



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. 0800 17

Petitioners, Ebrahim and Flora Pourati, applied to the Building Commissioner to construct a new dwelling unit within the existing fourth floor living space (presently part of the third floor unit) thereby converting the premises from a 3 unit to a 4 unit building per plans at 68 Boylston Street. The application was denied and an appeal was taken to this Board.

On 8 May 2008, 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 26 June 2008, at 7:15 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its 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 5 and 12 June 2008 in the Brookline Tab, a newspaper published in Brookline. 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: **POURATI, EBRAHIM and FLORA**
Location of Premises: **68 BOYLSTON STREET BRKL**
Date of Hearing: **06/26/2008**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Main Library, 2nd. floor**

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

1. **5.07; Dwellings in Business and Industrial Districts, Special Permit Required.**
2. **5.60; Side Yard Requirements, Variance Required.**
3. **5.70; Rear Yard Requirements, Variance Required.**
4. **5.91; Minimum Usable Open Space, Variance Required.**
5. **6.01.2a; General Regulations Applying to Required Off-Street Parking Facilities, Special Permit Required.**
6. **6.02.1; Table of Off-Street Parking Space Requirements, Variance Required.**
7. **8.02.2; Alteration or Extension, Special Permit Required**

of the Zoning By-Law to construct a dwelling unit within the existing fourth floor living space (presently part of the third floor unit) thereby converting the premises from a 3 unit to a four unit building per plans at **68 BOYLSTON ST BRKL.**

Said Premise located in a **G-1.0** 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.***

**Enid Starr
Jesse Geller
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr and Board Members Jesse Geller and Kathryn Ham.

The petitioners, Ebrahim and Flora Pourati, owners of the subject property, were present and their case was presented by Angela L. Wieremann of Mulvey, Sneider and Freyman, PC, 1244 Boylston Street, Suite 200, Brookline, MA 02467-2115.

Ms. Wieremann described the property as a three-family, four-story residential building on a lot that is approximately six feet above street level. Immediately west of the existing building on the site is a four car parking area with high retaining walls, which was approved in a prior Board of Appeals decision. The neighborhood along either side of Boylston Street is mix of commercial and commercial/residential buildings from one to four stories in height. The Walnut Street neighborhood to the rear of the property is primarily residential. She said that the applicants, Ebrahim and Flora Pourati, wish to divide the upper unit, currently occupying the third floor and fourth floor attic area, into two separate units. The existing unit has seven bedrooms; under this proposal, it would be divided into one four-bedroom unit and one three-bedroom unit. There would be no exterior alteration to the building, as the attic is already finished floor space. The changes to the interior include the installation of a kitchen on the attic floor and a reconfiguration of the stairway to install a new entrance. Ms. Wieremann said that the parking area next to the building currently has parking spaces for four cars, and is used for residents at night and businesses during the day. The applicants would like to install a fifth tandem compact parking space behind the parking space furthest to the rear in this parking area.

The Chair asked whether anyone wished to speak in favor or in opposition to the petition. Two abutters spoke. The first, the homeowner at 123 Walnut Street, expressed concern over the addition of a 5th tandem parking spot which may encroach on the abutting property. Attorney Wieremann responded that the addition of the 5th spot does not increase the current

size and dimensions of subject parking lot. The homeowner at 115 Walnut Street spoke of her concern that the proposed conversion may increase the foot traffic by the tenants of 68 Boylston Street through her property. Apparently the fence separating her property from the petitioner's property had been altered so people can gain access to 68 Boylston Street from Walnut Street through her property. The homeowner stated that she was not opposed to the proposal if a more permanent fence was erected. Both neighbors also expressed concern over the noise the conversion might cause.

Lara Curtis, Planner delivered the findings related to the case.

Section 5.07 – Dwellings in Business and Industrial Districts: Dwellings in business and industrial districts shall conform to the minimum usable open space and minimum side and rear yard requirements of the M district with the same maximum permitted floor area ratio as the business or industrial district in which it is located. *However, the Board of Appeals may waive such requirements by special permit if it would promote reasonable development of the site compatible with adjacent buildings and the surrounding area.*

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 6.01.2.a – General Regulations Applying to Required Off-Street Parking Facilities

Section 6.02, Paragraph 1 – Table of Off-Street Parking Space Requirements

PARKING

	Required	Existing	Proposed	Finding
Parking Spaces	9 spaces	4 spaces	5 spaces (1 tandem)	Special Permit*

* Under Section 6.01.2.a, the Board of Appeals may by special permit waive up to half of the total number of parking spaces required when a structure in a G district is converted for one or more additional dwelling units.

Section 8.02.2 – Alteration or Extension: A special permit may be granted under Section 8.02.2 to alter or enlarge a non-conforming condition.

Modification of Board of Appeals Decision, Case #3619 (12/14/2000) which allowed the creation of a parking lot solely for the use of the residents of 68 Boylston Street, is required.

Modification of Board of Appeals Decision, Case #030031 (8/25/2003) which allowed for dual use parking of the lot by residents of 68 Boylston Street, adjacent residences, and customers and/or employees of local businesses, is required.

Ms. Curtis said that the Planning Board was not opposed to the proposal to convert this building from a three-unit to a four-unit dwelling. The space in the attic for the proposed

unit is already finished floor space, and the modifications to the building needed to make it into a separate unit are minor. The building is located near mass transit, and five spaces should be sufficient for the dwelling. However, tandem parking arrangements are difficult for business parking uses unless managed by a parking attendant, so the tandem parking layout should only be employed at night by residential tenants. Additionally, a visit to the site revealed that there are several bicycles currently being parked on the building's front porch. The Planning Board would like to encourage alternative modes of transportation, especially when the site does not have the required number of parking spaces, as well as proper storage of bicycles, therefore secure bicycle parking facilities should be provided on site near the building's entrance but separate from the front porch. Finally, the building's exterior is in some disrepair and should be painted. Therefore, she said, the Planning Board recommended approval of the plans, titled "68 Boylston Street," prepared by Kunz Associates and dated 03/19/08, and the site plan prepared by J.F. Hennessy Co., indicating a tandem parking arrangement, and dated 5/18/08, subject to the following conditions:

1. **Prior to the issuance a building permit, the applicant shall submit a final site and parking plan to the Assistant Director for Regulatory Planning for review and approval. This plan shall also indicate bicycle parking facilities near the building's front entrance.**
2. **The parking lot shall be appropriately striped and labeled. The tandem parking arrangement shown on the plan referenced above shall only be employed during nighttime hours.**
3. **The building's exterior shall be painted and kept in good condition.**
4. **Prior to 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) 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.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He reported that the condition of the façade was extremely worn and in need of refurbishment but he did not think it was an appropriate condition for approval of the petition. He said one abutter visited his office regarding the fence and he recommended a new fence, not as easily removed as the existing one, be put in its place as part of the project. Otherwise, he reported, the Building Department had no issue with the approval of the petition or the modified conditions of the Planning Board.

The Chair then commenced deliberations amongst the Board. The Board felt that the inclusion of the requirement for painting and preservation of the exterior of the building was not an appropriate condition for relief.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it is desirable to grant a Special Permit in accordance with Sections 5.07, 6.01.2a and 8.02.2 of the Zoning By-law and makes 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.

The Board voted to modify the Board of Appeals Decisions in Case#3619 (12/14/2000) and Case #030031 (8/25/03) insofar as they are inconsistent with the Board's decision and the conditions imposed in the instant Case #080025.

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

1. Prior to the issuance a building permit, the applicant shall submit a final site including fencing, parking and bicycle storage to the Assistant Director for Regulatory Planning for review and approval.
2. The parking lot shall be appropriately striped and labeled. The tandem parking arrangement shown on the plan referenced above shall only be employed during nighttime hours and used by residents of a single unit at 68 Boylston Street.
3. Prior to 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) 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.

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

08 JUL -3 PM 12:25

Unanimous Decision of
the Board of Appeals



Enid Starr

Filing Date: July 3, 2008

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals