



# *Town of Brookline*

## *Massachusetts*

**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0012  
ALAN TAM

Petitioner, Alan Tam, applied to the Building Commissioner for permission to convert an existing two-family dwelling to a single-family dwelling and a professional office use. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed July 17, 2014 at 7:30 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 June 26, 2014 and July 3, 2014 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: ALAN TAM  
Owner: ALAN TAM  
Location of Premises: 7 HARVARD AVENUE  
Date of Hearing: JULY 17, 2014  
Time of Hearing: 7:30 PM  
Place of Hearing: SELECTMEN'S 6<sup>TH</sup> FLOOR CONFERENCE ROOM

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

1. **Section 5.07: Dwellings in Business and Industrial Districts**
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.61: Projections into the Side Yard**
4. **Section 5.64: Side Yards for Non-Dwellings in Business and Industrial Districts**
5. **Section 6.02, Paragraph 1: Table of Off-Street Parking Requirements (5 total spaces required)**
6. **Section 6.02.1.b: Off-Street Parking Space Regulations**
7. **Section 8.02.2: Alteration or Extension**

of the Zoning By-Law to **CONVERT FROM A TWO-FAMILY DWELLING TO A SINGLE FAMILY AND BUSINESS USE. CONSTRUCT ADDITIONS AT SIDE AND REAR** at 7 HARVARD AVENUE. Said Premises is located in a **L1.0 (Local Business) 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 Office of the Town Clerk at 617-730-2007 or check the meeting calendar at: [www.brooklinema.gov](http://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 programs and services of the Town of Brookline are invited to 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](mailto:rsneirson@brooklinema.gov).***

**Jesse Geller  
Jonathan Book  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jonathan Book, and Board Members Christopher Hussey and Avi Liss. 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 Alan Tam, owner of the property, and Chih Ming Lee, the Petitioner's architect.

Chairman Jonathan Book called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner proposes to convert the existing two-family dwelling to a single-family dwelling and a professional office use.

Attorney Allen presented to the Board a background of the Petitioner and the property, stating the following: The Petitioner's family owned 7 Harvard Avenue and the Petitioner grew up on the property. Attorney Allen stated that the property was transferred to the Petitioner in 2012, and plans to have his wife and two children live in the house. Attorney Allen stated that the Petitioner proposes to convert the dwelling into a single-family home, consisting of four bedrooms, with a professional office on the first floor.. Attorney Allen stated that the Petitioner plans to either personally use the first floor office for his software business or rent the office space out. Attorney Allen stated that the property is located near the corner of Harvard Avenue and Harvard Street right across from Pierce Park. Attorney Allen stated that the property is in an L-1.0 District, which permits dual residential and commercial use by-right, and currently contains a mix of residential and commercial uses, including a day-care facility, mediation office, and a building with mixed commercial and residential use.

Attorney Allen noted that the original site plan was not initially cited for design review; however the property was found to be within 100 feet of Harvard Street, thus allowing the Planning Board to have design review authority and express some concerns with the façade of the home. Attorney Allen stated that after Mr. Lee revised the design of the dwelling, the Planning Board unanimously voted in favor of the project.

Chih Ming Lee, 26 Maple Street, Newton, MA 02446, then discussed the site plans for the proposal. Zoning Board of Appeals Chairman Jonathan Book asked what the proposed number of

parking spaces will be on the property. Attorney Allen stated that there will be four in total, two spaces for the family and two spaces for the office space.

Chairman Book asked whether Section 5.07 was incorrectly cited in the denial letter. Attorney Allen stated that it had to be cited because it was necessary to determine if the pre-existing non-conforming requirements were met. Attorney Allen clarified that the Petitioner was cited for Section 5.07 – Dwellings in Business and Industrial Districts. Because the property is located in a local business district, it must comply with the dimensional requirements of the M-district. Attorney Allen stated that the existing non-conformities will not increase, and that the Board may waive dimensional requirements under Section 5.43 if a counterbalancing amenity is provided. Attorney Allen noted that the proposal includes replacing the brick in the back of the property with landscaping and adding a two-tier level of planting to enhance the front of the home as a counterbalancing amenity under Section 5.43.

Attorney Allen stated that under Section 6.02, the Board of Appeals may waive 10 parking spaces or 50% of the increased requirement when there is an alteration to an existing commercial use. However, Attorney Allen noted that this property is not an existing commercial use, and that under Section 6.02.1.b or Section 6.02.1.c, the Board of Appeals has the power by special permit to allow dual use of parking because the Petitioner plans to either personally use or rent the professional office, which will only require parking during the day and then the residents can use it for overnight parking. Attorney Allen stated that some neighbors were opposed in the first Planning Board meeting because they were concerned that tenants and visitors to the office space would park on Harvard Avenue, as is the current situation with other nearby offices without parking on site. However, this proposal provides parking, making it easier to control the situation for parking than other properties on Harvard Avenue.

Attorney Allen discussed relief under Section 8.02.2 of the Zoning By-Law where a special permit is required under Section 9.05 of the Zoning By-Law. As for Section 9.05, in looking at this

conversion, (1) the specific site is an appropriate location because the property is located in an L-1.0 District that permits single-family dwellings and professional office uses by-right, which is surrounded by apartment complexes, office condominiums, two-family dwellings, and mixed use properties; (2) there will be no adverse effect on the neighborhood because the professional office will primarily require parking spaces during the day, typically when residents are away from the dwelling, thereby not creating any issues with the amount of parking spaces on the property; (3) no nuisance or serious hazard to vehicles or pedestrians exists because there will be no increase in parking and the office use parking will be provided on site; (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.

Zoning Board of Appeals Member Hussey asked what type of siding is proposed. Mr. Lee stated that Hardie board siding will be used for the project. Chairman Book asked whether the Hardie board siding will be used for the entire structure. Mr. Lee stated that the Hardie board siding is for the entire structure.

Zoning Board of Appeals Chairman Book asked if there was anyone present who wished to speak in favor of this application. No one spoke in favor of this application.

Zoning Board of Appeals Chairman Book asked if there was anyone present who wished to speak in opposition to this application. Shauna Rives, 23 Harvard Avenue, stated concern for the amount of parking on Harvard Avenue because there is already traffic congestion in the neighborhood and that the business offices are on Harvard Street and not on Harvard Avenue, which have parking on Harvard Street. Board Member Hussey asked how many cars are currently parked on 7 Harvard Avenue as a two-family dwelling. Attorney Allen stated that there are no cars currently parked.

Lara Curtis Hayes, Planner for the Town of Brookline, delivered the findings of the Planning Board:

**FINDINGS:**

1. Section 5.07 – Dwellings in Business and Industrial Districts
2. Section 5.43 – Exceptions to Yard and Setback Regulations
3. Section 5.61 – Projections into the Side Yards
4. Section 5.64 – Side Yards for Non-Dwellings in Business and Industrial Districts
5. Section 6.02 – Paragraph 1, Table of Off-Street Parking Requirements (7 total spaces required)

The proposed office use requires 7.4 spaces, but gets credit for the 2.3 spaces that were previously required for the residential unit that is being converted into office space; therefore 3 additional spaces are required for the office use. The residential unit is required to have 2.3 parking spaces because there are over three bedrooms, which brings the parking requirement for the property to 7 parking spaces.

6. Section 6.02.1.b or c – Off-Street Parking Space Regulations

Under Sec. 6.02.1., if there is a change or expansion of a non-residential use, the Board of Appeals may waive 10 parking spaces or 50% of any increased requirement, whichever is greater. However, in this case, there is currently no non-residential use and therefore the Planning Department finds that a special permit under Sec. 6.02.1.c, dual use, would be more appropriate. This section allows for dual use if the two uses would be used at different times. Since residents would be out during the day, business users could use the parking spaces.

	Required	Existing	Proposed	Relief
<b>Projections into Side Yards</b>	3'	2.9'	2.9'	Special Permit*/ Variance
<b>Side Yard Setback (West)**</b>	7.5'	3.4'	3.4'	Special Permit*/ Variance
<b>Parking - res. use</b>	2.3	4	4	Special Permit***/ Variance
<b>Parking - business use</b>	3 addtl.	4	4	Special Permit***/ Variance

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

\*\* A dwelling in a business district is required to comply with the dimensional requirements of an M District.

\*\*\* Under Sec. 6.021..c, a special permit for dual use could be granted.

7. Section 8.02.2 – Alteration or Extension

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

Ms. Hayes stated that the Planning Board is supportive of the proposal to convert the two-family dwelling to a single family and professional office use, both of which are allowed by-right in this local business district. Ms. Hayes stated that the Board finds the proposed additions and alterations to the structure to be attractively designed and appreciates the applicant's efforts to revise his proposal. Ms. Hayes stated that the applicant has submitted a landscaping plan that shows proposed planters and a landscaped patio in the rear. Ms. Hayes stated that the Board supports the waiving of three parking spaces and believes that four parking spaces on the premises would be adequate. Ms. Hayes stated that the Board feels that a professional office will primarily require parking spaces during the day, typically when residents are away from the dwelling. Ms. Hayes stated that the Board recommends that the applicant not use vinyl on the exterior, as the Board feels that this will make for the most attractive project. Therefore, the Planning Board recommended approval of the plans and elevations prepared by OoDD Architects, LLC, dated 5/27/14, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, and all salient dimensions and materials, 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 a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of 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 building elevations and 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.

Board Member Hussey asked why there were two Planning Board meetings. Ms. Hayes stated that after the initial meeting on April 17, 2014, the Planning Board asked the Petitioner to revise the

plans, and then on June 12, 2014, the Petitioner met with the Planning Board again, when approval was recommended.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch, stated that the Building Department had no objections to the relief sought under this application. Mr. Yanovitch noted that **Section 6.02.1.b** or **Section 6.02.1.c** is applicable in this proposal and since there is a minor alteration to the side yard, it requires side yard relief. Furthermore, Mr. Yanovitch stated that the structure will become more compliant with the L-1.0 District because the first floor office requires that any residential use in a business district maintain at least 60% business on the first floor and no more than 40% residential on the first floor, which in this proposal the entire first floor will be for business use. Chairman Book asked whether all parking along Harvard Avenue is two-hour parking. Attorney Allen stated that parking on Harvard Avenue is two-hour parking and there is metered parking along Harvard Street.

In deliberation, Zoning Board of Appeals Member Avi Liss asked Mr. Yanovitch why the Building Department cited **Section 6.02**. Mr. Yanovitch stated that under **Section 6.02.1.b**, the Building Department interpreted this proposal as a change from residential to non-residential. Mr. Yanovitch stated that the Planning Board believed the intent is for existing business use and if modified, this particular section will apply. Mr. Yanovitch stated that **Section 6.02.1.c** can also apply because professional office parking will only be used during the day and not in the evening. Board Member Liss stated that both **Sections 6.02.1.b** and **6.02.1.c** apply because it can be interpreted as a change of a current residential, however Board Member Liss believes this proposal can be better interpreted under **Section 6.02.1.c**. Board Member Liss stated that the parking situation on this lot should be lenient because it achieves the Petitioner's goal and meets special permits requirements. Therefore, Board Member Liss stated that he was in support of the relief requested.

Zoning Board of Appeals Member Hussey stated support for the relief requested. Board Member Hussey noted that with two residential units there is a likelihood of more vehicles associated with the property, and this proposal will help control and reduce the amount of vehicles associated with the property.

Zoning Board of Appeals Chairman Book echoed support for the relief requested. Chairman Book stated that side yard relief for a special permit is met. Chairman Book stated that notwithstanding the neighbor's concern for parking, this property is in a business district, parking on Harvard Avenue is limited to two hours, there is metered parking on Harvard Street and having a professional office will reduce parking rather than having two residential homes. Chairman Book agrees that special permit relief for parking can be met either under Sections 6.02.1.b or 6.02.1.c, but believes Section 6.02.1.c better interprets this situation.

The Board then determined, by unanimous vote that the requirements for a special permit for Sections 5.07; 5.43; 5.61; 5.64; 6.02; 6.02.1.c; and Section 8.02.2 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.

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

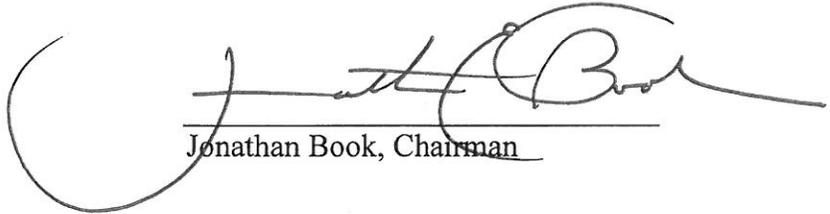
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- 2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the**

**Assistant Director of Regulatory Planning.**

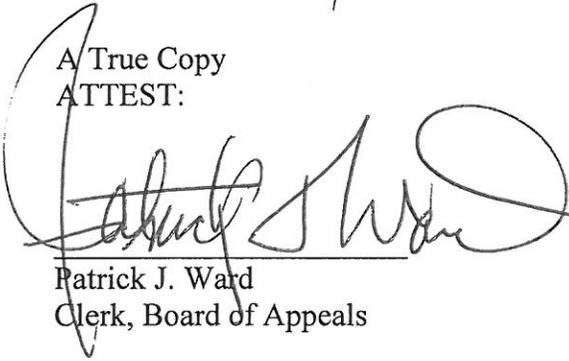
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Unanimous Decision of  
The Board of Appeals

Filing Date: 8/15/14

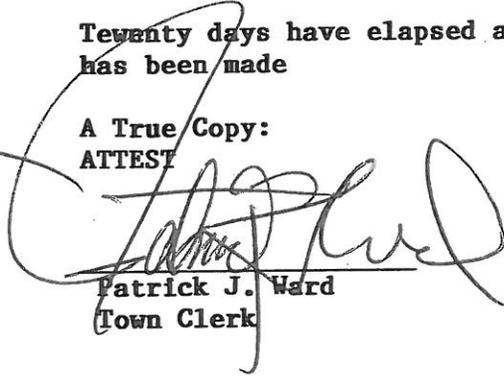
  
Jonathan Book, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

**Twenty days have elapsed and no appeal  
has been made**

A True Copy:  
ATTEST

  
Patrick J. Ward  
Town Clerk

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