



BOARD OF APPEALS
Jesse Geller, Chair
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0009

Petitioners Tiffany and Mikael Rinne, applied to the Building Commissioner for permission to convert unfinished basement into a residential condominium unit. The petitioners also propose to enclose a covered porch on the first floor level, expanding that unit by an additional 409 square feet. Finally, the petitioners propose to construct an 11 foot tall accessory shed at the rear of the structure. The application was denied and an appeal was taken to this Board.

On January 28th, 2016 the Board administratively determined that the properties affected were those shown on a schedule certified by the Board Assessors of the Town of Brookline and fixed April 21, 2016, at 7:00 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 7th and April 14th, 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: **MIKAEL and TIFFANY RINNE**

Owner: **21 KENT STREET CONDOMINIUM ASSOCIATION**

Location of Premises: **21 Kent Street**

Date of Hearing: **April 21, 2016**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

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

1. **Section 5.05 Conversion; Special Permit required,**
2. **Section 5.07, Dwellings in Business and Industrial Districts; Special Permit Required,**
3. **Section 5.09.2.d, Design Review; Special Permit Required,**
4. **Section 5.43, Exceptions from Yard and Setback Regulations; Special Permit Required,**
5. **Section 5.50, Front Yard Requirements; Variance Required,**
6. **Section 5.60 Side Yard Requirements; Variance Required,**
7. **Section 4.07 Table of Use Regulations, Use #6, Variance Required,**
8. **Section 5.63, Accessory Buildings or Structure in Side Yard; Special Permit Required,**
9. **Section 5.91 Minimum Usable Open Space, Variance required,**
10. **Section 6.02, Table of Off Street Parking Space Requirements; Special Permit Required,**
11. **Section 6.02.1.a, General Regulations Applying to Required Off Street Parking Facilities; Special Permit Required,**
12. **Section 6.04.2.a.b.e, Design of Off Street Parking Facilities; Special Permit Required,**
13. **Section 6.04.5.a and b, Design of All Off Street Parking Requirements; Special Permit Required,**
14. **Section 8.02.2 Alteration or Extension, Special Permit required, and**
15. **Any Additional Relief the Board May Find Necessary.**

of the Zoning By-Law to **CONSTRUCT ADDITION REQUIRING BOA RELIEF** at 21 Kent Street.

Said premise located in an G.2 (General Business) 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.

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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 Johanna Schneider. The case was presented by the attorney for the petitioner, Jacob Walters of Walters, Shannon & Jensen located at 27 Harvard Street, Brookline, MA 02445. Attorney Walters described the applicants' proposal to add an additional condominium unit in the basement, stating that his clients were the owners of the 3 of the building all of whom wish to convert otherwise unused space into a fourth (4th) unit. Mr. Walters stated that the building was constructed in 1925 and is in need of maintenance. The condominium association intends to rent the additional unit for a period of time and ultimately sell the same as a way of financing deferred building maintenance. Mr. Walters then addressed the relief needed, stating that the Board could waive the minimum usable open space requirement by Special Permit pursuant to Section 5.07 of the Zoning By-Law if a finding is made that such a waiver would promote reasonable development of the site compatible with adjacent buildings and the surrounding area. Mr. Walters suggested that in this location the addition of one (1) residential condominium unit was a reasonable development which would be compatible with the neighborhood. Mr. Walters cited the support of the abutting neighbor as evidence of such compatibility.

With reference to side yard setbacks for the proposed shed and parking spaces, Mr Walters stated that relief could be granted Special Permit pursuant to **Section 5.43** of the Zoning By-Law adding that that this Board may permit, in lieu of other requirements for yards or setbacks, 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 went on to say that the applicants are proposing landscaping and plantings as a counterbalancing amenity. Mr. Walters stated that a Special Permit pursuant to **Section 5.09.2.d** Design Review was required, and added that the Planning Board voted unanimously in favor of relief citing compliance with design review standards as set forth in the By-Law including (a) Preservation of Trees and Landscape, (b) the Relation of Buildings to the Form of the Streetscape and Neighborhood , (c) Open Space, (d) Circulation, and (e) Storm water Drainage.

Turning to parking, Mr. Walters indicated that eight (8) spaces are required which the applicants can meet with the additional spaces they are proposing but the Planning Board requested a reduction to seven (7) spaces to allow for additional setbacks and to accommodate a pathway to the dwelling if desired. The applicants agreed to the reduction from eight to seven spaces which would require relief pursuant to **Section 6.02.b**, which allows this Board to waive up to fifty percent (50%) of parking spaces in this district. Mr. Walters then turned to relief pursuant to **Section 4.07 Use #6**, which requires that not more than forth percent (40%) of frontage along a street may be devoted to residential use in this G 2 District. Mr. Walters stated that he believed this Board could provide relief via Special Permit pursuant to **Section 8.02.2** of the By-Law. Mr. Walters stated that G 2 districts throughout Brookline – such as Harvard Street, Boylston Street and Beacon Street looked substantially different than the section of Kent Street that is at issue. Mr. Walters cited the fact that 21 Kent Street was constructed as a solely residential dwelling and

has remained residential ever since. Mr. Walters acknowledged that the creation of the 4th unit creates the violation, but suggested that the intent of the By-Law was not to stifle development such as proposed by the applicants. Mr. Walters concluded by pointing out that the addition of a basement unit would not increase the non-conformity, and added that the Planning Board unanimously recommended that this Board grant relief pursuant to **Section 8.02**. Mr. Walters also mentioned that a Special Permit pursuant to Section 8.02.2 was required in any event as a number of pre-existing nonconformities were being altered.

Mr. Walters then asked the Board to also consider granting of a **Variance from Section 4.07, Use #6** and offered, in support of such a grant the fact that Chapter 40A, Section 10 of the Massachusetts General laws provides that *“owing to circumstances relating to the soil conditions, shape or topography of such land or structures, but not affecting generally the zoning district....* Mr. Walters argued that in this instance the shape of the building on the lot, which building was constructed prior to the enactment of the Zoning By-Law makes conformance with the 40% frontage requirement impossible. Mr. Walters again cited Section 10 of Chapter 40A stating: *A literal enforcement of the By-Law would involve a substantial hardship, financial or otherwise, to the petitioner, and relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the purpose or intent of the By-Law.* Mr. Walters pointed out that the hardship to the applicants would be substantial as their inability to sell or profit from the additional unit will compromise the ability of the condominium association to make needed maintenance on the building, in addition to not being able to make use of otherwise unused portion of the premises. Mr. Walters suggested that the grant of a variance would create no detriment to the public good nor would it derogate from the intent of the By-Law, and again cited the support of the abutter and general neighborhood.

Mr. Walters concluded the petitioners' presentation by stating that there were grounds to issue the requested Special Permits under **Section 9.05** of the Zoning By-Law since the site was an appropriate location for the addition, the use of the property will not adversely affect the neighborhood and no nuisance or hazard to vehicles or pedestrians would be created by the proposed addition.

Chairmen Zuroff asked whether anyone in attendance wished to speak in favor of or against the proposal. Mrs. Alice McQuaid spoke in opposition, stating her concerns about the Test Kitchen's use of Andem Place, the difficulty she encounters entering and exiting her garage space on Andem Place and a general objection to any additional parking spaces and automobiles.

John Rosa a member of the Planning Staff delivered the findings of the Planning Board.

G-2.0 General Business	Required	Existing	Proposed	Relief
Side Yard Setback Primary Structure	15.3'	10.5' (west) 4.6' (east) Place)	10' (west) 0.6 (east-raised deck)	Special permit* Pre-Existing
Side Yard Setback (accessory shed)	6'	N/A	2.4	Special Permit
Minimum usable Open Space	160.6 sq. ft.	Approximately 480 sq. ft.	0 sq. ft.	Special Permit
Off street Parking Spaces	8	5	7	Special Permit
Front Yard Setback	10 feet	0 feet	0 feet	Special Permit Pre-Existing
Side Yard Setback (parking)	5 feet	0 feet (west) 22.5 feet (east)	0 feet (west) 0 feet (east)	Special Permit Pre-Existing
Setback From basement and ground level residential units	10 feet	9 feet (Andem Pl.)	9 feet (Andem Pl.)	Special Permit Pre-Existing

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

*** 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 if the Board finds that a waiver of such requirements would promote reasonable development of the site compatible with adjacent buildings and surrounding area.*

Mr. Rosa reported that the Planning Board supported the proposed additional unit, enclosure of the first floor unit covered porch and the accessory shed. Mr. Rosa added that the Planning Board recommended six not seven parking spaces along Andem Place and the retention of the existing parking space in the Kent Street front yard for a total of seven spaces on the site. Mr. Rosa stated that the Planning Board was supportive of the proposed landscaping to serve as a counterbalancing amenity. Mr. Rosa added that the Planning Board expressed support for the grant of a Special Permit pursuant to **Section 8.02** for relief from **Section 4.07**, as the structure has always been 100% residential. Mr. Rosa noted that the Planning Board recommends approval of the relief requested as per the plans by Robert Babcock, dated 12/16/15, and floor plans and plans by Douglas Stefanov, dated 1/29/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan including all parking spaces and stall dimensions, floor plans and elevations, subject to review and the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities and fencing, subject to review and approval by the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch Chief Building Inspector, for the report from the Building Department. Mr. Yanovitch stated that the Building Department had no objections to the applicants' proposal. Mr. Yanovitch added that the dimensional and parking relief can all be granted by Special Permit and opined that it is unfortunate that the structure in question falls in a G district and believed the original intent of the By-Law was not meant for structures such as the one in question. Mr. Yanovitch added that the Building Department would have no objection to the grant of either a variance or special permit for this property. Mr. Yvanovich concluded his remarks by saying the Building Department would, pending approval of the Zoning Board of Appeals, work with the applicant to assure compliance with the law.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant a Variance for relief from **Section 4.07, Use #6**, rather than a Special Permit, and found that the unusual circumstances regarding the dimensions of the structure pre-date the enactment of the Zoning By-Law and that hardship would ensue if the applicants were unable to convert the property to a 4 family dwelling and the fact that relief could be granted without detriment to the public good and without derogating from the intent of the By-Law, warranted the grant of a Variance. The Board then approved the other requested relief by Special Permit. The Board, granted relief pursuant to **Section 5.43, Section 5.07, Section 5.09.2.d, Section 6.02.b, Section 8.02.2 and Section 9.05** of The Brookline Zoning By-Law. The Board also made the following specific findings pursuant to **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.

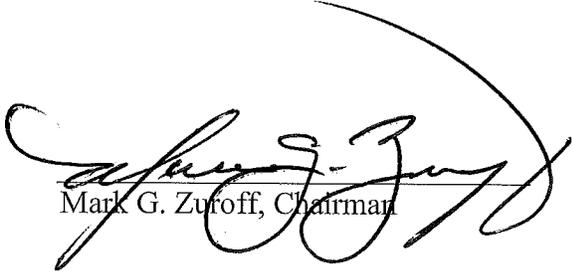
The Board further required that the applicant move the proposed shed off the lot line approximately 2.4 feet, and added that the additional parking spaces be made permeable in order to minimize drainage problems which were conditions accepted by the applicant..

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 floor plans including gross floor area calculations and roof deck dimensions, subject to approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan stamped and signed by a registered land surveyor; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

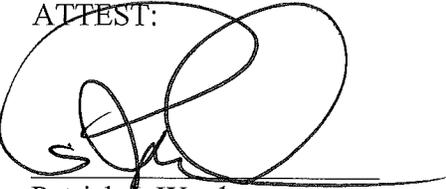
Unanimous Decision of
The Board of Appeals

Filing Date: 5/23/16


Mark G. Zurroff, Chairman

A True Copy

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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