



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0042
OWNER: ROSEMONT TRUST, LLC
ADDRESS: 50 ARLINGTON ROAD

Petitioner, Richard Tuck, Trustee of the Rosemont Trust LLC, applied to the Building Commissioner for permission to modify previous Board of Appeals Case Nos. 1639 and 1639A for 50 Arlington Road. 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 October 1, 2015 at 7:05p.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 September 17, 2015 and September 24, 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:

50 ARLINGTON RD – MODIFY EXISTING ZBA DECISION TO SUBDIVIDE LOT in an S-10, Single-Family, residential district, on October 1, 2015, at 7:05 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: ROSEMONT TRUST LLC) *Precinct 15*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and additional zoning relief as needed:

- 1. Modification, as required, of BOA case 1639 and 1639A, June 18, 1970 and June 24, 1971**
- 2. Any additional relief the Board may deem necessary**

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 Mark G. Zuroff and Board Members Christopher Hussey and Avi Liss. The case was presented by Robert L. Allen, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were Richard and Zachary Tuck, and Jonathan Lefell of Rosemont Trust, LLC, owner of the property located at 50 Arlington Road.

Chairman Mark G. Zuroff called the hearing to order at 7:25 p.m. Mr. Allen waived a reading of the public hearing notice. Mr. Allen stated that the Petitioner requests relief from previous BOA Case No. 1639 (June 18, 1970) and BOA Case No. 1639A (June 24, 1971).

Attorney Allen stated that 50 Arlington Road is an oversized corner lot located in the S-10 Single-Family District. Mr. Allen stated that the total lot size is 24,395 square feet, which allows the

Petitioner to create two separate 12,000 square foot lots, which is well beyond the required minimum for the district. He stated that the 24,395 s.f. lot currently consists of one single-family dwelling with a pool and accessory tennis court. Attorney Allen confirmed that the Petitioner intends to reconfigure the existing lot lines through an ANR subdivision plan. Furthermore, he stated that the Petitioner requests relief to modify the existing Board of Appeals decisions in order to “clean the chain of title” prior to approval of an ANR subdivision plan.

Attorney Allen reviewed specific conditions included in both BOA Case No. 1639 (June 18, 1970) and BOA Case No. 1639A (June 24, 1971). He stated that the relevant conditions in BOA Case No. 1639 state the following: #1) the structure shall not be less than 10.4 feet from any lot line; and #2) no enlargement of the existing residence and no further construction in the back yard shall be permitted unless this condition is modified or revoked after another hearing. Attorney Allen stated that pursuant to Condition #1, the proposal will maintain a minimum setback of 10.4 foot from all lot lines for the existing single-family dwelling. Mr. Allen further stated that Condition #2 was subsequently revoked by BOA Case No. #1639A in order to construct the previously mentioned pool and tennis court within the rear yard.

Mr. Allen continued by stating the relevant conditions in BOA Case No. 1639A: #1) All of the site shown on the plot plan dated May 5, 1971, shall remain in single ownership. Attorney Allen confirmed that this represents the adjoining lots and he believed that this condition now becomes moot because all accessory uses in the rear yards will be removed and that this condition ran with the original property owner rather than the land itself. He stated that conditions that are attached to a specific property owner are permitted, but do not remain following a change of ownership, which is the case for this property. Attorney Allen submitted a case summary of Huntington v. Zoning Bd. Of Appeals of

Hadley, 12 Mass. App. Ct. 710 (1981) to the Board to further support his claim that the imposed condition is not transferable to a new property owner pursuant to M.G.L. c. 40A, Section 10.

Mr. Allen stated that several abutters of the subject property attended the prior Planning Board meeting on this matter to discuss specific project details and were satisfied enough that they now have no opposition to the proposal before the Board of Appeals. Attorney Allen also confirmed that a request to demolish the existing structure at 50 Arlington Road was submitted to the Preservation Commission, but the property owner subsequently decided to preserve and renovate the existing structure.

Board Chairman Zuroff noted that the Board has imposed special permit conditions that are attached to specific property owners. Most commonly these conditions are related to home office uses. Mr. Zuroff agreed that these conditions are not transferable beyond the current property owner. Mr. Zuroff clarified that the petitioner is requesting that the Board invalidate the two prior decisions in question aside from BOA Case No. 1639, Condition #1 because the 10.4 foot setback from all property lines will be maintained.

Board Member Liss agreed that this request serves to simplify special permit/variance history for the subject properties, which is particularly important if the Petitioner intends to engage in future subdivisions and or a transfer of ownership.

Board Member Hussey requested confirmation that the existing swimming pool and tennis courts will be demolished. Attorney Allen confirmed that a building permit application to initiate this demolition work was submitted to the Building Department.

Board Member Liss questioned if the existing home at 50 Arlington Road will be renovated and what the estimated size of the proposed new structure will be. Attorney Allen confirmed that significant interior and exterior renovation to the existing structure will take place. Attorney Allen added that the

12,000 square foot lot size will allow for a new single family that is approximately 4,000 square feet in size.

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

Zoning Board of Appeals Chairman Zuroff asked if anyone wanted 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. Mr. Rosa stated that the Planning Board unanimously supported this request to modify conditions included in BOA Case Nos. 1639 and 1639A in order to allow for the subdivision of this oversized corner lot. The future subdivision will not trigger any new non-conformities for the existing structure and will create a new lot that meets minimum lot size requirements and provides adequate frontage. Mr. Rosa further stated that the Planning Board appreciated that the existing single-family home at 50 Arlington Road will be preserved. Therefore, the Planning Board recommends approval of the site plan by VTP Associates, dated 6/12/2015, subject to the following conditions:

1. Prior to subdivision of the property, an ANR plan shall be submitted to the Planning Board for endorsement.
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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Member Hussey suggested that condition number two be modified because it is contingent upon a building permit for the proposed new structure.

Mr. Rosa stated that the Building Department also has no objection to these requested modifications. The proposed new lot will meet all zoning requirements for a buildable lot. He stated that the condition specifically requiring common ownership of these lots was intended to maintain the

side tennis court as an accessory use. Mr. Rosa agreed that the Petitioner intends to demolish both the court and swimming pool prior to any transfer of ownership, thus removing the accessory use all together. Mr. Rosa confirmed that if the Board determines that these conditions may be modified, the Building department will work with the petitioner to ensure compliance with all imposed conditions and to review any proposed development on the new lot to ensure compliance.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Chairman Zuroff stated that this is an unusual request before the Board but commended the Petitioner for coming before the Board of Appeals specifically to clarify and simplify the property record. Mr. Zuroff reiterated that, if the Board of Appeals supports this request, all prior decisions will be invalidated while retaining BOA Case No. 1639, Condition #1. Mr. Zuroff was in favor of this request for modification. Board Members Hussey and Book concurred with Mr. Zuroff's statements. Mr. Liss added that this request serves as an "administrative tailoring" that will eliminate any confusion moving forward for the involved parties.

The Board then determined, by unanimous vote granted the aforementioned modifications and 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:

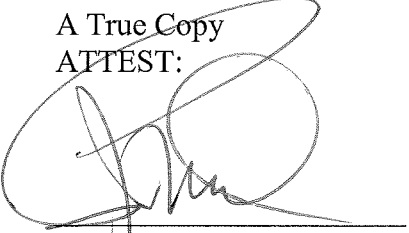
1. Prior to subdivision of the property, an ANR plan shall be submitted to the Planning Board for endorsement.
2. All previous decisions of this Board of Appeals shall be nullified with the exception of BOA Case No. 1639, Condition #1: The structure at 50 Arlington Road shall not be less than 10.4 feet from any lot line.
3. Prior to the issuance of a building permit for construction on the vacant side lot, 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 11/12/15


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

2015 NOV 12 A 11:16

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TOWN CLERK