



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0033
OWNER: LCM9 HOLDINGS LLC
ADDRESS: 142-144 PLEASANT STREET

Petitioner, LCM9 Holdings LLC, applied to the Building Commissioner for permission to remove the roof and construct an addition at 142-144 Pleasant Street. 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 22, 2015 at 7:00p.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 October 8, 2015 and October 15, 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:

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142-144 PLEASANT ST – REMOVE ROOF AND CONSTRUCT A THIRD STORY in an F-1.0, Three-Family, residential district, on October 22, 2015, at 7:10 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: LCM9 Holdings LLC c/o Jessica Ye) Precinct 2

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. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.50: Front Yard Requirements**
- 3. Section 5.60: Side Yard Requirements**
- 4. Section 5.91: Minimum Usable Open Space**
- 5. Section 6.04.5.c.1 and 3: Design of All Off-Street Parking Facilities**
- 4. 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.***

*Avi Liss, 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 Avis Liss and Board Members Christopher Hussey and Johanna Schneider. 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 was the project architect, John Le, Vina Design, Inc., 423 Park Avenue, Worcester, MA 01610.

Chairman Avi Liss called the hearing to order at 7:00 p.m. Mr. Allen waived a reading of the public hearing notice. Attorney Allen stated that the proposal before the Board was revised in collaboration with the Planning Board and the Building Department. He stated that the subject property is located at the corner of Pleasant Street and Freeman Street in the F-1 (Three-Family) Residence District. Attorney Allen confirmed that the Preservation Commission issued a one-year stay of demolition for the roof that will expire December 9, 2015.

Attorney Allen detailed plan revisions from previous iterations including reduced gross floor area, reduced maximum height, and increased setbacks for proposed front facing dormers. Attorney Allen noted that the original proposal was "over cited" because the submitted site plan included modifications to the existing parking area. He stated that the revised plans before this Board do not include any modifications to the pre-existing non-conforming parking layout.

Project Architect, John Le stated that the proposal includes the replacement of all existing windows, the inclusion of two front-facing gable dormers, and a vertical addition that will increase the gross floor area by 1,313 square feet and result in a two-and-a-half story structure.

Board Member Hussey questioned if the site plan illustrating, "proposed residential addition" is identical to the existing site plan because the structural footprint and parking layout will not change. Mr. Le confirmed that the existing and proposed site plans are identical. Mr. Hussey confirmed that the final site plan must be stamped certified by a land surveyor.

Furthermore, Mr. Hussey noted that the swing space and turning radii for the existing rear yard parking is difficult, but has functioned for the existing two-family structure.

Attorney Allen confirmed that a shared driveway easement for the subject property and the abutting property at 140 Pleasant Street was established in 1932.

Board Members requested that Attorney Allen review specific requested relief due to inconsistencies included in the Planning Board report. Mr. Allen confirmed the following:

1. The resulting gross floor area totals 4,130 square feet and is compliant.
2. The front-yard structural setback along Freeman Street is 3.1 feet and is a pre-existing non-conforming condition that will be extended vertically by the addition.
3. The side-yard structural setback along the driveway is 5.8 feet is a pre-existing non-conforming condition that will be extended vertically by the addition.
4. The usable open space is 790 square feet and is a pre-existing non-conforming condition that will be increased due to the proposed gross floor area increase.

Board Members suggested that a zoning legend should be submitted as a condition of special permit relief if the Board of Appeals votes to approve the Petitioner's request for zoning relief.

Attorney Allen discussed relief under Sections 5.50, 5.60 and 5.91 of the Zoning By-Law whereby a special permit is required under Section 9.05 of the Zoning By-Law. Mr. Allen argued: (1) the specific site is an appropriate location where the use will remain the same and the property is immediately surrounded by two and three-family dwellings in the F-1.0 District, which was created to encourage reuse of the existing buildings and preserve the fabric of the neighborhood; (2) there will be no adverse effect on the neighborhood because the footprint is not changing and two-family dwellings in this district have a similar front facing entrance and a shared driveway with rear yard parking; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the shared driveway easement has existed since 1923, the parking is located at the rear of the property, and meets the dimensional requirements for parking stalls; (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

Attorney Allen also believed that the final design of the structure is consistent with the surrounding three-family district. Attorney Allen believed that the maximum height of the structure is actually modest when compared to surrounding structures.

Board Member Hussey requested clarification regarding the appropriateness of Section 5.43 of the Zoning By-Law. Attorney Allen agreed with the Board Members that Section 5.43 of the Zoning By-Law requires counterbalancing amenities for the requested setback relief even though the non-conformities will not be further exacerbated. He stated that the Petitioner proposes to landscape the front yards on Freeman and Pleasant Streets.

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

Zoning Board of Appeals Chairman Liss asked if anyone wanted to speak in opposition to the application. Francoise Dumler, 128 Pleasant Street, stated that the subject property is in poor condition. Ms. Dumler stated that windows are broken, the home is vacant and not properly secured, and rodents have become a problem. Ms. Dumler believed that this quality of maintenance is disrespectful to the neighborhood and the historic structure. Ms. Dumler did not believe the current parking surface adequately served three vehicles and did not support the developers attempt to “maximize profit.”

Tom Beddall, 128 Pleasant Street, agreed that the property is “run down” and did not support the increased density that will result if this third story addition is constructed.

Board Member Hussey questioned whether the structure is currently occupied. Mr. Beddall stated that the property has been vacant for one year.

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

FINDINGS:

1. **Section 5.50 - Front Yard Requirements**
2. **Section 5.60 – Side Yard Requirements**
3. **Section 5.43 – Exceptions to Yard and Setback Regulations**
4. **Section 5.91 – Minimum Usable Open Space**

	Required	Existing	Proposed	Relief
Min. Lot Size	5,000 s.f.	4,624 s.f.	4,624 s.f.	Pre-Existing Non-Conforming
Floor Area (s.f.)	5,000 s.f.	2,817 s.f.	4,130 s.f.	Compliant
Floor Area Ratio (% of allowed)	1.0 100%	0.609 61%	0.89 89%	
Lot Width	45 ft.	34.35 – 49.17 ft.	34.35 – 49.17 ft.	Pre-Existing Non-Conforming
Height Max	35 ft.	26.4 ft.	31.67 ft.	Compliant
Front Yard (Freeman)	15 ft.	3.1 ft. (House) 6 ft (Parking)	3.1 ft. (House) 6 ft (Parking)	Special Permit*
Side Yard Setback	10 ft.	5.8+ ft.	5.8+ ft.	Special Permit*
Front Yard (Pleasant)	15 ft.	14.9 ft.	14.9 ft.	Pre-Existing Non-Conforming
Rear Yard	30 ft.	4.0 ft.	4.0 ft.	Pre-Existing Non-Conforming
Landscaped Open Space	10%	0 ft.	0 ft.	Pre-Existing Non-Conforming
Usable Open Space	30%	790 ft. 28%	790 ft. 19%	Special Permit

*

Under Section 5.43, the Board of Appeals may waive dimensional requirements in lieu of other dimensions if the applicant provides countervailing amenities.

5. Section 8.02.2 – Alteration or Extension

A special permit is required to alter this pre-existing non-conforming structure.

Mr. Rosa stated that the Planning Board unanimously supported the addition. He stated that the Petitioner worked with the Planning Board and the Planning Department to revise plans that only require special permit relief for the extension of pre-existing non-conforming conditions as outlined by Attorney Allen. He noted that the Planning Board specifically requested a revised site plan detailing the existing parking layout to be maintained and a revised roof plan detailing compliant front dormers. Mr. Rosa

confirmed that the Petitioner submitted these revised materials. Therefore, the Planning Board recommends approval of the plans by Registered Architect John Le of Vina Design Inc, dated 9/10/2015 and revised 10/22/15, and the site plan submitted by Registered Land Surveyor Timothy Callahan of Hawk Consulting, dated 10/20/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
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; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Liss requested that Michael Yanovitch review the opinion of the Building Department.

Mr. Yanovitch stated that abutters should notify the Building Department if area structures are open to the elements. Mr. Yanovitch confirmed that the front-yard setback along Pleasant Street was unnecessarily cited for relief because the dormers in question are considered projections that are permitted within the required front-yard. Mr. Yanovitch confirmed that all other structural setbacks are pre-existing and are appropriately cited for relief in accordance with Sections 5.43 and 8.02.2 of the Zoning By-Law. Ultimately, all necessary relief is minimal. Should the Board find that the standard for special permit relief is met, the Building Department will work with the Petitioner to ensure compliance with all imposed conditions and building codes.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Member Hussey agreed that despite confusion regarding the cited relief and the site plan, the requested zoning relief is minimal. Mr. Hussey stated that the condition of the property will be

improved as a result of this project. Additionally, he noted that new owners or renters will maintain the property, thus alleviating some of the neighbor concern. Mr. Hussey supported plans submitted by the Petitioner and reiterated support for the submission of a final zoning table prior to the issuance of a building permit. For these reasons, Mr. Hussey recommended approval.

Board Member Schneider agreed that the relief requested is modest. Ms. Schneider stated that proposed alterations are more in scale with the surrounding neighborhood. Ms. Schneider supported the Petitioner's right to seek additional interior living space. Ms. Schneider concluded her comments by stating disappointment with the quality and clarity of the Planning Board report. As a result, Ms. Schneider believed that it was difficult for all parties to accurately evaluate the proposed addition in preparation for this hearing.

Chairman Liss concurred with Mr. Hussey and Ms. Schneider's comments. Mr. Liss stated that the existing structural footprint will not be altered and all requested zoning relief is pre-existing.

The Board then determined, by unanimous vote, that the requirements for a special permit were met and granted the aforementioned modifications. The Board made the following specific findings pursuant to **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.

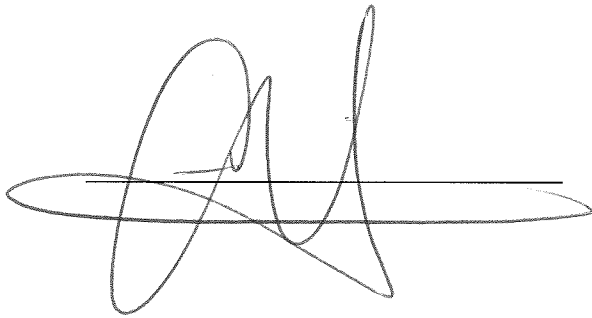
Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a final zoning table indicating compliance with, and/or relief requested, for all cited zoning relief included in the Planning Board report, dated October 8, 2015.
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; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

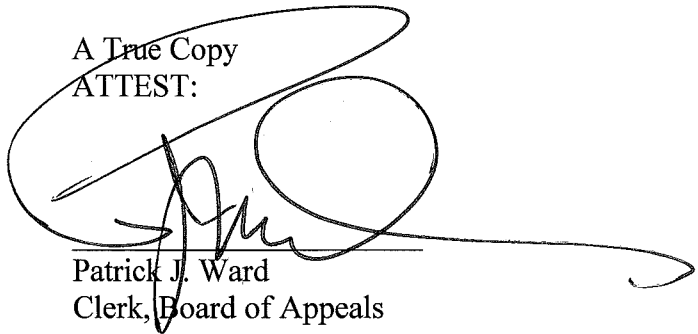
Unanimous Decision of
The Board of Appeals

Avi Liss, Chairman

Filing Date: 11/16/15



A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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