



Town of Brookline

Massachusetts

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

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090044

Petitioner, the Edd Kamp Family Limited Partnership applied to the Building Commissioner for permission to convert an existing two-family home into a three-family home at 98 University Road. The application was denied and an appeal was taken to this Board.

On 9 July 2009, 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 3 September 2009, at 7:15 p.m. in the Selectmen's hearing room, 6th floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his 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 20 and 27 August 2009 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: **EDD KAMP FAMILY LP**
Location of Premises: **98 UNIVERSITY RD BRKL**
Date of Hearing: **09/03/09**
Time of Hearing: **7:15p.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. (The issuance of a Special Permit under 5.05 may waive any dimensional requirements other than lot size).**
2. **5.50; Front Yard Requirements, Variance Required.**
3. **5.60; Side Yard Requirements, Variance Required.**
4. **5.70; Rear Yard Requirements, Variance Required of the Zoning By-Law to convert an existing two family home into a three family home at 98 UNIVERSITY RD BRKL.**

Said Premise located in a M-1(apartment house) 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.

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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, Jesse Geller and Board Members, Jonathan Book and Rob DeVries. The petitioner was represented by Attorney Kenneth Hoffman of Holland and Knight, 10 St. James Avenue, Boston, MA 02116.

Attorney Hoffman said the sole relief required by his client is a Special Permit under **Section 5.05**, conversions, of the Zoning By-Law. He said there was no increase in any non-conformity in this proposal.

Attorney Hoffman said that 98 University Road is a two-family two-and-a-half-story dwelling outside of the Washington Square neighborhood immediately abutting Winthrop Path. A paved parking area approximately 30 feet wide exists immediately to the left of the building, supported by concrete retaining walls with iron railings. He said that the property slopes down from the front lot line towards the rear. Surrounding properties on University Road include single-, two-

and three-family dwellings; properties to the rear with frontage on Washington Street include primarily multi-family dwellings.

Attorney Hoffman said that his client, EDD KAMP FLP, proposes to convert the two-family dwelling into a three-family dwelling by converting the basement into a third unit. Alterations to the building's exterior include a new primary egress door and stair on the building's east side, new windows and window wells on the front and side of the building, and new windows on the rear of the dwelling. The new stair leading to the proposed front entry would be 3 feet 2 inches wide with a railing 42 inches high. Attorney Hoffman said that the parking lot was improved several months prior to this application. He said as a result of the Planning Board hearing and concerns that were raised at the time, the petitioner had a landscape plan prepared entitled Landscape Plan, 98 University Road, dated 4 September 2009. (Submitted as exhibit "A") Attorney Hoffman said that the plan had been reviewed by the Assistant Director for Regulatory Planning and she indicated that in her opinion, it met the requirements of the Planning Board. Attorney Hoffman said the overnight parking is not allowed on University Road and it is a tow zone. He said his client was able to accommodate the required six cars on his lot without encroaching on the sidewalk. Attorney Hoffman opined that while the requested relief required no counterbalancing amenities, his client was offering several landscape "enhancements" to improve the appearance of his property. He said that the requested relief complies with the requirements of Section 9.05 relative to the issuance of a Special Permit.

Board Member DeVries asked about the size of the parking spaces in the proposal and whether they met the requirements of the Zoning By-Law. The Building Commissioner responded that the lot was pre-existing, non-conforming and had not been increased or decreased to accommodate the cars. The Commissioner also offered that the Zoning By-Law exempts lots of 6 or fewer spaces from the dimensional requirements for parking spaces. Mr. DeVries also inquired about the Planning Board suggestion that the width of the curb-cut be reduced. Lara Curtis, Senior Planner, responded that it was only one of several suggestions of the Planning Board and that the petitioner felt that if the curb cut were reduced vehicles, in exiting the lots, would just damage or destroy any landscaping.

Chairman Geller asked whether there were any pre-existing non-conformities that were being increased, and Attorney Hoffman responded that there were not.

Chairman Geller asked whether anyone wished to speak in favor of the application. Mr. Louis Scorziello of 97 University Road gave a brief history of the neighborhood in general and the parking issues in particular. He said that the neighbors were all in support of the project and they are pleased with the work that has been done on the property. Mr. Scorziello said he was in favor of the proposal before the Board. Five neighbors on University Road submitted letters stating that they had no objection to the requested relief.

Chairman Geller asked whether anyone wished to speak against the proposal. Ms. Stephanie Greenfield TMM Precinct 12, of 154 University Road said that she was not opposed to the proposal if the Planning Board recommended conditions were adopted. She said that two other Town Meeting Members, David Cotney and Casey Hatchett expressed their concern about the project in a letter to the Planning Board Members dated 20 July 2009. She said she had concerns about the amount of bituminous paving on the parking lot. She said the introduction of some other material could help lessen the amount of black top. She said the planting of substantial plant materials that would be pleasing during all seasons would help mitigate the negative impact of the parking area. She said she was concerned about the width of the curb cut and commented as she looked at the proposed landscape plan that it appeared to be fine.

Ms. Curtis delivered the findings of the Planning Department Staff.

Section 5.05 – Conversions: When a dwelling is converted to create additional dwelling units in an M District, the structure shall conform to all dimensional requirements specified in Section 5.01, however, the Board of Appeals by special permit may waive any of the dimensional requirements in Section 5.01, except minimum lot size, as long as no previously existing nonconformity is increased.

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements: Although the new stair would be approximately seven inches from Winthrop Path, *Section 5.62, Fences and Terraces in Side Yards*, exempts “terraces, steps, uncovered porches, or other similar features not over three feet high above the level of the floor of the ground story.” Therefore, the proposed stair would be in compliance. In this proposal, the applicant requires relief for the main building’s pre-existing non-conforming side yard of 3.8 feet.

Section 5.70 – Rear Yard Requirements

	Required	Existing	Proposed	Finding
Front Yard Setback	15	10.1 feet	10.1 feet	Pre-existing Non-conforming; Special permit required*
Side Yard Setback	$(10+L/10)^{**}$	3.8 feet	3.8 feet	Pre-existing Non-conforming; Special permit required*
Rear Yard Setback	30	14.6 feet	14.6 feet	Pre-existing Non-conforming; Special permit required*
Parking Spaces	6 spaces	6 spaces	6 spaces	Complies

*Under Section 5.05, Conversions, the Board of Appeals may grant a special permit to waive dimensional requirements in the case of a building being converted for additional units, as long as no non-conformity is increased.

**The site plan submitted with the application was not-to-scale and did not indicate the building's length, so the accurate side yard setback cannot be estimated; however, since the required setback would be greater than 10 feet, it is clear the building is not conforming.

Ms. Curtis said that the Planning Board was not opposed to the conversion of this two-family dwelling into a three-family dwelling. The relief required and the exterior alterations are minimal and do not detract from the building's appearance.

Ms. Curtis reported that there have been some concerns the parking area has been overloaded with vehicles, and the addition of another dwelling unit amplifies those concerns. Recently taken pictures indicate vehicles have been parked in the front yard setback. Therefore, the parking lot should be limited to six vehicles at all times, and the vehicles should not be parked in the front yard setback nor in any way interfere with the sidewalk. Additionally, since the parking area is so expansive, the front of the driveway should be narrowed in order to add landscaping and improve the appearance of the parking area.

Additionally, since the new stair will be located so close to a public path, the materials for that stair should be substantial and attractive. Also, lattice will need to be removed to expose that portion of the building wall, and the exposed surface should be finished with siding materials similar to the existing building. Therefore, she said, the Planning Board recommended approval of the proposal and the plans, including the floor plans prepared by Benjamin E. Abrams and dated 6/29/09, and the submitted parking plan, received by the Planning Department on 7/24/09, subject to the following conditions:

- 1. No more than six cars shall be parked on the lot at any time, nor shall they be parked in the front yard setback or parked in a manner that overhangs the sidewalk.**

2. **Prior to the issuance of a building permit, details about the new side stair, the materials at the new entrance, and the railing shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
3. **Prior to the issuance of a building permit, a landscape plan, indicating landscaping in the front, back and side yards, as well as improvements to the parking area, including a narrowing of the curb cut, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
4. **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 to-scale site plan, indicating all parking area dimensions and setbacks, window well locations, and setbacks for the dwelling and new stair, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. Mr. Shepard reported that the property had fallen into significant disrepair in the recent past but after being acquired by the petitioner has undergone significant upgrades to improve its appearance and serviceability and now is among the well maintained properties in the neighborhood. He said there have been issues in the past regarding excessive vehicles parking in the lot and in some cases encroaching on the sidewalk. Mr. Shepard opined that having an approved plan for six cars would lessen the potential future enforcement issues. He said that the Building Department was supportive of the relief as well as the conditions proposed by the Planning Board.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member, Book asked about the Planning Board condition #2. He said that in his opinion the submitted landscape plan does not address all the issues raised by the Planning Board. Ms. Curtis responded that the Planning Board recommended several changes that they wanted the petitioner to consider but they suggested leaving final approval of a plan to the Planning Staff. Mr. DeVries asked about the handrail and stairs on the new entrance to the lower unit and suggested they need more study. He was especially concerned about the planters, handrails and lattice surrounding the new entrance. Attorney Hoffman responded that the exterior materials and design were discussed at the Planning Board Hearing and the specific materials were not discussed. Attorney Hoffman

opined that as a general rule these issues were reviewed and approved by the Assistant Director for Regulatory Planning. There was discussion among the Board Members regarding modifying the conditions to satisfy Mr. DeVries' concerns. Mr. DeVries stated that the Planning Staff should have for review a plan with sufficient detail to assure a quality product. He said he was concerned what the property would look like from Winthrop Park. Mr. DeVries suggested that a section-view through the stairs on Winthrop Path would provide the details about which he was concerned. Board Members then discussed amending proposed condition #3 to include pavers on the entire surface between the parking area and the sidewalk and reached general consensus on this point.

The Board then determined, by unanimous vote, that it is desirable to grant a Special Permit in accordance with Section 5.05, conversions, and made the following 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.
- e. The development as proposed will not have a significant adverse 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. No more than six cars shall be parked on the lot at any time, nor shall they be parked in the front yard setback or parked in a manner that overhangs the sidewalk.**
- 2. Prior to the issuance of a building permit, details about the new side stair, the materials at the new entrance, and the railing including elevations of the affected portions of Winthrop Path, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to the issuance of a building permit, a landscape plan, indicating landscaping in the front, back and side yards, as well as improvements to the parking area to include an aesthetically pleasing delineation, such as pavers, in the area between the parking and sidewalk, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

4. 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 to-scale site plan, indicating all parking area dimensions and setbacks, window well locations, and setbacks for the dwelling and new stair, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of

The Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

SEP 24

Filing Date: September 18, 2009



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals