



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

RECEIVED
Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0038

Petitioner, Michael Shashoua, applied to the Building Commissioner for permission to legalize an existing basement unit thereby converting a three (3) story, three-family apartment building into four (4) dwelling units at 36 Claflin Road. The application was denied and an appeal was taken to this Board.

On July 12, 2011 the Board met and 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 July 28, 2011 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 July 7 and 14, 2011 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: **SHASHOUA, MICHAEL**
Owner: **SHASHOUA, MICHAEL**
Location of Premises: **36 CLAFLIN RD**
Date of Hearing: **July 28, 2011**

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) 5.05; Conversions; Special Permit Required.
- 2) 5.09.2.d; Design Review, multiple dwellings, Special Permit Required.
- 3) 5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.
- 4) 5.50; Front Yard Requirements; Variance Required.
- 5) 5.60; Side Yard Requirements; Variance Required.
- 6) 5.90; Minimum Landscaped Open Space; Variance Required.
- 7) 5.91; Minimum Usable Open Space; Variance Required.
- 8) 6.01.2.a; General Regulations Applying to Required Off-Street Parking Facilities; Special Permit Required.
- 9) 6.02.1; Table of Off-Street Parking Space Requirements; Variance Required.
- 10) 8.02.2; Alteration or Extension; Special Permit Required

of the Zoning By-Law to **LEGALIZE BASEMENT UNIT THEREBY CREATING 4 UNIT BUILDING REQUIRING BOA RELIEF at 36 CLAFLIN RD.**

Said premise located in a **M-1.5 (apartment house)** residential 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, Enid Starr and Board Members, Jonathan Book and Christopher Hussey. The case was presented by the petitioner's attorney, Robert L. Allen Jr., 300 Washington Street, Brookline, MA 02445.

Attorney Allen introduced the applicant, Michael Shashoua, and described 36 Claflin Road as a three story multi-family brick apartment building built in 1910 and located on a steep slope south of Beacon Street. The building is the end unit in a long row of attached buildings. The neighborhood is primarily residential and many of the buildings have basement dwelling units. The property is not far from the Washington Square Commercial District. Surrounding uses are primarily multi-family. The prior owner had rented the basement unit as a separate apartment since 1987. The unit has its own mailbox and entrance from the street. The applicant has owned the building for over two years.

The Applicant seeks to legalize the existing 901 sf basement unit, thereby legalizing the fourth unit in this three-family home. The proposal involves removing a common interior staircase on the south side of the home connecting the garden level and first floor. The renovation would allow there to be exclusive access to the basement unit via the garden level entrance on the west side of the home. The Applicant would also install new hardwood floors in the basement. There would be no exterior changes. Attorney Allen informed the Board that there are numerous other buildings along Claflin Road that have legalized a basement unit.

The Applicant was cited under: Section 5.05 (Conversion); failure to comply with dimensional requirements, and; Section 8.02. Attorney Allen suggested that the Board may waive dimensional requirements since the dimensional requirements are pre-existing non-confirming and, because the Applicant is making no exterior changes, such non-conformities are not increased.

The applicant was also cited for not having the nine (9) required parking spaces; however Attorney Allen argued that pursuant to Section 6.01.2(a), when, as here, a dwelling is converted for additional units, the Board of Appeals by special permit may waive up to half of the required parking spaces. There are two 3 bedrooms units, 1 two bedroom unit and 1 one bedroom unit for an overall requirement of 9 parking spaces. The Applicant has eight (8) parking spaces and the building is located

within walking distance to public transportation. Further, the Applicant was offering numerous plantings as counterbalancing amenities.

Chairman Starr asked whether anyone in attendance wished to speak either in favor or against the proposal. No one rose to speak.

Ms. Courtney Synowiec, Planner, presented the findings of the planning staff.

Section 5.05 – Conversions: When converting a dwelling to create additional units in an M District, the structure shall conform to all dimensional requirements, such as setbacks. However, the Board of Appeals by special permit may waive the dimensional requirements except minimum lot size, provided that no previously existing nonconformity to such requirements is increased. *Special permit required.*

Section 5.09.2.d – Design Review, multiple dwellings

Any exterior addition for which a building permit is required for multiple dwellings with four or more units on the premises. The applicant is not proposing any exterior alterations.

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

Requirements	Required	Existing	Proposed	Finding
Front Yard Setback	15'	12.5'	12.5'	Pre-existing, non-conforming*
Side Yard Setback	15.6'	0'	0'	Pre-existing, non-conforming*
Landscaped Open Space	509 s.f.	Est. 659 s.f.	Est. 659 s.f.	Complies
Usable Open Space	763'	0' (est.)	0' (est.)	Pre-existing, non-conforming*
Parking Spaces	9	8	8	Special Permit**

* Under Sections 5.05 and 5.43, the Board of Appeals may waive yard and setback dimensional requirements by special permit. Should Section 5.43 be found to apply, the applicant is proposing to plant flowers in the front yard as a counterbalancing amenity.

**Under Section 6.01.2(a), when a dwelling is converted for additional units, the Board of Appeals by special permit may waive up to half of the required parking spaces. There are two 3 bedroom units, 1 two bedroom unit and 1 one bedroom unit for an overall requirement of 9 parking spaces.

Section 8.02.2 – Alteration or Extension

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

Ms. Synowiec said that the Planning Board was supportive of this proposal. The property has an adequate amount of parking, the basement conversion was done by a previous owner and has been in existence without issue for a number of years and the current owner has taken the appropriate actions to

legalize the unit and this proposal is not the result of an enforcement action. Finally, the Planning Board is supportive of the interior alterations such as the reconfiguration of the stairs and the installation of a fully functioning kitchen. Therefore, the Planning Board approves the plans by Jonathan Raisz, Architect, dated 4/27/11 and George C. Collins, Professional Land Surveyor from Boston Survey, Inc., dated 6/30/11, subject to the following conditions:

1. Prior to the issuance of a building permit, a final site plan indicating any counterbalancing amenities shall be submitted 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 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Starr then called upon the Building Commissioner to speak on the proposal.

Commissioner Sheppard stated that the Applicant had come to the Town seeking approval of the proposal and was not before the Board as a result of action from his office. He stated that he was generally supportive of the proposal, however, based upon a number of concerns he has heard from citizens, he questioned whether Applicants seeking to legalize an existing unit should be willing to voluntarily make a payment to the Affordable Housing Trust Fund. With that said, he did think the requested approval was appropriate under these circumstances.

Attorney Allen rose to inform the Board that the Applicant was willing to place \$1500 into the Affordable Housing Trust Fund, but did make the point that this unit, being a basement unit, will be an affordable unit by Brookline's standard.

The Board deliberated and felt that such a payment was not something they should or could condition and, therefore, felt the Applicant can donate as he sees fit without being a condition of any

approval. The Board inquired about the garage removal and felt that there was adequate parking and that a waiver of one parking space was not problematic.

The Board then determined, by unanimous vote, that the requirements necessary for granting the Special Permit relief requested under the relevant sections of the Zoning By-Law, including Section 8.02.1.a (to alter a pre-existing, non-conforming structure) were met. The Board made the following findings pursuant to 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.

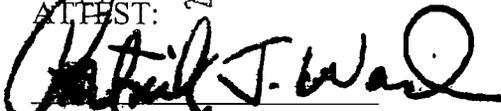
Accordingly, the Board voted unanimously to grant the requested relief subject to the following condition:

- 1. Prior to the issuance of a building permit, a final site plan indicating any counterbalancing amenities shall be submitted 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 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: August 8, 2011

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals


Enid Starr, Chairman