



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0076
86 BABCOCK STREET LLC

Petitioner, 86 Babcock Street LLC, applied to the Building Commissioner for permission to convert a single to a two-family dwelling and construct a second driveway. 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 January 29, 2015 at 7:30p.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 January 15, 2015 and January 22, 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:

86 BABCOCK ST – CONVERT FROM A SINGLE-FAMILY TO A TWO-FAMILY AND CONSTRUCT A SECOND DRIVEWAY in a T-5, Two-Family and Attached Single-Family,

residential district, on January 29, 2015, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: 86 Babcock Street, LLC c/o Belinda Hunsinger; Owner: 86 Babcock Street, LLC c/o Belinda Hunsinger) *Precinct 8*

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

1. **Section 5.05: Conversion**
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.50: Front Yard Requirements**
3. **Section 5.70: Rear Yard Requirements**
4. **Section 6.04.5.c.2: Design of All Off-Street Parking Facilities**
5. **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 Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at 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 Jesse Geller and Board Members Johanna Schneider and Avi Liss. The case was presented by Bailey C. Gaffney, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Belinda Hunsinger, Manager of 86 Babcock Street LLC, architects Dartagnan Brown and Owen Thomas, Embarc Studios, 319 A Street, Suite 5B, Boston, MA 02210, and landscape architect Blair Hines, 318 Harvard St # 25, Brookline, MA 02446.

Chairman Jesse Geller called the hearing to order at 7:30 p.m.

Ms. Gaffney stated that the Petitioner proposes to convert a single-family dwelling to a two-family dwelling with two separate driveway entrances and 4 parking spaces. Ms. Gaffney presented to the Board a background of the Petitioner and the proposal, stating that 86 Babcock Street is a two-and-a-half story single-family dwelling located at the intersection of Babcock and Dwight Streets in the T-5 Zoning District and that after evaluating the condition of the home and the composition of the surrounding area, the Petitioner proposes a two-family conversion with separate driveway entrances.

Ms. Gaffney noted that the Petitioner significantly revised the original proposal after meeting with the Planning Board and immediate abutters, specifically the adjacent neighbors at 80-82 and 90 Babcock Street, to address concerns over the density of the proposal and the location of off-street parking. Ms. Gaffney stated that the Petitioner agreed to eliminate two bedrooms (for a total of six (6) bedrooms) and reduce the number of tandem parking spaces in the existing driveway from three to two. Furthermore, the Petitioner met with Tom Brady, of the Brookline Conservation Department, to stake out the proposed driveway. Ms. Gaffney explained that Mr. Brady requested the Petitioner to widen the driveway eighteen inches in order to protect the root system of an existing tree on Babcock Street. Ms. Gaffney stated that this request meant that the proposed driveway would violate the side yard setback requirement for the first two feet of the driveway.

Dartagnan Brown, Embarc Studios, 319 A Street, Suite 5B, Boston, MA 02210, described the streetscape along Babcock Street with respect to the number of curb cuts and driveways. Mr. Brown stated that a single four-car tandem driveway generated significant safety concerns and was not a feasible alternative. Mr. Brown presented evidence of the pattern of driveways between each residential structure. Mr. Brown stated that 80-82 Babcock Street and 86 Babcock Street was the exception where no driveway existed between the homes.

Blair Hynes, 318 Harvard St # 25, Brookline, MA 02446, discussed the counterbalancing amenities and stated that the parking and landscaping plans minimized the visual impact on the streetscape.

Chairman Geller asked if another property in this neighborhood maintained 2 driveways. Ms. Gaffney stated that there was no other property with two driveways in this neighborhood.

Board of Appeals Member Johanna Schneider inquired whether there was enough room at the rear of the property for a larger parking surface or a turn-around area. Mr. Hynes stated that similar options were explored but would result in significantly more pavement and the loss of rear-yard open space. Furthermore, Ms. Gaffney stated that an expanded single-driveway would extend the preexisting non-conformity of the existing driveway and that any attempt to reduce the total parking requirement would require a variance.

Ms. Gaffney stated that the Planning Board was divided in a 3-3-0 vote about whether or not to support the conversion due to the proposed second driveway. Ms. Gaffney stated that the Planning Board members opposed to the establishment of a second driveway considered a four-car tandem in the existing driveway a safer alternative than a two-car tandem in both driveways. On the other hand, the Planning Board members in support of the proposal felt that a second driveway was the only feasible solution to provide adequate parking for a two-family conversion. Ms. Gaffney recognized that the Planning Board members who voted to approve the proposed driveway conditioned support on installation of decorative pavers for the proposed driveway and the front of the existing driveway, as well as landscaping or fencing along the property line abutting 80-82 Babcock Street.

Ms. Gaffney stated that the Petitioner requests special permit relief to convert a single-family dwelling to a two-family dwelling in the T-5 District pursuant to **Section 5.05** of the Zoning By-Law. She stated that the Board of Appeals by special permit may waive dimensional requirements except

minimum lot size, provided that no preexisting non-conformity is increased. Ms. Gaffney noted that the required minimum lot size is 5,000s.f. and 86 Babcock Street is approximately 6,000s.f. She said that the existing driveway abutting 90 Babcock Street violates the side yard setback because it is within 1 foot of the lot line, but that the proposal does not increase the non-conformity.

Ms. Gaffney stated that the porch triggered rear yard setback relief because it measured less than 25ft. to the property line. She stated that **Table 5.01** of the Zoning By-Law requires a 30ft. rear yard setback in the T-5 Zoning District. Ms. Gaffney stated that **Section 5.74** of the Zoning By-Law prohibits any structure within the minimum depth of the rear lot line, except uncovered porches which may not extend into the yard more than 50% of the required yard setback or be within 6ft. of the property line. Here, the proposed deck is within 6ft. of the rear and side yard property lines and does not encroach more than 15ft. into the setback. Thus, the porch is in conformance with the Zoning By-Law.

Finally, Ms. Gaffney discussed the special permit relief relative to **Section 6.04.5.c.2** of the Zoning By-Law for off-street parking. She stated that **Section 6.02, Paragraph 1** of the Zoning By-Law requires 2 parking spaces for a dwelling unit containing 2 bedrooms and 2.3 parking spaces for a dwelling unit containing more than 2 bedrooms. Here, Unit 1 has 2 bedrooms and Unit 2 has 4 bedrooms, which requires a total of 4 parking spaces required.

Ms. Gaffney stated that the Petitioner proposes a two-car tandem in both the existing driveway and the proposed driveway. She stated that under **Section 6.04.5.c.2** of the Zoning By-Law, a driveway may be within 5ft. from the side yard setback. Ms. Gaffney stated that both the existing and proposed driveways violate the 5ft. setback requirement. She stated that unlike the existing driveway, the proposed driveway is almost entirely compliant with the side yard setback but for the first two feet of the driveway, which was widened to protect the root system of the Babcock Street tree.

Ms. Gaffney discussed relief under Sections 5.05, 5.70 and 6.04 of the Zoning By-Law whereby a special permit is required under Section 9.05 of the Zoning By-Law. As for Section 9.05, Ms. Gaffney argued: (1) the specific site is an appropriate location where the density is in keeping with the neighborhood and two-family dwellings are located at 80-82 Babcock Street as well as 79, 89, 95, 117-119, 121-123 Stedman Street; (2) there will be no adverse effect on the neighborhood where the street is comprised of 12 back-out driveways in between each property with the exception of 80-82 and 86 Babcock Street and the abutters at 90 and 95 Babcock Street signed letters of support; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the proposal offers a safer experience than a four-car tandem located in the existing driveway and the proposed driveway will create a uniform streetscape; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will have no effect on the supply of housing available for low and moderate income people.

Ms. Gaffney next discussed zoning relief under Section 5.43 of the Zoning By-Law, where the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. Ms. Gaffney stated that the Petitioner has prepared a significant landscaping plan including decorative pavers for the proposed driveway and the front of the existing driveway and a new fence along the proposed driveway. Furthermore, Ms. Gaffney stated that the Petitioner will introduce new plantings as a counterbalancing amenity in addition to the changes already made with respect to the abutters' concerns at 80-82 Babcock Street.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in opposition to the application. No one spoke in opposition to this application.

John Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning

Board:

FINDINGS:

1. **Section 5.05: Conversion** -- When a single-family is converted to a two-family in a T district, the Board of Appeals may by special permit waive the dimensional requirements specified in *Section 5.01* except for minimum lot size, provided that no previously-existing nonconformity is increased.
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.70: Rear Yard Requirements**
4. **Section 6.04.5.c.2: Design of All Off-Street Parking Facilities (parking/driveway setback)**

	Required	Existing	Proposed	Finding
Rear Yard Setback – Deck	15' (50% of 30')	24' 7.5"	18' 7.5"	Complies*
Parking Side Yard Setback (existing driveway)	5'	1' or less	1' or less	Special Permit**
Parking Side Yard Setback (new driveway)	5'	N/A	3'	Special Permit**

*Under Section 5.74, uncovered porches or decks may extend into the yard up to fifty percent of the required rear yard setback, but in no case closer than six feet to the property line.

**Under Section 5.43, the Board of Appeals may allow by special permit alternate dimensions for setback and yard requirements if counterbalancing amenities are provided. Should the existing driveway not be extended, as shown in the most recently revised parking plan dated 1/12/2015, setback relief would only be needed for the new driveway.

5. **Section 8.02.2: Alteration or Extension:** A special permit is required for an alteration.

Mr. Rosa stated that the Planning Board was divided with a 3-3-0 vote. He stated that three Planning Board members were opposed to establishing a second driveway to accommodate the required parking, believing a single driveway with tandem parking could support the two units; a four-car tandem parking arrangement may be uncomfortable for the residents to manage, but other properties in this neighborhood have similar arrangements and find them workable. He stated that the Planning Board members were concerned about establishing another back-out driveway at this location. He stated that Tom Brady expressed concern that the Babcock Street tree could obstruct sight lines in the future. Mr.

Rosa stated that that the remaining Planning Board members approved the second driveway as the only feasible solution to allow conversion of the dwelling into two units. He stated that the Planning Board members conditioned their approval on the counterbalancing amenities previously discussed. Therefore, Mr. Rosa stated that the Planning Board voted (3-3-0) to recommend denial of the proposed plans, including the floor plans by Embarc Studios, dated 12/24/14, the site plan dated 8/7/14, and the revised landscape plan dated 1/12/15. Should the Board of Appeals find that the statutory requirements for a special permit are met, the following conditions are recommended:

1. Prior to the issuance of a building permit, the applicant shall submit a final site and landscaping plan, indicating all counterbalancing amenities, including decorative paving for both the new driveway and front of the existing driveway, and screening landscaping and/or fencing, 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 obtain approval for creation of a new curb cut from the Department of Public Works, and submit copies of this approval to the Building Department and Department of Planning and Community Development.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans, stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Chief Building Inspector Michael Yanovitch delivered the comments of the Building Department. Mr. Yanovitch stated the Building Department had no opposition to the proposal. **Section 5.05** of the Zoning By-Law permits the conversion to a two-family dwelling and the parking layout remains as the only point of debate. The two separate tandem parking areas are much safer than the four-car tandem single driveway. Additionally, this proposed layout provides tandem spaces that should be under common ownership which will result in less difficulty and communication required to back out vehicles. Mr. Yanovitch stated that the Petitioner could propose one compliant parking space in the new

driveway, but has elected to go through the special permit process in order to achieve a more effective parking layout, albeit non-conforming to side-yard dimensional requirements.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Member Schneider expressed her support for the two-driveway parking plan and believed that it is clearly the safest option. Board Member Liss agreed that the single four-car tandem driveway option is unworkable, but that the proposed driveway presents a threat of similar future proposals in this neighborhood. Mr. Liss agreed that the Zoning By-Law establishes a preference for tandem parking spaces to be under shared ownership, supporting the two-driveway layout.

Chairman Jesse Geller preliminarily noted for the record and in response to Mr. Liss' comment that neither a special permit nor variance decision establishes a precedent.

Mr. Liss stated that the abutter located at 80-82 Babcock Street has expressed opposition to this proposal before the Board. Ms. Schneider reiterated that the applicant has explored a variety of options for the property, and the second driveway plan is the safest and most appropriate alternative without pursuing a variance. Mr. Liss stated that the layout of the curb cuts in the immediate neighborhood is unique and a new driveway in this particular location is consistent with the existing streetscape. Mr. Geller concurred with Ms. Schneider and Mr. Liss' support for the proposed parking layout provided that tandem parking spaces in each respective driveway are dedicated for use in connection with the same dwelling unit but reiterated for the record his concern with permitting two driveways to serve this single structure.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of **Sections 5.05, 5.70 and 6.04** of the Zoning By-Law pursuant to **Sections 6.04.5.c.2, 5.43, 5.74, and 9.05** of the Zoning By-Law 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.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

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 a final site and landscaping plan, indicating all counterbalancing amenities, including decorative paving for both the new driveway and front of the existing driveway, and screening landscaping and/or fencing, 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 obtain approval for creation of a new curb cut from the Department of Public Works, and submit copies of this approval to the Building Department and Department of Planning and Community Development.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans, stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

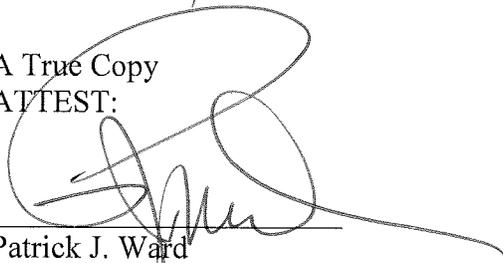
Unanimous Decision of
The Board of Appeals

Filing Date: 3/30/15



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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