



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st Floor
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0064
1755 BEACON STREET, LLC

Petitioner, 1755 Beacon Street, LLC, applied to the Building Commissioner for permission to convert the structure from a three-family dwelling and one office to a four-family dwelling, construct a dormer, and extend living space into the basement. The application was denied and an appeal taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed January 15, 2015 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 December 25, 2014 & January 1, 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:

1755 BEACON ST – EXPAND AND RECONFIGURE THREE RESIDENTIAL UNITS AND ONE OFFICE UNIT, AND RECONSTRUCT A REAR CARPORT in an M-1.5, Apartment House, residential district, on January 15, 2015 at 7:30 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: 1755 Beacon Street, LLC c/o Ivan Ramirez; Owner: 1755 Beacon Street, LLC c/o Ivan Ramirez

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

- Section 5.01: Table of Dimensional Requirements, Footnote 1**
- Section 5.09.2.a and d: Design Review**
- Section 5.20: Floor Area Ratio**
- Section 5.43: Exceptions to Yard and Setback Regulations**
- Section 5.50: Front Yard Requirements**
- Section 5.53: Accessory Buildings in the Front Yard**
- Section 5.63: Accessory Buildings or Structures in the Side Yard**
- Section 5.90: Minimum Landscaped Open Space**
- Section 5.91: Minimum Useable Open Space**
- Section 8.02.2: Alteration or Extension**
- Modification, as required, of BOA case #940 April 30, 1959**

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, the Zoning Board of Appeals 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 were Victor Sheen and Jonathan Parkes, property managers for 1755 Beacon Street, and architect Dartagnan Brown, Embarc Studios 60 K Street, 3rd Floor, Boston, MA 02127.

Zoning Board of Appeals Chairman Jonathan Book called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner originally proposed a four-family conversion, but revised the proposal to a create a 430s.f. first floor office and a renovated three-family triplex that includes 755s.f of additional floor area.

Attorney Allen presented to the Board a background of the Petitioner and the proposal, stating the following: 1755 Beacon Street is situated among a row of 7 townhouses that occupy the entire block from Regent Circle to Dean Road. Mr. Allen stated that the building jacket revealed that the three-story brick apartment house was originally occupied by dentist offices and two apartments, but later transitioned to a single-family dwelling with a first floor office. Mr. Allen stated that the Petitioner's proposal will create 755s.f. of livable floor area in the basement, provide covered parking for 3 vehicles, and maintain a 430s.f. first floor office.

Dartagnan Brown, the Petitioner's architect having a business address at 60 K Street, 3rd Floor, Boston, MA 02127 presented the elevations, discussed the design review process, and described the triplex layout and discussed construction of the rear carport. Chairman Book inquired about refuse storage. Mr. Brown identified an area inside the carport for trash and recycling corrals. Zoning Board of Appeals Member Christopher Hussey asked about snow removal relative to the carport. Attorney Allen stated that the Petitioner is creating an area for snow storage where none exists.

Zoning Board of Appeals Member Hussey inquired about the location of HVAC equipment for the residential units and the first floor office space. Mr. Brown introduced an aerial shot of 1751-1763 Beacon Street and stated that a majority of the equipment will be re-located to a flat portion of the roof that is not visible from Beacon Street (Exhibit A).

Attorney Allen noted that the Planning Board unanimously voted to approve the revised proposal. Mr. Allen stated that based on feedback from immediate abutters during the first hearing, the Petitioner removed the rear dormer and bracketed deck at the request of 1757 Beacon Street.

Attorney Allen stated that the Petitioner requests front yard setback relief relative to the location of the carport in the rear alleyway. Mr. Allen identified a site plan dated May 12, 1980 that shows the property lines for 1751-1763 Beacon Street ending in the middle of a rear passageway. Mr. Allen stated that **Section 5.01, Footnote 1** of the Zoning By-Law requires a garage that faces toward the street to which its driveway has access be at least 20 ft. from the lot line. In response to concerns raised by abutters at the Planning Board, the Petitioner agreed to install a garage door on the carport.

Attorney Allen noted that relief is required pursuant to **Section 8.02.2** of the Zoning By-Law whereby a special permit is required under **Section 9.05** of the Zoning By-Law to alter and/or extend a the existing garage structure. Mr. Allen commented that the proposed relief meets the requirements of said **Section 9.05** as follows: (1) the specific site is an appropriate location because the proposed use will remain a three-family with an office on the first floor, the town homes immediately surrounding the property range from 2-unit condos to 6-unit condos and include similar medical office units; (2) there will be no adverse effect on the neighborhood where the dormer has been removed, bracketed deck eliminated, and the medical office will continue to be accessed from Beacon Street; (3) no nuisance or serious hazard to vehicles or pedestrians exist because each residential unit will have 1 full size parking space, the carport will have a garage door prohibiting vehicles from protruding into the passageway; (4) adequate and appropriate facilities will be provided for the proposed use; and (5) development will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Mr. Allen discussed zoning relief under **Section 5.43** of the Zoning By-Law, where the Board of Appeals may waive the front yard setback requirement if a counterbalancing amenity is provided. Mr. Allen stated that the Petitioner is providing 216s.f. of usable open space above the carport, creating 3 full-size covered parking spaces, and sprinklering each floor.

Finally, Attorney Allen discussed relief under MGL c. 40A Section 10, pursuant to **Section 5.20** and **5.91.2.e** of the Zoning By-Law to grant a variance from the floor area ratio and usable open space requirements for the M-1.5 District. Attorney Allen stated that the Petitioners meet the requirements for a variance under M.G.L. Chapter 40A, Section 10 and should therefore be granted a variance. Attorney Allen stated that M.G.L. Chapter 40A, Section 10 states in relevant part:

“The permit granting authority shall have the power . . . to grant upon appeal ... a variance . . . where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

Attorney Allen stated that the Petitioner is not required to show any usable open space because this structure is a three-family dwelling with an office located on the first floor. Under the **Table 5.01** of the Zoning By-Law, this type of structure in the M-1.5 District is considered to be “any other structure or principal use.”

Chairman Book requested Acting Chief Building Inspector, Michael Yanovitch to explain the usable and landscaped open space distinction in the M-1.5 District. Mr. Yanovitch stated that the mixed-use dwelling is not considered to be solely a residential dwelling, so it falls into the category of “any other principal use,” which requires approximately 115s.f. of usable open space for the additional 755s.f.

of floor area. Mr. Allen stated that there is no existing usable open space and the proposal creates 216s.f. of usable open space, thus complying with the Zoning By-Law.

Mr. Allen next discussed the variance requirements relative to the increase in gross floor area. Mr. Allen stated that in December 1919 the Town of Brookline established a building line from Dean Road to Regent Circle that amounted to a total taking of 5,000s.f. He stated that the purpose of the taking was to build sidewalks and create a tree lawn along Beacon Street. Mr. Allen argued that the taking equated to approximately 740s.f. from 1755 Beacon. He stated that coupled with the 75s.f. taken for the rear passageway, the total lot size would have made the 755s.f. increase in floor area to be within the grant of a special permit.

Additionally, Mr. Allen suggested that this particular row of houses creates a unique structure on a unique lot. He stated that while there are many row houses in the M-1.5 District, there are few properties that contain a pre-existing non-conforming use. Mr. Allen stipulated that 1755 Beacon Street has been a non-conforming, mixed use since 1946. Mr. Allen stated that such a non-conformity created a tremendous hardship for the purposes of rehabilitating the existing medical office units. Unlike 1471 Beacon Street, which received a variance to create additional floor area for a garden level unit, there will be no exterior modifications to the Beacon Street view from this property. He stated that the additional square footage being requested will help generate additional income to offset the cost of the restoration of this historic structure.

Zoning Board of Appeals Chairman Book asked if there was anyone present who wished to speak in favor of this application. Michael Elasmr, 1757 Beacon Street (and a member of the Abbott House Condo Association), stated overall support for the restoration of the building and preservation of the architecture.

Zoning Board of Appeals Chairman Book asked if there was anyone present who wished to speak in opposition to this 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:

1. **Section 5.01: Table of Dimensional Requirements, Footnote 1:** The entrance to a garage shall be at least 20' from the street lot line. The garage will be 8.58' from the lot line, and can be granted relief under Section 5.43.
2. **Section 5.09.2.a and d: Design Review**
3. **Section 5.20: Floor Area Ratio**

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.5	2.23	2.45	Variance
Floor Area (s.f.)	100%	148%	163%	
	5,077	7,570	8,325	

4. **Section 5.43: Exceptions to Yard and Setback Regulations**
5. **Section 5.50: Front Yard Requirements**
6. **Section 5.53: Accessory Buildings in the Front Yard**
7. **Section 5.63: Accessory Buildings of Structures in the Side Yard**
8. **Section 5.91: Minimum Open Space**

	Required	Existing	Proposed	Finding
Carport off alley Front Setback	20'	35'	8.58'	Special Permit*
Front Yard Setback (dormer)	21.5'	35'	20'	Special Permit*
Minimum Landscaped Open Space for proposal (s.f.)	832.5	896	1344	Complies
Minimum Usable Open Space for proposal (s.f.)	1,248.7	0	0	Variance

*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.

9. **Section 8.02.2: Alteration or Extension:** Existing nonconforming conditions may not be increased unless explicitly provided for in the town Zoning By-Law. A variance is required to increase FAR nonconformity, and a special permit is required to increase front-yard setback nonconformity.

10. Modification, as required, of BOA case #940 – April 30, 1959: BOA case #940 permitted dental office use on the first floor of 1755 Beacon Street. This proposal represents a conversion back to residential use within an M-1.5 residential district along Beacon Street.

Mr. Rosa stated that the Planning Board did not object to the proposal where the use will not change and the Petitioner worked with immediate abutters to improve the project design including the carport. Mr. Rosa stated that the Planning Board deferred the variance evaluation for the expanded floor space to the Zoning Board of Appeals. Mr. Rosa stated that the Planning Board conditioned their support on a drainage plan and side elevations of the carport prior to issuance of a building permit. Therefore, the Planning Board unanimously recommended approval of the plans by Embarc Studio, dated December 18, 2014, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a certified site plan, final floor plans, and elevations, including side elevations and a section of the garage, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. No above ground changes shall be made to the façade facing Beacon Street.
3. The garden level dwelling unit shall not have more than three bedrooms at that level.
4. Prior to the issuance of a building permit, the applicant shall submit a drainage plan, subject to the review and approval of the Director of Transportation and Engineering.
5. Prior to the issuance of a building permit, the applicant shall submit a final landscaping and fencing plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
6. 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) a final floor plan and final elevations, stamped and signed by a registered architect; 2) a final landscape and fencing plan, stamped and signed by a registered engineer or landscape architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Book then called upon Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that the additional parking space is beneficial because rear parking behind Beacon Street properties is always challenging. Mr. Yanovitch reiterated that all floor area

increase is a direct result of interior conversion which is preferable to exterior alteration, particularly on Beacon Street. Modernization of the property is also beneficial.. Mr. Yanovitch stated that the Building Department had no objections to the relief sought under this application and will work with the Petitioner to make sure that construction complies with **Section 9.05** of the Zoning By-Law.

Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Zoning Board of Appeals Member Christopher Hussey inquired about the garden level apartment. Mr. Yanovitch stated that the room labeled “den” does not meet the requirements of a bedroom because there are no windows or doors.

Board Member Christopher Hussey stated that modernization of historic structures should be encouraged and the hardship requirement necessary for a variance may be settled by the need to offset rehabilitation costs. Furthermore, Mr. Hussey distinguished the French Chateau style of 1751-1763 Beacon Street, which appears to be one structure that is divided internally (Exhibit C), with that of 1683-1693 Beacon Street, which gives the appearance of individual row houses (See Exhibit B). Mr. Hussey stated that the design of 1751-1763 Beacon Street is unique and the floor area will provide adequate light and egress for the garden level unit.

Zoning Board of Appeals Member Avi Liss stated that the cost of rehabilitating an architecturally significant row house in the French Chateau style supported a hardship finding under M.G.L. Chapter 40A, Section 10. Furthermore, Board Member Liss supported the location of the carport where the Petitioner was instrumental in keeping the neighborhood informed and part of the design review process.

Chairman Book concurred with Board Members Hussey and Liss, citing that the uniqueness of the structure and the financial hardship to restore the property support the grant of a variance under M.G.L. c. 40A, §10 for the creation of 755s.f. of floor area . Mr. Book agreed with Board Member Liss

that the carport was in an appropriate location and that the usable open space did not require relief pursuant to **Section 5.91** of the Zoning By-Law.

The Board then determined, by unanimous vote that the requirements for a variance from **Section 5.20** of the Zoning By-Law and special permits from the application of the provisions of **Sections 5.01, Footnote 1, 5.09.2.a and d, 5.50, 5.53, and 5.63** of the Zoning By-Law pursuant to **Sections 5.43, 8.02.2 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 not have any effect on the supply of housing available for low and moderate income people.

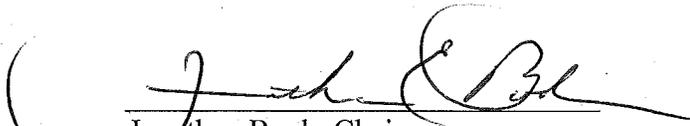
Accordingly, the Board voted unanimously to grant the requested relief and modification of Zoning Board of Appeals case#940 (1959) subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a certified site plan, final floor plans that include a tabulation of existing and proposed usable square footage, and elevations that include side elevations and a section of the garage, signed by and certified by a registered architect, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. No above ground changes shall be made to the façade facing Beacon Street.
3. The garden level dwelling unit shall not have more than three bedrooms at that level.
4. Prior to the issuance of a building permit, the applicant shall submit a drainage plan, subject to the review and approval of the Director of Transportation and Engineering.
5. Prior to the issuance of a building permit, the applicant shall submit a final landscaping and fencing plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.

6. 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) a final floor plan and final elevations, stamped and signed by a registered architect; 2) a final landscape and fencing plan, stamped and signed by a registered engineer or landscape architect; 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


Jonathan Book, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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