



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0068
Owner: David and Nicole Lapidus

Petitioners, **David and Nicole Lapidus** applied to the Building Commissioner for permission to rebuild a freestanding garage and attach it to a two-family dwelling via an open breezeway, construct a rear addition and dormers, and reconfigure the front porch at **161 Davis Avenue**. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed December 11, 2014 at 7:15 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 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 November 20, 2014 and November 27, 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:

161 DAVIS AVE – ADD 375 SQUARE FEET OF FLOOR AREA WITH MULTIPLE ADDITIONS in a T-6, TWO-FAMILY and ATTACHED SINGLE-FAMILY residential district on

December 11, 2014, at 7:15 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: Warner George; Owner: LAPIDUS TR FOTOULLA NICOLE) Precinct 6

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

- 1. Section 5.09.2.j: Design Review**
- 2. Section 5.22.3.b.2: Exceptions to maximum Floor Area Ratio for Residential Units**
- 3. Section 5.43: Exceptions to Yard and Setback Regulations**
- 4. Section 5.50: Front Yard Requirements**
- 5. Section 5.60: Side Yard Requirements**
- 6. Section 5.70: Rear Yard Requirements**
- 7. Section 5.91: Minimum Useable Open Space**
- 8. Section 8.02.2: 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.

*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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@brooklinema.gov.*

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: November 20, 2014 & November 27, 2014

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair Jonathan Book, and Board Members Johanna Schneider and Christopher Hussey. Architect, George Warner, presented the case on the applicants' behalf.

Mr. Warner described 161 Davis Avenue as a two-family dwelling on a corner lot at the intersection of Davis Avenue and Dana Street, directly across from Cypress Playground, and approximately 1 block away from Brookline High School. The structure was built in 1894 and designed by M.F. Reynolds. There is a two-car garage at the rear of the property. The neighborhood consists primarily of single- and two-family homes.

Mr. Warner stated that the applicants are proposing major renovation to this two-family home. In addition to upgrading the windows, insulation and mechanical systems, they propose to: 1) rebuild the two-car garage, which is in disrepair, and connect it to the house with an open breezeway; 2) construct a first floor addition to the rear of the house; 3) alter the roof in the back and add dormers on both sides of a gable roof, where currently there is a hip roof; and 4) extend the first and second floor porches at the front of the house to provide access to the second floor family room and covered access to the first floor living room.

On the north wall of the garage, the applicant will install trellises and vines to create a green wall and leave ground area for ground cover and snow removal/storage in the winter. In the front, a tree, shrubs, and lawn will all be maintained.

The Board requested additional detail regarding appropriate counterbalancing amenities provided for the special permit relief request, and proposed interior alterations. Mr. Warner described landscape features including garage trellises and vines, a partial rear and side yard fence, and preserved vegetation at the front of the property as formal counterbalancing amenities

provided by the applicant. Mr. Warner also stated that the home will remain as a two-family dwelling. The increase in gross floor area results from a proposed rear mud room and minimally expanded bedrooms on the upper floors.

Board Chair Jonathan Book called for any public comment in favor of, or in opposition to the applicant’s proposal. No members of the public wished to comment.

The Board Chair called upon Jay Rosa, Zoning Coordinator, to deliver the findings of the Planning Board:

FINDINGS

Section 5.09.2.j – Design Review: Any exterior alteration or addition, which requires FAR relief, requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. The most relevant sections of these standards are described below:

a. Preservation of Trees and Landscape – The applicant intends to retain the existing tree in the front of the property and beautify the property with additional landscaping and reconstruction of walkways.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed addition will be visible from Dana Street, but not very visible from Davis Avenue. The addition will be constructed to match the dwelling, and the garage is attractively designed with a trellis on the side facing the neighbor’s property.

d. Open Space – The proposal creates open space for the building’s occupants through patios and new decks. The applicant has not submitted information about general landscaping improvements, but will upon final submission if granted a special permit for setback relief.

Section 5.22.3.b.2 – Exceptions to Maximum Floor Area Ratio for Residential Units

Dimensional Requirements	Allowed	Existing	Proposed	Relief
Floor Area Ratio	.75	.71	.89	Special Permit*
FAR Percentage	100%	94%	104%	
Floor Area	4,031 s.f.	3,819 s.f.	4,192 s.f.	

* Under **Section 5.22.3.b.2**, the Board of Appeals may grant a special permit for an increase in floor area that is less than or equal to 20%.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements – Covered Porch

Section 5.60 – Side Yard Requirements – Garage and House

Section 5.70 – Rear Yard Requirements - Garage

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback (porch)	15'	8.8	8.8'	Special Permit*
Side Yard Setback (house)	10'	3.2	3.2	Special Permit*
Rear Yard Setback (garage)	30'*	3.8	3.8	Special Permit**

*When the garage is connected to the house, it must meet the yard setback for a house and not an accessory structure.

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

Section 5.91 – Minimum Usable Open Space

Dimensional Requirements	Required	Existing	Proposed	Relief
Minimum Usable Open Space	1,258 s.f.	1,327 s.f.	1,258 s.f.	Complies

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a nonconforming use or condition.

Mr. Rosa stated that the Planning Board was supportive of this proposal to renovate this two-family dwelling and create additional living space for the occupants. Proposed trellises and vines are a valid counterbalancing amenity for necessary special permit relief. The applicant has also worked closely with the Planning Board to modify plans in order to comply with minimum usable open space requirements and maintain the aesthetic character of the structure.

Therefore, the Planning Board recommended approval of the plans by Warner + Cunningham, Inc., dated 12/9/14, and the site plan by Everett M. Brooks Co., dated 9/29/14, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and

elevations subject to the review and approval by the Assistant Director for Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director for 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 stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa also stated that the Building Department was not opposed to this proposal. The Building Department worked extensively with the architect on this well designed proposal. The architect made some modifications to the project to accommodate more, as well as decrease the need for, useable open space. Necessary relief is now by special permit only. If the board finds the proposal meets the requirements for the grant of a special permit, the Building Department will work with the petitioner to ensure compliance with building codes.

The Board deliberated on the merits of special permit relief as requested and noted that rear and side yard setback nonconformance is preexisting, and a result of connecting the reconstructed garage to the residential dwelling. The Board voted unanimously that the requirements have been met for the issuance of a special permit under Sections, **5.09.2.i, 5.22.3.b.2, 5.43, 5.50, 5.60, 5.70, 5.91, and 8.02.2** of the Zoning By-Law. The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.

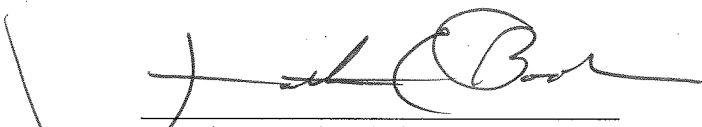
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use

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

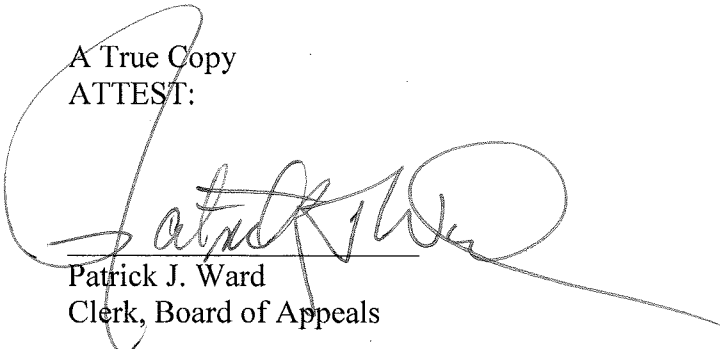
1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations subject to the review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director for 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 stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous decision of the
Board of Appeals

Filing Date: 1/6/15


Jonathan Book, Chair

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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