



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0058
BROOKLINE DEVELOPMENT CORP., LLC

Petitioner, Brookline Development Corp., LLC, applied to the Building Commissioner for permission to construct a two-car rear parking area. 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 October 27, 2016, 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 October 13, 2016, & October 20, 2016, 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:

1471 BEACON STREET – CONSTRUCT A TWO CAR PARKING AREA AT THE REAR OF 1471 BEACON STREET, in an M2.5 (Apartment House) Residence District, on October 27th at 7:30 PM in the 1st Floor Room 111 in Town Hall, 333 Washington Street (Petitioner/Owner: Brookline Development Corp., LLC C/O Jeff Feuerman) *Precinct 10*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law for both subject properties, and any additional zoning relief the Board deems necessary:

1. **Section 5.09.2.a: Design Review**
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.50: Front Yard Requirements**
4. **Section 5.52: Fences and Terraces in the Front Yard (Retaining Wall)**
5. **Section 5.60: Side Yard Requirements**
6. **Section 5.62: Fences and Terraces in the Side Yard (Retaining Wall)**
7. **Section 5.90: Minimum Landscaped Open Space**
8. **Section 6.04.5.b: Design of All Off-Street Parking Facilities**
9. **Modification, as necessary, of BOA case #2012-0059 September 27, 2012**

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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@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 Johanna Schneider and Board Members Jonathan Book 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 was Jeff Feuerman, Petitioner, and landscape architect Katya Podsiadlo of Blair Hines Design and Associates, Inc., 318 Harvard Street, Suite 25, Brookline, MA 02446.

Attorney Allen provided the Board with background history of the proposal. 1471 Beacon Street is situated among a row of 5 townhouses between Marion Street and Fairbanks Street in the in the M-2.5 (Apartment House) District. Mr. Allen stated that the Zoning Board of Appeals previously approved a proposal for a four-car rear parking garage in 2015. That proposal was not constructed, primarily due to the difficulty of constructing the approved garage without upsetting all of the neighbors along the very long rear private way. The Petitioner is now proposing to construct a two-car parking area instead. Attorney Allen stated that the Petitioner also originally requested and received relief in 2012 to convert the 10-unit apartment building to 11 units by converting basement space into additional floor area and updating the exterior façade. Mr. Allen stated that the currently proposed angled two-car parking area at the rear of the property would require a retaining wall due to the dramatic grade change from Beacon Street down to the private way.

Attorney Allen reviewed the requested zoning relief, specifically from front and side yard setback requirements and landscaped open space. Board Member Zuroff asked if the previous proposal involved landscaped space on top of the garage. Attorney Allen stated that while the prior proposal involved landscaped space, since this proposal is just a parking area, not a garage, there won't be space for any landscaping on top. Mr. Allen said that the open space at the rear of the property is not considered usable because of the slope of the hill, but since the proposal will be removing some of that space for parking, a variance is triggered for landscaped open space.

Attorney Allen discussed the zoning relief required pursuant to **Section 5.43** of the Zoning By-Law whereby a special permit is required under **Section 9.05** of the Zoning By-Law to waive the dimensional requirements for front and side-yard setback relief. 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 where legal access to the rear of 1471 Beacon Street was granted in 1896; (2) there will be no

adverse effect on the neighborhood, as the proposal will prevent cars from impeding with the private way, it will implement an attractive landscape plan that works to preserve some of the large trees at the rear, and the new wall will help with drainage issues that arise from water runoff down the hill's steep slope; (3) no nuisance or serious hazard to vehicles or pedestrians exist, and this proposal should be safer than the previously approved four-car garage; (4) adequate and appropriate facilities will be provided for the proposed use, and a well-qualified landscape architect, Blair Hines Design, has been hired to develop an appropriate landscaping plan; and (5) development will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Attorney Allen then reviewed how the proposal complies with the requirements needed for granting a variance. Attorney Allen stated that typically open space variances are triggered when floor area is added, but this situation is different. Attorney Allen said a previous variance was granted for this property in 2012 when a unit was added to the building, but at that time, parking was not part of the proposal. This proposal would add two parking spaces, which requires a variance because of the removal of landscaped space. Attorney Allen said the subject property has a unique topographical condition in that it is extremely sloped in the rear, dropping dramatically from Beacon Street down to the private way. There is a substantial hardship in that currently there is absolutely no parking for the building, which has made it extremely difficult for the Petitioner to market the units. Attorney Allen said that while the previous garage proposal would allow for more landscaped open space, the neighbors were strongly opposed to that proposal, and the Petitioner did not feel the garage could be built while still meeting the needs and concerns of the neighbors. This proposal would involve a significantly smaller disturbance to the hillside, reducing the impact to neighbors and installing a retaining wall to address water runoff. Attorney Allen said the requested zoning relief can be granted without substantial

detriment to the public good, and there is no derogation to the intent or purpose of the Zoning Bylaw, which encourages the most appropriate use of the land.

Attorney Allen stated that there are few properties that have such a significant vertical drop from Beacon Street to the rear, and that can also only be accessed by a narrow private way more than 150 feet in length. These conditions prevent the Petitioner from being able to build the previously-approved proposal. The current two-car proposal is less detrimental to the neighborhood, and the proposal meets the requirements for a variance.

Attorney Allen said that the Petitioner has also agreed, in response to a request by neighbors, to ensure that the two parking spaces would be used only by the building's occupants.

Zoning Board of Appeals Board Member Zuroff said it was odd that a variance is required for this proposal, which has less of an impact than the previous proposal, which did not require a variance.

Deputy Building Commissioner Michael Yanovitch agreed, and reviewed the requirements for landscaped open space, and said that as long as the proposal involves removing landscaped open space, zoning relief is needed.

Board Member Zuroff said that the lot clearly has a topographical issue, but he wishes another variance wasn't necessary. The Board discussed the previously granted variances for FAR and parking in 2012, as well as the previous opposition from neighbors.

Board Member Book asked Attorney Allen to confirm that the described topographical issue only really affects this property, and the slope lessens as you move away. Mr. Allen said yes. Zoning Board of Appeals Chairman Schneider said that the inability to market the units is a substantial hardship. Attorney Allen said the Petitioner has owned the property for at least two years, and there are still available units because potential buyers want onsite parking.

Chairman Schneider asked if anyone would like to speak in favor of or in opposition to the proposal or to offer a general comment. No comment was offered.

Ashley Clark, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

Section 5.09.2.a – Design Review: Any exterior alteration or addition to a building with frontage on Beacon Street, or to a multiple dwelling with four or more units, requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*, Community and Environmental Impact and Design Standards. The most relevant sections of these standards are described below:

- a. Preservation of Trees and Landscape – Most existing trees will remain and a new landscaping plan has been proposed to improve the aesthetics of the rear of the building.
- d. Open Space – The proposal removes some landscaped open space area from the rear of the property. However, it also proposes new plantings and trees on the existing hillside to improve the overall appearance.
- e. Circulation – The proposed parking area will use a 10’-wide easement at the back for access. The spaces will be setback from the property line (easement center line) by 5’.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.52 – Fences and Terraces in the Front Yard (Retaining Wall)

Section 5.60 – Side Yard Requirements

Section 5.62 – Fences and Terraces in the Side Yard (Retaining Wall)

Section 5.90 – Minimum Landscaped Open Space

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback	6’	N/A	4.7’	Special Permit*
Side Yard Setback (east)	6’	N/A	0’	Special Permit*
Side Yard Setback (west)	6’	N/A	2.5’	Special Permit*
Landscaped Open Space	2,478 s.f. 10% of g.f.a.	2,276 s.f. 9.2%	1,924 s.f. 7.8%	Variance

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 6.04.5.b – Design of All Off-Street Parking Facilities

Modification, as necessary, of BOA Case #2012-0059 December 14, 2012

If application is approved, a new landscaping plan would need to be submitted.

Ms. Clark stated that the Planning Board voted to recommend approval of the rear parking area. Ms. Clark stated that the Planning Board thought previous proposals for parking amenities on this property have included much larger proposals including enclosed garages. This proposal is the least impactful of the recent proposals. The proposed landscape will also improve the hillside at the rear of the building and improve the appearance for abutting properties at the rear on Beacon and Griggs Terrace. Therefore, Ms. Clark stated that the Planning Board voted to recommend approval of the site parking plans by J.F. Hennessy Co. dated 6/27/16, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations, 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 a final landscape plan, stamped and signed by a registered landscape architect, indicating substantial counterbalancing amenities, subject to the review and approval of the Assistant Director of 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 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.

Attorney Allen said he is not sure whether an engineer or architect will be developing the final plans for the retaining wall, so he would like the wording of condition #3 to reflect the possibility of a different registered design professional designing the plans.

Chairman Schneider next called upon Deputy Building Commissioner Michael Yanovitch to deliver the opinion of the Building Department. Mr. Yanovitch noted that the lack of opposition from the neighborhood, especially considering the issues regarding the previously approved proposal, is indicative of the fact that this proposal is expected to have less of an impact on its neighbors. Mr.

Yanovitch stated that if relief is granted, the Building Department will work with the Petitioner to ensure compliance.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Member Zuroff asked how the private way is maintained. Attorney Allen said the way's abutters pitch in to manage its maintenance. Mr. Yanovitch said many alleys along Beacon Street have difficulties with parking, access and maintenance. Attorney Allen said this proposal clearly defines where the parking will be located, which can be unusual with some of the private ways.

Board Member Book said he is in favor of granting the requested relief.

Board Chairman Schneider agreed, the proposal meets the standards for a variance, and will be less impactful on the neighborhood.

The Board then determined by unanimous vote that the requirements for a variance under M.G.L. Chapter 40A from the requirements of **Section 5.90** of the Zoning By-Law; and special permit relief from the application of the provisions of **5.09.2.a**, **5.50**, **5.52**, **5.60**, **5.62**, and **6.04.5.b** of the Zoning By-Law pursuant to **Sections 5.43**, **6.04.12**, **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 No. 2012-0059, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations, 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 a final landscape plan, stamped and signed by a registered landscape architect, indicating substantial counterbalancing amenities, subject to the review and approval of the Assistant Director of 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 elevations stamped and signed by a Massachusetts registered design professional; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

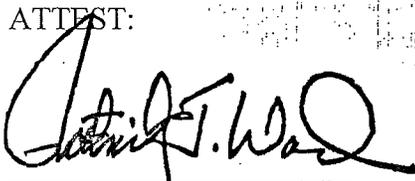
Filing Date: 11/21/16



Johanna Schneider, Chairman

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

