

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. 2014-0002
88 MASON TERRACE

Petitioner, James Kinsella, applied to the Building Commissioner for permission to construct an addition at the rear and convert the single-family dwelling to two attached single-family dwellings. 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 February 27, 2014 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 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 13, 2014 and February 20, 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **ROBERT L. WINTER**
Owner: **ROBERT L. WINTER**
Location of Premises: **88 MASON TERRACE**
Date of Hearing: **FEBRUARY 27, 2014**
Time of Hearing: **7:30 PM**
Place of Hearing: **SELECTMEN'S HEARING ROOM, 6TH FLOOR**

A public hearing will be held for a variance and/or a special permit from:

1. Section 4.07: Table of Use Regulations, Use #3

of the Zoning By-Law to **CONSTRUCT AN ADDITION AT THE REAR AND CONVERT FROM A SINGLE FAMILY DWELLING TO TWO ATTACHED SINGLE- FAMILY DWELLINGS ADDING AN ADDITIONAL 3654 SQUARE FEET OF FLOOR AREA at 88 MASON TERRACE.**

Said Premises is located in **SC-7 (Single-Family and Converted for Two-Family) residential district.**

Hearings once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Office of the Town Clerk at 617-730-2007 or check the 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 programs and services of the Town of Brookline are invited to 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, Chairman
Jonathan Book
Christopher Hussey**

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Zoning Board of Appeals Chairman, Jonathan Book, and Zoning Board of Appeals Board Members Christopher Hussey and Mark Zuroff. 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 James Kinsella, the Petitioner for the property located at 88 Mason Terrace, and Alex Svirsky, the Petitioner's architect. Attorney Allen

stated that the property is currently owned by Robert Winter who was unable to attend the hearing due to a conflict.

Zoning Board of Appeals Chairman Jonathan Book called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner proposes to convert the single-family dwelling to two attached single-family dwellings by constructing an additional 3,654 square feet of floor area attached to the rear of the property.

Attorney Allen presented to the Board a background of the Petitioner and the property, stating the following: 88 Mason Terrace is located in a SC-7 district surrounded by a mix of housing types, ranging from single to multi-family dwellings. Attorney Allen stated that the Petitioner would like to convert the property by building and renting out the new single-family unit to mitigate purchase costs. Attorney Allen stated that the 3,654 sq. ft. rear addition overlaps the first and second floors of the existing dwelling. Attorney Allen stated that the proposed FAR is in compliance, all dimensional relief is in compliance and the dimensional and parking requirements are satisfied.

Attorney Allen stated that the Planning Board voted unanimously in support of this proposal where the proposed FAR will be approximately 0.49 in the SC-7 District, the parking requirement is met with four garage spaces and one parking space located next to the kitchen, and the yard setback requirements are satisfied.

Attorney Allen then discussed zoning relief required from the Board. Attorney Allen stated that a detached dwelling converted for two-family occupancy is allowed by special permit in the SC-7 District. Attorney Allen noted that all external evidence of the conversion conforms to the Building Code requirements.

Finally, Attorney Allen discussed relief under Section 4.07 of the Zoning By-Laws where a special permit is required under Section 9.05 of the Zoning By-Laws to convert a single-family dwelling

for two-family occupancy. As for **Section 9.05**, in looking at this conversion, (1) the specific site is an appropriate location because the SC-7 District was created specifically to allow for the conversion of detached dwellings for two-family occupancy; (2) there will be no adverse effect on the neighborhood where there are several two-family homes located within the zoning district on York Terrace, Summit Avenue, and Mason Terrace; (3) no nuisance or serious hazard to vehicles or pedestrians exists where the Petitioner complies with the parking requirements and there will be no change to the driveway; (4) adequate and appropriate facilities will be provided for the proper operation; and proposed use and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people

The Zoning Board of Appeals then asked several questions of the Petitioner. Zoning Board of Appeals Chairman Jonathan Book asked how the proposed use will fit into the neighborhood. Attorney Allen stated that the land area is 15,708 sq. ft. and there are more than twenty seven two-family properties in the immediate area.

Attorney Allen introduced Alex Svirsky, 61 Gardner Road, to provide an overview of the architectural plans. Mr. Svirsky stated that the rear yard elevation is steep allowing the 3,654 sq. ft. conversion to be hidden from the streetscape. Mr. Svirsky stated that the existing landscaping is mature and the properties adjacent to 88 Mason Terrace will be largely unaffected by the construction where the Petitioner plans to add to the existing landscaping.

Zoning Board of Appeals Member Christopher Hussey noted a discrepancy in the lot area where the Planning Board listed 15,708 sq. ft. and the plot plan, which indicates 15,802 sq. ft. Attorney Allen stated that the assessor's database listed the lot area as 15,708 sq. ft., but the surveyors indicated a total land area of 15,826 sq. ft.

Finally, Attorney Allen stated that the Petitioner is only requesting relief for a two-family conversion and although there was no neighborhood opposition at the Planning Board hearing on February 20, 2014, the Petitioner was in contact with abutters to address all comments, questions, and concerns prior to this hearing.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in favor of this application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in opposition. Karen Wenc, 84 Summit Avenue, stated concern for the old growth trees and opposition density of the proposal. Ken Nobel, 80 Mason Terrace, stated concern for the lack of open space and the scale of the proposal. Jim Doyle, 84 Summit Avenue, stated the proposal will negatively affect his view of the property by eliminating open space and increasing the roofline. Zoning Board of Appeals Member Christopher Hussey stated the roofline will remain the same.

Kunal Jaloo, 82 Summit Avenue, inquired about the number of units that would be rented and the impact the conversion will have to the open space in the backyard. Peter Lankford, 82 Mason Terrace, opposed the plans current iteration and was concerned about whether the existing retaining wall would be sufficient. Chief Building Inspector Michael Yanovitch stated that if approval was granted, the Building Department would ensure that a retaining wall would be properly constructed. Mr. Lankford inquired about the requirement of notice. Tim Richard, Planner for the Town of Brookline, stated that constructive notice was given two weeks in advance of both the Planning and Zoning Board of Appeals hearings.

Attorney Allen stated that the issue of open space must be considered in relation to the standards set forth by the Zoning By-Laws. Attorney Allen stated that the scale of the addition is respective of the increased FAR standard and all side and rear yard setback requirements are compliant. Attorney Allen

stated that the Petitioner appreciates the input from the neighborhood and is willing to include a landscaping plan, subject to the approval of the Assistant Director of Regulatory Planning, to appease concerns about the old growth trees and lack of open space.

The Zoning Board of Appeals Chairman then called upon Timothy Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS

1. Section 4.07 – Table of Use Regulations, Use #3

A detached dwelling converted for two-family occupancy is allowed by special permit in the SC-7 District. The applicant has slightly overlapped the first and second floors for the two units. Therefore, they are not considered two attached single-family dwellings.

Mr. Richard stated that the Planning Board is supportive of the proposal to convert the dwelling.

Mr. Richard stated that a conversion to a two-family dwelling allows for a higher FAR from .35 to .50 in the SC-7 district. Mr. Richard stated that the proposed FAR will be .49 for the converted dwelling. Mr. Richard stated that the parking requirement of 5 spaces is met with four garage spaces and one parking spot located next to the existing kitchen. Finally, Mr. Richard stated that the yard setback requirements are all met for the proposed addition. Therefore, the Planning Board recommends approval of the plans by Architex Team, Inc., dated 1/20/14, and the site plan by Terra Nova Survey Consultants, dated 12/2/13, subject to the following conditions:

1. Prior to the issuance of a building permit, a final site plan and final existing and proposed floor plans and elevations 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, 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.

The Chairman next called upon Michael Yanovitch, Chief Building Inspector, to deliver the

comments of the Building Department. Chief Building Inspector Michael Yanovitch, stated that the Building Department has no objections to the relief sought under this application.

In deliberation, Zoning Board of Appeals Chairman Jonathan Book stated that the issue before the Board was limited to relief for the conversion under Section 4.07 of the Zoning By-Laws. Chairman Book stated support for the proposal where the Petitioner has met the requirements for parking, open space, and side and rear yard setback. Chairman Book stated that the conversion from a single-family to a two-family is appropriate given the composition of the neighborhood.

Zoning Board of Appeals Member Mark Zuroff stated sympathy for the neighborhood, but stated that relief is appropriate where the conversion is a modest two-family. Board of Appeals Member Zuroff stated that he is inclined to grant relief with the condition of a landscaping plan in order to give the abutters input on how best to screen the property. Zoning Board of Appeals Member Christopher Hussey concurred.

The Zoning Board of Appeals then determined, by unanimous vote that the requirements for a special permit for Section 4.07 of the Zoning By-Laws were met. The Board made the following specific findings pursuant to said Section 9.05 of the Zoning By-Laws:

- 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.

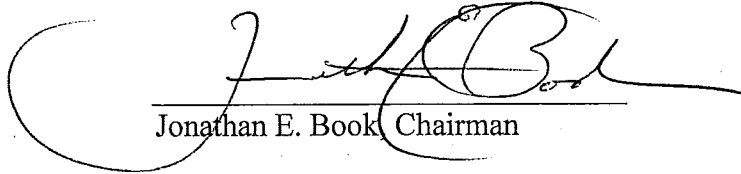
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, a final site plan and final existing and proposed floor plans and elevations, as well as a landscaping plan, shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.**

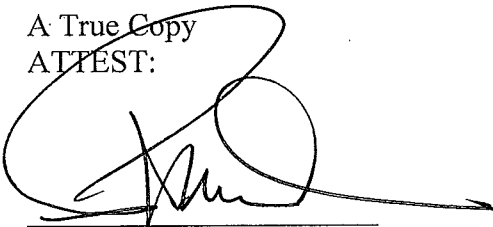
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and 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: April 9, 2014


Jonathan E. Book, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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