



Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book

# *Town of Brookline*

## *Massachusetts*

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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. 2015-0062

Petitioner Mark Linsky applied to the Building Commissioner for permission to convert an existing single family dwelling into a two family dwelling. The applicant also proposes to demolish the one car garage and expand the paved driveway. The building permit application was denied and an appeal was taken to this Board.

On January 14, 2016, 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 April 7<sup>th</sup>, 2016, at 7:30p.m. in Room 101 at Brookline Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 March 24<sup>th</sup> and March 31<sup>st</sup>, 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

**Petitioner: BRUCE LINSKY**

**Owner: TWISTER MANAGEMENT INTERNATIONAL REALTY TRUST**

**Location of Premises: 40 THORNDIKE STREET**

**Date of Hearing: April 7, 2016**

**Time of Hearing: 07:30 PM**

**Place of Hearing: Room 101 Brookline Town Hall first floor**

A public hearing will be held for a variance and/or special permit from:

- 1. Section 5.43; Exceptions to Yard and Setback Regulations, Special Permit required**
- 2. Section 5.50; Front Yard Requirements, Special Permit required,**
- 3. Section 5.60; Side Yard Requirements, (existing),**
- 4. Section 5.22.3.b.1.c; Exceptions to Maximum Floor Area Ratio (FAR) for Residential Units,**
- 5. Section 6.04.5.c.3; Design of All off-street Parking Facilities;**
- 6. Section 5.91: Minimum Usable Open Space; and**
- 5. 8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to convert a single family dwelling requiring BOA relief at **40 Thorndike Street.**

Said premise located in an **T-5 (Two Family)** residence district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*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 programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Jesse Geller  
Jonathan Book  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Jonathan Book and Christopher Hussey. Attorney Jacob Walters, Business address 27 Harvard Street, Brookline, Massachusetts presented the case for the petitioners.

Mr. Walters stated that FAR and Minimum Usable Open Space relief was not required since the Petitioner had revised the project to comply with the Town By-Law requirements. Mr. Walters indicated that the relief needed could be granted by four (4) Special Permits, one under Section 5.43, one under Section 5.70, another under Section 6.04.5.c.3 and the last under Section 8.02.2, all of the Zoning By-Law. Mr. Walters added that after the initial Planning Board hearing in February, the applicant made a number of changes to the submitted plan and the project to address the issues raised by the Planning Board and the neighbors. Mr. Walters stated that the revised design has met with the approval of the neighborhood and was unanimously approved by the Planning Board. Mr. Walters further stated that the front and side yard setback violations are preexisting and Section 5.43 of the Zoning By-Law allows by special permit for the substitution of such other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the By-Law. Mr. Walters commented that the counterbalancing amenities being offered include new plantings and a significantly upgraded fence at the rear and side of the property. Mr. Walters explained that the interior stairway being added at the side of the structure created a very small "bump out" for which relief from the requirements of Section 5.70 of the By-Law could be granted under said Section 5.43. Addressing the parking, Mr. Walters stated that the Zoning By-Law requirement that five (5) parking spaces be provided necessitates an expansion of the driveway, which changed the sideyard setback from 1 foot to zero feet. Mr. Walters stated that Section 6.04.5.c.3

allows the substitution of dimensional requirements for driveway setbacks. Mr. Walters added that due to the fence being installed, the abutting neighbor will not be able to see vehicles parked in the driveway. The final Special Permit is required under said Section 8.02, alternation or extension. Special Permit relief under this Section is needed because the preexisting non-conforming dwelling is being altered. Mr. Walters continued to say that the requested Special Permits conformed with the requirements of Section 9.05 of the By-Law in that the location of the driveway and dwelling were appropriate, no nuisance would be created and traffic would in no way be affected. Mr. Walters concluded his remarks by saying that the final design will be an improvement to the neighborhood and cited the applicant's efforts in working with the neighborhood and Planning Department staff.

The Chairman then asked if anyone in attendance wished to speak in support of or in opposition to the petitioner's proposal. No one asked to be heard.

Jay Rosa, delivered the findings of the Planning Department.

**Section 5.50 – Front Yard Requirements (extension of non-conformity)**

**Section 5.60 – Side Yard Requirements (existing)**

**Section 6.04.5.c.3 – Design of all Off- Street Parking Facilities**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard setback</b>	15 ft.	12.9 ft,	12.9 ft,	Special Permit*
<b>Side Yard setback</b>	10 ft	4.7 ft.	4.7 ft.	Special Permit*

<b>Setback to Driveway</b>	5 ft.	1 ft. left 1.6 ft rear	0 ft. left 1.6 ft. rear	Special Permit

Under Section 5.43 the Board of Appeals may waive yard and setback requirements and grant a Special Permit if a counterbalancing amenity is provided. The applicant is proposing to provide additional landscaping as a counterbalancing amenity.

**Section 8.02.2 – Alteration or Extension**

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

Mr. Rosa said the Planning Board is supportive of this proposal. The Planning Board felt the two family use is consistent with the district zoning and the development pattern of this neighborhood. The Planning Board also noted the setback relief is minimal and the proposed fence, one of the counterbalancing amenities offered, would be effective. Mr. Rosa noted that the Planning Board recommenced more robust landscaping than what was proposed as a further counterbalancing amenity.

**Therefore, the Planning Board recommends approval of the site plan by professional land surveyor Kenneth Anderson dated 3/31/16, and the architectural plans by registered architect Derek Rubinoff, revised 3/11/16 and 3/31/16, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit final corrected site plan with open space calculations and updated parking configuration certified by a registered land surveyor and final floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall provide a final landscape

plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director for Regulatory Planning, with the advice of the Planning Board.

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 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.

Mr. Rosa noted that the parking shows five spaces, which is required; however, the tandem spots on the left can be moved away from the rear lot—without locating the parking in the front yard setback—to increase the usable open space in the rear and reduce the impact on the left side abutter.

He further noted that the proposed fence material would be wood with decorative lattice and is a considerable improvement.

Finally, Mr. Rosa commented that the Planning Board recommends that the project team consult with the Town Arborist and specify how street trees in front of the property will be protected during construction. He noted that the Planning Board also recommended that more thought be put into the landscaping plan to ensure that there would be year round plantings.

The Chairman then called upon Jay Rosa, representing the Building Department, to deliver the comments of the Building Department. Mr. Rosa stated that the Building Department has no objections to the request for relief. Mr. Rosa concluded by stating that the Building Department will work with the applicant to ensure compliance with the Building Code.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the petitioner has satisfied the requirements necessary for relief under **Sections 5.43, 5.07, 6.04.5.c.3, 8.02.2, and 9.05** of the Zoning By-Law and made the following specific findings pursuant to said **Section 9.05** of the Zoning By-Law:

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

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

1. Prior to the issuance of a building permit, the applicant shall submit final corrected site plan with open space calculations and updated parking configuration certified by a registered land surveyor and final floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall provide a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director for Regulatory Planning, with the advice of the Planning Board.
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 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

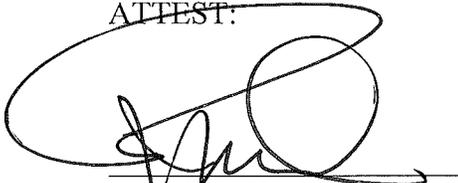
The Board of Appeals

Filing Date:

5/10/16

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:

  
\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals

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