



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. 2016-0012
BARKLEY INVESTMENTS, LLC
36 VERNON STREET, BROOKLINE, MA

Petitioner, Barkley Investments, LLC, applied to the Building Commissioner for permission to legalize a second-story deck in the front yard of a two-family dwelling. 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 April 28, 2016, at 7:15 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 April 14, 2016, and April 21, 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:

36 VERNON ST – LEGALIZE DECK OVER EXISTING BAY IN THE FRONT, in an F-1.0, Three-Family, residential district, on

April 28, 2016, at 7:15 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: BARKLEY DEVELOPMENT LLC) Precinct 7

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 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.50: Front Yard Requirements**
- 3. Modification as Necessary of BOA decision #2232, May 25, 1978**
- 4. 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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Deputy Building Commissioner Michael Yanovitch and Zoning Coordinator Jay Rosa. 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 Petitioner David Schwartz from Barkley Investments. Zoning Board of Appeals Chairman Jonathan Book called the hearing to order at 7:15 p.m. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen presented to the Board a background of the Petitioner and the proposal stating: 36 Vernon Street is located at the intersection of Vernon and Harris Streets in the F-1.0 District. Attorney Allen stated that the dwelling's existing sunroom facing Harris Street is

nonconforming as to front yard setback, and the Petitioner had installed a railing and deck above the existing sunroom, increasing the front yard nonconformity. Mr. Allen indicated that he had been contacted by the abutters to the subject property, and they would like the new fencing proposed as a counterbalancing amenity be wood and not vinyl. Attorney Allen said the Petitioner is fine with a condition requiring new fencing to be wood.

Attorney Allen then discussed relief under **Section 5.43** of the Zoning By-Laws to waive the dimensional requirements for front yard setback when counterbalancing amenities are provided. Attorney Allen stated the following: (1) the specific site is an appropriate location for a deck, as it does not protrude or project from the structure and will not significantly affect the streetscape; (2) there will be no adverse effect on the neighborhood, as the house will continue to remain a two-family dwelling and no neighbors have expressed opposition; (3) no nuisance or serious hazard to vehicles or pedestrians exists; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people. Attorney Allen said the proposal is straightforward and meets the special permit requirements under **Section 9.05** of the Zoning By-Laws.

Zoning Board of Appeals Chairman Jonathan Book asked if there was a landscaping plan for the property. Mr. Allen said a landscaping plan had been submitted. Mr. Yanovitch presented some background on the project, noting that when the building permit was first issued for the proposal, the Building Department did not identify until later that relief from the Zoning By-Law would be required for the front deck. Mr. Yanovitch said the applicant had submitted a landscaping plan when applying for the building permit, and much of the landscaping has

already been installed. Mr. Allen said that since most of the landscaping is already planted, the applicant is proposing the new fence as the counterbalancing amenity.

Board Member Christopher Hussey questioned if a vinyl fence would be installed. Mr. Allen said there was concern from abutters that the new fencing would be vinyl, but the Petitioner has agreed to install new wood fencing.

Board Member Schneider asked for clarification on whether the deck was shown in the initial permit plans. Mr. Yanovitch confirmed that the deck was shown in the initial plans submitted for a building permit, and the Building Department issued the permit in error.

Petitioner David Schwartz, 555 Columbus Avenue, Boston, Massachusetts, confirmed that he had talked with the neighbors, and the new fence to be installed on the property would be wood.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in favor of or against the proposal. No comment was offered.

Zoning Board of Appeals Chairman Book called upon Jay Rosa, Planner for the Town of Brookline, to deliver the findings of the Planning Board:

FINDINGS:

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

F-1.0 (Three-Family)	Required	Existing	Proposed	Relief
Front-Yard Setback (Vernon Street)	15 Feet	20 Feet	20 Feet	Complies
Front-Yard Setback (Harris Street)	15 Feet	5.3 Feet	5.3 Feet	Special Permit*

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

Modification, as required, of BOA #2232 – July 17, 1978: This prior zoning relief permitted conversion of the subject property to a two-family dwelling. Condition #2 was imposed and states that: “Occupancy of each unit shall be limited to families within the first degree of kinship or to not more than two unrelated persons.”

This limitation on unrelated individuals is inconsistent with the Zoning By-Law definition of a family (**Section 2.06**) which permits no more than four unrelated individuals to occupy a dwelling unit.

Mr. Rosa stated that the Planning Board is supportive of the proposal to legalize a 124.7 square foot deck at the second story. The deck design and railing are consistent with the existing front porch that faces Vernon Street and will not extend the structure any closer to the Harris Street lot line than the preexisting nonconforming sunroom below. Similar upper-story decks are not common amongst surrounding 1, 2, and 3 family-dwellings; however, they are common amongst multi-unit residential buildings located directly to the north and east. Decks are permitted to project into the front yard up to three and one-half feet, but compliance with that dimensional requirement would necessitate a somewhat less consistent deck design and reduce the usability of the deck itself. The Board highly recommends that to meet the counterbalancing amenities the applicant submit a landscaping and fencing plan. The fence material shall be wood.

Therefore, the Planning Board recommends approval of the site plan submitted by Boston Survey, Inc., dated 9/17/2014, and final floor plans and elevations submitted by The Builders Architect, dated 1/13/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.

2. Prior to the issuance of an Occupancy Permit, the applicant shall submit a final landscaping and fencing plan showing a wood fence, 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 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.

Zoning Board of Appeals Chairman Book asked if the Planning Board's recommended second condition is focused only on a final fencing plan. Mr. Rosa said the plan could either show the existing landscaping with fencing or just the new fencing. Board Member Hussey said that even though the landscaping is already installed, he would include the landscaping as part of the counterbalancing amenity condition along with the new fencing. Chairman Book said that the already installed landscaping is not related to this request for zoning relief.

Chairman Book asked if the final site plan and elevations have already been submitted since the work has already been done. Mr. Rosa said yes, but the requirement in the first condition would establish a clear record of the project.

Chairman Book called upon Michael Yanovitch, Deputy Building Commissioner, to report on behalf of the Building Department. Mr. Yanovitch indicated that the Building Department does not have any objection to the proposal. If the Board finds that the proposal needs revisions to meet the standards for a special permit, the Building Department will work with the Petitioner to ensure compliance.

During deliberations, Mr. Hussey inquired whether the documents already on file for the project include a landscaping plan. Mr. Rosa said no, a landscaping plan was not submitted, although all other plans are complete and in the file. Mr. Hussey indicated he was in favor of the

project, and he would like to keep mention of the landscaping plan in the second condition along with the fencing. Attorney Allen asked if photos of the installed landscaping would be acceptable. Mr. Hussey indicated photos might be sufficient as he wants to ensure the landscaping is documented.

Board Member Schneider said the proposal is a simple and modest request for zoning relief, and it meets the standards for a special permit. Board Member Schneider disagrees with including the landscaping in the second condition, as the applicant has agreed to upgrade the proposed fencing from vinyl to wood and that is sufficient for a counterbalancing amenity. Chairman Book agreed with Board Member Schneider. Board Member Hussey said he would agree to leave out mention of a landscaping plan in the second condition.

Chairman Book said this proposal requires modest relief that likely would have been granted if it had been applied for prior to construction. Chairman Book said this request is worthy of relief and meets the requirements of **Section 9.05** of the Zoning By-law. Chairman Book said the conditions from the Planning Board's recommendation should be modified as most of the materials have already been provided and a building permit has already been issued. Mr. Yanovitch said the only new materials needed include a fencing plan showing a wood fence and evidence the decision was recorded at the Registry of Deeds. Chairman Book reviewed changes in the recommended conditions, including modifying the third condition to only require evidence of the recording of the decision at the Registry of Deeds prior to the issuance of a Certificate of Occupancy, modifying the second condition to only reference a new fencing plan prior to issuance of a Certificate of Occupancy, and completely removing the first condition and renumbering accordingly.

The Board then determined by unanimous vote that the requirements for a special permit from application of Section 5.50 of the Zoning By-Law pursuant to Sections 5.43 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.

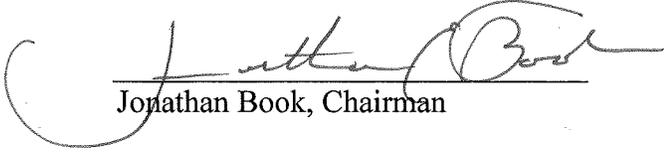
Accordingly, the Board voted unanimously to grant the requested relief subject to the following amended conditions:

1. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit a final fencing plan showing a wood fence, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

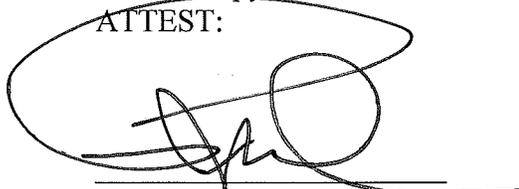
Unanimous Decision of
The Board of Appeals

Filing Date:

5/23/16


Jonathan Book, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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