



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0074  
OWNER: DREAMBLUE LLC

Petitioner, Luis Diazgranados, manager of Dreamblue LLC, applied to the Building Commissioner for a building permit to construct an addition at the rear of the property at 66 Perry Street and to convert was is a legal one-family into a two-family. 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 of the City of Boston and fixed February 26, 2015 at 7:30 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for 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 February 5, 2015 and February 12, 2015 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:

**66 PERRY ST – CONSTRUCT A REAR ADDITION AND CONVERT FROM SINGLE TO TWO FAMILY DWELLING in a T-5, Two-Family and Attached Single-Family, residential district, on February 26, 2015, at 7:30 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: Luis Diazgranados; Owner: GOLDSTEIN, ELIZABETH)**

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

- 1. Section 5.43: Exception to Yard and Setback Regulations**
- 2. Section 5.70: Rear Yard Requirements**
- 3. Modification, as needed, of BOA case #2050 February 5, 1976**

*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 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, Chair  
Christopher Hussey  
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing.

Present at the hearing was Chairman Mark G. Zuroff, and Board Members Christopher Hussey and Avi Liss. The case was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467. Chairman Mark G. Zuroff called the hearing to order at 7:30 p.m.

Attorney Gladstone presented to the Board a background of the Property, stating as follows: The Property was constructed in 1900 and for years was used as a three family. The owners that preceded the Petitioner purchased the home in 1976 and at some point reconfigured the interior so that it became a two family. The Property backs up to a parking lot servicing a

condominium complex fronting on St. Paul Street. The condominium parking lot is accessed by a right of way from Perry Street crossing the Property along its southerly border. In addition to the right of way servicing the condominium on St. Paul Street, the Property is also serviced by a second driveway on the other (northerly) side of the house leading to the rear of the Property. The Property is located in a neighborhood which consists of a mix of single family, two family and multi-family buildings. Its immediate Perry Street neighbor to the north is a four family residence, with a two family residence immediately to the rear of that, which is visible from the rear of the Property. In the same group of buildings as the four-family and two-family that abut the Property to the north is a large barn that is not currently in use.

Attorney Gladstone discussed the prior decision, Case #2050 issued on February 5, 1976, which states that "Future use of the dwelling at 66 Perry Street shall be single-family." Attorney Gladstone explained that, prior to 1976, the property at 66 Perry Street was owned in by the same person, Chester Khan, who owned the then-rental units at 33-37 St. Paul Street. Mr. Kahn wanted to accomplish three things with the combined properties:

1. Convert the St. Paul rental units into condominiums;
2. Take a 12' x 75' parcel off of the back of 66 Perry Street and attach it to the small parking area servicing the St. Paul development in order to create even more parking for the St. Paul structure; and
3. Create town houses on the 66 Perry Street lot, which necessarily would have resulted in the demolition of the historic structure and of the oversized landscaped front yard.

The neighborhood was against the tearing down of the 66 Perry Street Property and requested time to find a buyer who would maintain the building as it was. According to the 1976 special permit decision, the buyer, Dr. Michael Goldstein (and Elizabeth Goldstein, according to the deed), expressed the intention to use the 66 Perry Street property "as his residence only." The only tool available to the ZBA at the time to preserve the historic building was to require that it

be maintained as a single family, which the new buyer was planning to do in any event, so as to make it less likely that a developer would tear it down. Mr. Gladstone argued that there are now other tools available to preserve historic structures.

Attorney Gladstone explained that there are two reasons why modifying this condition is consistent with the Special Permit criteria under Section 9.05.

Mr. Gladstone explained that the existing conditions included a second kitchen and that the prior owner, Mrs. Goldstein, had reported that the property functioned as a two family. Thus, Petitioner's proposed use as a two family, which is an allowed use in this T-5 district, is NOT an intensification of the use. Moreover, since this is a two family zoning district, AND 66 Perry Street used to be a three family; the property is clearly an appropriate location for such a use, structure, or condition.

Second, officially recognizing the two-family use at 66 Perry Street, as expressed in the Petitioner's proposal, actually supports the aim of the single-family restriction stated in the 1976 Special Permit decision, which was to preserve the historic home. Today, in contrast to 1976, the rules of the local Neighborhood Conservation District are in place and, as will be discussed below, have resulted in the preservation of the historic structure and the generous front landscaped setback.

Attorney Gladstone discussed the impact of the Neighborhood Conservation District on the design. The Property lies in the Greater Toxteth Neighborhood Conservation District ("GTNCN") and this Project's application was the first ever to be considered by the Neighborhood Conservation District Commission ("NCDC"). The NCDC held two public hearings. In the course of that review process the Project was changed to respond to suggestions and concerns raised by neighbors and the NCDC. The Project began as a proposal to add to the

front of the existing historic home or to move the existing home forward on the lot, both of which would have facilitated an addition in compliance with all zoning by-law setback requirements. In the end, the NCDC approved a Project that puts the addition in the rear of the existing home without moving the existing home. The NCDC found that this configuration was the most compliant with the GTNCD guidelines. It was this change that now requires the Petitioner to seek rear set-back relief.

Attorney Gladstone explained that, at the urging of neighbors and the NCDC, the Petitioner also removed one of the bedrooms from the second floor of the planned rear addition, replacing it with an open porch. This reduction in living space brought the project even more in line with the density guidelines of the GTNCD. After some additional meetings with a design sub-committee, the NCDC gave its approval. One of the main features of the approved plan, from the NCDC's perspective, was the de-commissioning of the second driveway on the northerly side of the lot (i.e., the one that is NOT also the right of way access for the St. Paul condominiums). That driveway will be replaced by a landscaped walkway not for vehicular use.

Attorney Gladstone then discussed how the size of the building was further reduced and landscaping elements were added at the urging of the Planning Board. Unit #1 was reduced to two bedroom, thus eliminating the need for a fifth parking space. A landscape plan was submitted which shows a row of arborvitae along the rear fence line to provide full screening of at least the first floor of the addition. The western most garage was reduced by 50% and the lost covered garage space was replaced with a carport space without solid walls. While the structure is still within 5 feet of the rear property line, the visual massing of the structure has been reduced tremendously. As a consequence of reducing the size of the western most garage, the roof deck above that garage had to be significantly reduced.

Mr. Gladstone discussed the fact that this space is uniquely suited to the requested reduction in rear setback for the following reasons:

- With an allowed F.A.R. on this 10,000 square foot lot, the revised plans have an F.A.R. of 65.75%, more than a third less than allowed F.A.R. under the zoning by-law, while maintaining an historic and generous garden at the front open space (which is being improved upon by the decommissioning of the driveway that currently run along the northern lot line).
- The abutter to the north, adjacent to the St. Paul condominium parking lot, already maintains a barn as large as a house with no setback at all from its lot line adjacent to that parking lot.
- The St. Paul condominiums are separated from the 66 Perry Street Property by their own rear landscaped area, then a row of condo resident cars, then a large travel lane in the condo parking lot, then a row of tandem parking spaces that are each 34' 5" long before hitting the fence on the lot line separating the parking lot from the 66 Perry Street property. The condominium parking area alone is 84 feet from the condominium's landscaped area to the lot line. Hence, the St. Paul condominium buildings, including their own rear landscaped area, are more than three times farther away from the proposed addition than current zoning would require.
- The addition will be substantially screened from the view of the St. Paul condominium by arborvitae.

Mr. Gladstone concluded by explaining that the Section 9.05 elements had all been met, as was stated in the earlier memo:

- a. The site is an appropriate location for such a use, structure, or condition: This is already a two family residential building, which in turn is surrounded by multi-family buildings. This is already a two family zoned district.
- b. The proposed use will not adversely affect the neighborhood. This project has been approved by the NCDC as complying with the guidelines of the GTNCN.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians since, if the relief is granted, the number of cars required for this property is not changing and there are adequate facilities using the existing south driveway to access the garages.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The expanded second unit will be built in accordance with all building code requirements.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people. It is not adding any additional housing as there already exists two dwellings in the current structure.

Attorney Gladstone pointed out that there was ample counterbalancing amenities justifying the relief under Section 5.43 including the replacement of the northern driveway and curb cut with a landscaped pedestrian walkway and both fencing and green screening in the rear using shrubs/trees that will not cause sap or acorns to drip on the cars in the St. Paul parking lot (pursuant to the request of the St. Paul Condominium association).

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in favor of the application. Edward Bonfilio, a direct abutter at 70 Perry Street spoke in favor of the proposed design.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to the application. Godfrey Hildebrandt, a direct abutter at 64 Perry Street asked questions about the precedential value of the 1976 decision.

Attorney Cameron Merrill, representing the condominium association of the St. Paul condo complex abutting the Property, stated that his client was not opposed to the Project and that the developer had agreed to request that the Board add a condition that the parties enter into a mutually agreeable Passageway Agreement.

Zoning Board of Appeals Chairman Zuroff called upon John Rosa, Planner for the Town of Brookline, to deliver the findings of the Planning Board. Mr. Rosa responded that the Planning Board was not opposed to granting the Petitioner's requests and found that the

standards for special permit had been met. The Planning Board recommended approval of the plans submitted by ARCO design & Build, dated 1/8/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall provide evidence that the final elevations, site, utility locations, and landscaping plans conform to all of the conditions in the Certificate of Appropriateness, dated 10/22/14, to the Assistant Director for Regulatory Planning.
2. One of the two dwelling units shall have no more than two bedrooms.
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 and 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.

The Chairman then called upon Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch reported that the Building Department was supportive of the proposal and stated that he, or his office, would work with the Petitioner to ensure that the construction was done in compliance with the Zoning By-Law and the Building Code.

In deliberations, Board Member Liss complimented the Applicant for being so flexible and responsive to the concerns of the neighbors and the Town Boards and Commissions and he lauded this project as an example of how Brookline's system of review works at its best.

The Board of Appeals then determined by unanimous vote that the requirements for a Special Permits for Sections **5.43**; **5.70** have been met and that the prior 1976 decision should be modified to permit the proposed project. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site in 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 of Appeals voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall provide evidence that the final elevations, site, utility locations, and landscaping plans conform to all of the conditions in the Certificate of Appropriateness, dated 10/22/14, as may later be amended, to the Assistant Director for Regulatory Planning.
2. One of the two dwelling units shall have no more than two bedrooms.
3. The Petitioner shall enter into a mutually agreeable Right of Way Agreement with the Board of Managers of the St. Paul Village Condominium, concerning the maintenance of the Right of Way, which may be amended from time to time by mutual agreement of the relevant parties.
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 site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and 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.

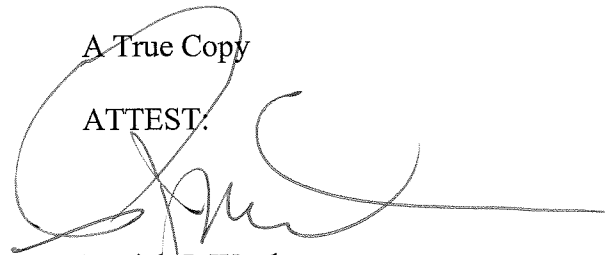
Unanimous Decision of  
The Board of Appeals

Filing Date: 3/18/15

  
Mark G. Zuroff, Chairman

A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

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