two public meetings. The Board supported the use of brick veneer to match the existing structure but strongly recommended that the head house that is visible from Beacon Street be removed from project plans in favor of a low skylight. As Attorney Allen noted, the revised plans incorporate this recommendation however there is a discrepancy in the length of the enclosed fourth-story sunroom. The original plans indicate a twelve foot length for the majority of the sunroom but revised plans extend the sunroom 18' –

11” from the rear façade. The Planning Board prefers the twelve foot length for the sake of minimizing visual impact on Beacon Street.

Therefore, the Planning Board recommended approval of the site plan by Peter Nolan and Associates, dated 1/9/2015, and floor plans and elevations by RAV and Associates, dated 12/21/15. If approved by the Board of Appeals, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans, and elevations showing the elimination of the forward head house, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to review and approval by 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; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa further stated that the Planning Board did not review revised plans, dated 3/9/2016, therefore stated conditions are applicable and accurately capture plan revisions that should be made prior to the submission of final project plans.

Board Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief as requested. Mr. Yanovitch described the relief as being fairly modest and confirmed that special permit relief is only required for usable open space and overall design review. Mr. Yanovitch confirmed that the Building Department would

work with the Petitioner to ensure compliance with any imposed conditions and building codes if the Board determines that the requirements for the grant of a special permit are satisfied.

The Board deliberated on the merits of special permit relief as requested. Board Chairman Book stated the Board may grant special permit relief under Zoning By-Law **Section 5.07** to waive the overall requirement to provide 45.3 square feet of usable open space or, alternatively, the Board may waive dimensional requirements for usable open space, as defined in Zoning By-Law **Section 5.91**, so that the area provided by the uncovered roof deck may be credited toward this overall open space requirement.

Board Member Hussey stated that he supported the grant of requested zoning relief and he believed that the fourth-story addition meets the requirements for zoning relief in accordance with Zoning By-Law **Sections 9.05** and **5.09.2.a**. Mr. Hussey further described the roof alterations as being fairly innocuous and he reiterated the fact that the roof deck does indeed provide new open space that is usable for residents.

Board Member Geller stated that he was in favor of the relief as requested and he agreed that the requirements for the grant of a special permit are met in accordance with **By-Law Section 9.05**.

Board Chairman Book concurred with prior Board Member comments and he agreed that the proposal is worthy of requested relief. Mr. Book noted that special permit relief is also required under By-Law **Section 8.02.2** in order to alter this pre-existing nonconforming structure.

Board Members agreed that the forward head house should be removed from project plans and the reduced version of the sunroom is preferable in terms of minimizing visibility from

Beacon Street. The Board also noted that no zoning relief is necessary for provided yard setbacks, therefore the submission of a final landscaping plan is not required as a method to indicate counterbalancing amenities for said relief from setback requirements. Board Chairman Book reiterated that these Board findings are specifically in reference to the site plan submitted by Peter Nolan, dated 1/9/2015, and floor plans and elevations submitted by RAV and Associates, dated 12/21/2015.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under Sections 5.09.2a and 9.05 of the Zoning By-Law, granting relief from the provisions of Sections 5.07, 5.91, and 8.02.2. The Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

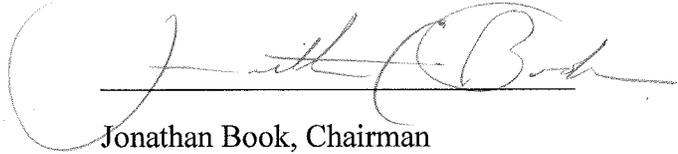
- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people

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, floor plans, and elevations showing the elimination of the forward head house, subject to review and approval by the Assistant Director for Regulatory Planning.
2. 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;

and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

**Unanimous decision of the
Board of Appeals**

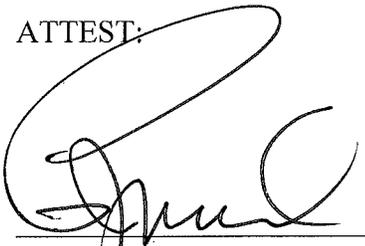


Jonathan Book, Chairman

Filing Date: 4/8/16

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals

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