



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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. 2016-0001
THE COUNTRY CLUB
191 CLYDE STREET, BROOKLINE, MA

Petitioner, The Country Club, applied to the Building Commissioner for permission to partially demolish and rebuild an existing stable/recreation building. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed March 3, 2016 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 February 18, 2016 & February 25, 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:

191 CLYDE ST – PARTIALLY DEMOLISH AND REBUILD EXISTING STABLE/RECREATION BUILDING in an S-40, Single-Family residential district, on

March 3, 2016, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: COUNTRY CLUB, THE) Precinct 15

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 4.03: Pre-Existing Special Permit Uses**
- 2. Section 5.09.2.i: Design Review**
- 3. Section 5.30: Maximum Height of Buildings**
- 4. Section 6.02, Paragraph 1: Table of Off-Street Parking Regulations**
- 5. Section 6.02.5.d: Off Street Parking Space Regulations**
- 6. Section 8.02.1: Alteration or Extension**
- 7. Modification as necessary of BOA cases (#2694 November 1984) (#3188 June, 1993) (#3395 March, 1997) (#3631 December, 2000) (#3654 April, 2001)**
- 8. Any additional Relief the Board May Deem 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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@brooklinema.gov.*

Jesse Geller, Chair

Christopher Hussey

Jonathan Book

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Christopher Hussey and Kate Poverman. Deputy Building Commissioner Michael Yanovitch and Zoning Coordinator Jay Rosa were also present. 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 project representatives David Shag and Steven Ballard, along with project architect Robert Olson, Robert Olsen + Associates Architects, 374 Congress Street, Boston, MA 02210.

Zoning Board of Appeals Chairman Geller called the hearing to order at 7:30 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen presented to the Board a background of the Petitioner stating the following: The Country Club is a 237 acre tract of land which includes multiple recreational and maintenance facilities. Attorney Allen stated that the Petitioner proposes to demolish a former stables building that is currently used for fitness related activities. He continued that the structure is not energy efficient, does not meet current codes, and has serious structural deficiencies. Mr. Allen stated that the project team wishes to modernize the facility and has worked closely with the Preservation Commission to apply appropriate modifications to upgrade the overall structural condition of the historic structure. Attorney Allen confirmed that the plans before the Board are supported by the Preservation Commission. Mr. Allen then yielded the floor to Robert Olson.

Project architect Robert Olsen reviewed the overall project objective with the Board. He stated that the Petitioner proposes to replicate important historic elements including front columns, fenestration, and ventilators. Mr. Olsen provided various floor plans and elevations to illustrate the original historic layout, the initial proposal, and the final design. He stated that the Petitioner maintains a clear desire to maximize the usable volume of interior portions of the structure to meet fitness needs and to support the weight of the equipment. He further stated that these design and safety goals dictate the slight height increase that triggers the need for zoning relief. Mr. Olson indicated that the proposed maximum height of the Stables Building is consistent with the height of the surrounding historic structures located around the Country Club's primary circular court area.

In response to a question from Board Member Hussey regarding calculation of the maximum height of the project, Mr. Olsen stated that ordinarily, roof beams dictate a structure's

maximum height. However, in this instance a proposed skylight which extends to a maximum height of 37 ft., 8in. would determine the maximum height. Mr. Olson stated that the Petitioner seeks relief up to a height of 38 ft. to account for construction tolerance.

Board Members Hussey and Poverman observed that the height maximum is requested to maximize usable interior space, particularly on the second floor. Mr. Hussey and Ms. Poverman questioned whether the Petitioner's request for relief is necessary.

Mr. Olsen responded by stating that the façade shape is driven by the historic proportions of the Stables Building in combination with modern structural concerns including ceiling heights and structural stability. Mr. Olsen also stated the resulting maximum height arises from an effort to provide adequate air circulations and fire suppression systems.

Attorney Allen in reviewing the relief required stated that the Petitioner's request for relief for the pre-existing, non-conforming height issue may be permitted through the grant of a special permit, pursuant to **Section 4.03** of the Zoning By-Law if the building was lawfully in existence on the effective date of the By-Law. He stated that the existing stable was built in 1893, long before the By-Law's enactment in 1961.

Attorney Allen also confirmed that a special permit for design review is required pursuant to **Section 5.09.2.i** of the Zoning By-Law where, as here, there is a proposed change or addition to a non-residential use in residential districts involving more than 5,000 s.f. of gross floor area or involving 10 or more parking spaces.

Next, Attorney Allen discussed relief under **Section 6.02** Paragraph 1, of the Zoning By-Law Table of Off-Street Parking Space Requirements. Attorney Allen stated that a large portion of the Stables Building will be dedicated to golf simulation activities which requires large equipment to accommodate low user numbers. Mr. Allen noted that determination of a baseline

for off-street parking required for the property is difficult to ascertain due to the large lot size and the uses. As such, Mr. Allen stated parking requirements for a standard recreation use is not the most accurate method to calculate overall parking requirements.

Furthermore, Attorney Allen stated that under Section 6.02.1.c of the Zoning By-Law, the Board may reduce parking requirements, by special permit, where the use is of such a kind that the occupancy of floor-space by customers, clients, or employees is substantially below the normal or average for retail and office uses.

Attorney Allen reviewed the parking history of the overall property including the construction of 64 parking spaces in 1985 and the construction of 112 parking spaces via special permit in 2000 (BOA Case #2694; BOA Case #3631). Mr. Allen stated that these parking increases were not directly associated with structural expansion at the site. Attorney Allen confirmed that the pure floor area increase associated with the reconstructed Stables Building would require an additional 89 parking spaces. However, Attorney Allen concluded that prior creation of parking more than adequately fulfills this new parking space requirement.

Board Member Poverman questioned whether the proximity of the proposed parking to the Stables Building has any impact on the evaluation of the adequacy of the parking.

Deputy Building Commissioner Michael Yanovich stated that the entire property is under common ownership; therefore, the location of available parking does not invalidate the method by which off-street parking requirements are determined.

Board Members Geller and Hussey agreed that the subject lot is atypical in the single-family district and that the provided club parking has operated largely in a self-regulating manner.

Attorney Allen concluded stating, no building or part thereof, shall exceed the 35 ft. maximum height requirement pursuant to **Section 5.30** of the Zoning By-Law, except in a situation where interpretation of the requirement is based on a non-typical lot or characteristic. In such a case, the Board may issue special permit zoning relief under **Section 5.31.2** of the Zoning By-Law where it deems that assurance of the same standard of amenity to nearby properties as would have been provided by the application of **Section 5.30** of the Zoning By-Law in the absence of non-typical characteristics. Mr. Allen stated that the Stable Building is not visible to the adjacent properties due to the significant distance from neighbors and visual screening. Attorney Allen further stated the subject property is certainly non-typical and that the height of the club house building exceeds that of the proposed structure.

Attorney Allen stated that the Petitioner's project is widely supported by its neighbors and submitted letters of support from twenty one residents.

Board Member Poverman requested that Attorney Allen address the statutory requirements for a variance for the maximum Stables Building height should the Board find that the requirements for **Section 9.05** of Zoning By-Law have not been satisfied.

Attorney Allen argued that the requirements under **Chapter 40A, Section 10** have also been satisfied. Attorney Allen stated that the lot is unique because it is significantly oversized for the surrounding district and Petitioners suffer a hardship by virtue of their inability to reconstruct this historic structure in a viable manner otherwise. Attorney Allen reiterated that the proposed reconstruction of the Stables Building is motivated by structural safety concerns and a desire to effect overall improvement to the facilities.

Board Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner's proposal. No members of the public commented.

Jay Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

1. **Section 4.03 – Pre-Existing Special Permit Uses:** Any application for a change in use or structure for an existing use that would require a special permit in its district requires a special permit.

2. **Section 5.09.2.i – Design Review:** Changes or additions to non-residential uses in residential districts with more than 5,000 s.f. of gross floor area or with 10 or more parking spaces require a special permit subject to the design review standards listed under Section 5.09.4(a-1). The most relevant sections of the design review standards are described below:
 - Preservation of Trees and Landscape – Since the new building will be located in the same place as the previous building, this project should not result in the removal of trees or soil.

 - Relation of Buildings to Environment – Although the new building will be larger than the existing building, this building, along with most of The Country Club’s buildings, is located a substantial distance from neighboring properties and streets.

 - Relation of Buildings to the Form of the Streetscape and Neighborhood – The applicant has worked extensively with the Town’s Preservation Commission to develop a building design that is compatible with the other buildings and the Club’s overall character.

 - Heritage – The new design has been developed based on input from the Preservation Commission, and the Preservation Commission has agreed to lift the stay of demolition on the existing building pending final approval of the new building’s plans.

3. **Section 5.30 – Maximum Height of Buildings**

	Allowed	Existing	Proposed	Relief
Maximum Height	35’	34’	38’	Variance

4. **Section 6.02, Paragraph 1 – Table of Off-Street Parking Regulations:**
 - If the use for the new building is considered a Private Club or Lodge (Section 4.07, Table of Use Regulations, Use 18), the additional square footage (14,286 s.f.) would require 40 additional parking spaces. Parking requirements for the entire property are unclear; a range of uses (public assembly, private club, restaurant, etc.) and insufficient information (first floor and second floor square footage, storage, etc. for multiple buildings) limit the ability to determine whether the entire property as a whole is in

compliance with parking, or if this project would require new parking relief.

5. **Section 6.02.1.c – Off-Street Parking Space Regulations:** The number of spaces required in a common parking facility may be reduced by special permit if it can be demonstrated that the hours or days of peak parking needed for the uses are so different that a lower total will provide adequately for all uses served by the facility.
6. **Section 6.02.5.d – Off-Street Parking Space Regulations:** Where a use is of a kind that the occupancy of floor space by customers, clients or employees is substantially below the normal or average for retail and office uses, the Board of Appeals by special permit may waive up to half the number of required parking spaces.
7. **Section 8.02.1 – Alteration or Extension:** A use that does not conform to the use regulations but did conform when initially established shall not be altered, reconstructed, or enlarged except for by special permit and if:
 - The change is on the same lot or on an adjoining lot owned by the same owner;
 - Any increase in volume or area is less than an aggregate of 25 percent during the life of the nonconformity; and
 - The change does not lengthen the economic life of the nonconformity. The project would add 14,286 s.f. to the overall square footage of the property, currently 189,980 sf, an increase of 7.5 percent. Special permit required.

Mr. Rosa stated that the Planning Board had no objection to the reconstruction of the multi-purpose Stables Building. Planning Board Members did not object to the slight height increase because it aligns with the requirements included in **Section 5.31.2** of the Zoning By-Law and is not anticipated to generate any adverse impact on abutting residents. The Planning Board described the land as unique given its distinct size within the single family district. Planning Board Members agreed that existing shared on-site parking is adequate to serve the proposed additional floor area resulting from the Stables Building reconstruction. Therefore, should the Board of Appeals find that the statutory findings for a variance are met, the Planning Board recommends approval of the plans by Robert Olson + Associates Architects, dated 12/9/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations of the Stables Building subject to the review and approval of the Assistant Director of Regulatory Planning and the Preservation Commission staff.

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 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.

Board Chairman Geller requested that Mr. Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that this proposal does not derogate from the purpose of the Zoning By-Law and is not anticipated to result in any adverse impact on abutting properties. Mr. Yanovitch agreed that the provisions included in **Section 5.31.2** of the Zoning By-Law are valid in this instance because the standard evaluation of building height is not easily applied to this unique lot within the single-family district. Mr. Yanovitch confirmed that should the Board find that the requirements for the grant of relief are satisfied, the Building Department will work with the Petitioner to ensure compliance.

In deliberation, Board Chairman Geller was satisfied that the proposed Stables Building meets the standards of **Section 9.05** of the Zoning By-Law. Mr. Geller also noted that the reconstructed building follows the existing building footprint and is comparable in height to several surrounding multi-purpose structures. Mr. Geller also supported Attorney Allen's parking evaluation. Mr. Geller agreed that the application of a parking credit is consistent with the Zoning Board of Appeals and the Building Department's interpretation and that the parking demand is largely self-regulated given the large lot size.

Board Chairman Geller requested that the Board discuss the applicability of **Section 5.31.2** of the Zoning By-Law.

Board Member Poverman expressed concern that allowing an oversized lot to satisfy the "non-typical lot shape" requirement for a special permit under **Section 5.31.2** of the Zoning By-Law would permit future exploitation of the provision.

Mr. Yanovitch appreciated Ms. Poverman's hesitation, but is confident that the subject property is non-typical with respect to determining how the maximum height of the Stables Building should be calculated. Mr. Yanovitch stated that **Section 5.30** of the Zoning By-Law delineates clear guidelines, contingent upon the determination of record grade of lot lines and/or public ways, for calculating the maximum height of a structure. He stated that in this instance, the guidelines provided in **Section 5.30** of the Zoning By-Law are not clearly applied due to the non-typical lot size and the substantial distance between the building and the surrounding public ways.

Board Chairman Geller stated that the term "non-typical" lot characteristic in **Section 5.31.2** of the Zoning By-Law is the most accurate description of the Country Club parcel as it relates to potential exemptions to maximum height regulations.

Board Member Hussey stated that the Country Club is non-typical within the surrounding S-40 district, particularly when calculating parking and height requirements. Mr. Hussey stated that constructing the Stables Building to 37 ft. in height, would have little to no adverse impact on surrounding properties.

Ms. Poverman concurred with Board Member comments and supported the grant of special permit relief for both parking and maximum building height under **Sections 5.31.2** and **6.02.1.c** of the Zoning By-Law.

The Board then determined, by unanimous vote that the requirements for a special permit from application of the provisions of **Sections 5.31.2** and **6.02.1.c** of the Zoning By-Law pursuant to **Sections 4.03** and **9.05** of the Zoning By-Law were met.

The Board made the following specific findings pursuant to said **Section 9.05**:

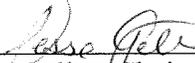
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 final plans and elevations of the Stables Building subject to the review and approval of the Assistant Director of Regulatory Planning and the Preservation Commission staff.
- 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 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: 4/14/16



Jesse Geller, Chairman

A True Copy
ATTEST



Patrick J. Ward
Clerk, Board of Appeals

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