



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

# *Town of Brookline*

## *Massachusetts*

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Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0043  
**Owner: Marc Resnick**

Petitioner, Marc Resnik, applied to the Building Commissioner for permission to finish additional portions of a basement residential unit to expand from one bedroom to three bedrooms at 97 Fuller Street. The application was denied and an appeal was taken to this Board.

The Board administratively 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 October 2, 2014 at 7:30 p.m. in the Selectmen's hearing room as the time and place of a hearing on the request. Notice of the hearing was mailed to the Petitioner, to their attorney 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 September 11, 2014 and September 18, 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**97 FULLER ST – FINISH UNFINISHED PORTION OF BASEMENT in a T-5, Two-Family and Attached Single-Family residential district, on October 2, 2014, at 7:15 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: RESNICK MARC S; Owner: TERRIER REALTY TRUST)**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

1. **Section 5.20: Floor Area Ratio**
2. **Section 5.43; Exceptions to Yard and Setback Regulations**
3. **Section 5.90: Minimum Landscaped Open Space**
4. **Section 5.91: Minimum Usable Open Space**
5. **Section 6.04.5.c.1,2 and 3: Design of All Off-Street Parking Facilities**
6. **Section 8.02.1 and 2: Alteration or Extension**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town 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 Town programs and services may make their needs known to **Robert Sneurson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneurson@brooklinema.gov](mailto:rsneurson@brooklinema.gov).***

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

**Publish: September 11, 2014 & September 18, 2014**

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 Christopher Hussey. Attorney, Michael Merrill, presented the case on the petitioner's behalf.

Mr. Merrill described 97 Fuller Street as a three story attached brownstone with four dwelling units, one at each of the four levels. It is attached to three other buildings and is the end building. It is located on a corner lot at Fuller and Clarence Streets, one block in from Harvard Street. There is one parking space under the rear deck. The surrounding neighborhood is made up of two and three family dwellings and multi-family apartment buildings.

Mr. Merrill stated that the petitioner is proposing to convert 1,025 s.f. of storage space in the basement to additional living area, solely for the use of the lower level unit. The lower level unit will be reconfigured and two additional bedrooms will be added, for a total of three bedrooms. The units at Levels 1, 2 and 3 already have three bedrooms each. A proposal to provide one parking space below a rear-yard deck was withdrawn by the petitioner.

The Chairman asked if anyone wished to speak in favor or in opposition of the proposal. One resident (91 Fuller Street) spoke in favor of the proposal and one resident (93 Fuller Street) spoke in opposition to the proposal.

The Chairman called upon Tim Richard, Planner, to deliver the comments of the Planning Board:

**FINDINGS**

| <b>Area</b>                       | <b>Allowed</b> | <b>Existing</b> | <b>Proposed</b> | <b>Finding</b>  |
|-----------------------------------|----------------|-----------------|-----------------|-----------------|
| <b>Floor Area Ratio</b><br>(s.f.) | 1.0<br>(3,501) | 1.8<br>(6,339)  | 2.1<br>(7,364)  | <b>Variance</b> |

**Section 5.90 – Minimum Landscaped Open Space**

Approximately, 300 s.f. of additional landscaping is required for the converted space. No information has been provided about existing or proposed landscaped space.

**Section 5.91 – Minimum Usable Open Space**

There is currently no usable open space on the lot. None is required for “any other structure or principle use” in a T-5 district.

**Section 8.02.1 and 2 – Alteration or Extension**

A special permit is required to alter this non-conforming use and structure.

Mr. Richard indicated that the Planning Board is not supportive of this proposal to convert the basement to additional floor area. Although the additional living area will be entirely within the existing dwelling and no exterior changes will be made, the use of the building will be intensified. The existing density is already significantly greater than that allowed, and the new floor space makes the dwelling more than twice the allowed FAR. Increasing the basement space will allow more people to reside in the lower unit with the incumbent impacts to the neighborhood of increased parking demand, traffic, and noise.

**Therefore, the Planning Board recommends denial of the proposal per the floor plans by David O’Sullivan, dated 10/30/13.**

If the Board of Appeals finds that the criteria for a variance are met, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, a final lower level floor plan stamped and signed by a registered engineer or land surveyor, 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, a final site plan including parking spaces and existing and proposed landscaping, shall be submitted 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 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 called upon Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch described how it can be challenging to define when FAR increase impacts neighborhood density. This proposal includes strictly internal rehab work and will not impact the existing building footprint. No visual forms of increased density exist. Mr. Yanovitch added that the Building Department does have the authority to regulate the number of residents within a structure based on the number of bedrooms. Mr. Yanovitch concluded by stating that the Building Department is not opposed to this proposal and, if granted, will work with the applicant to ensure compliance with building regulations.

The Board deliberated on the merits of variance relief as requested. The Board voted unanimously that the requirements have not been met for the issuance of a variance under **M.G.L c 40A, Section 10: Variances**. The Board made the following specific findings pursuant to this Massachusetts General Law:

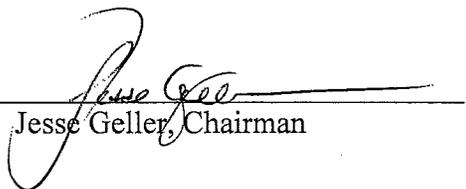
- a. No substantial hardship is placed on the petitioner as a result of unique soil condition, condition, shape, or topography of such land or structures.

**Accordingly, the Board voted unanimously to deny the requested relief.**

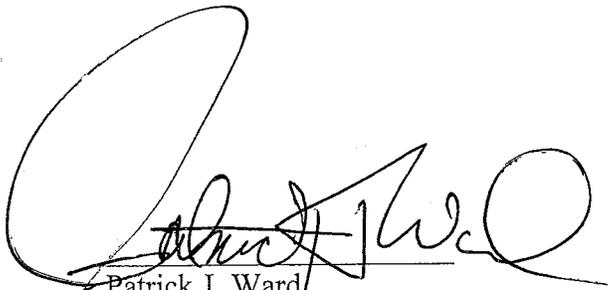
Unanimous Decision of

The Board of Appeals

Filing Date: 12/2/14

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

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