



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
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0065
BRIAN LESTER
23 BROWNE STREET, BROOKLINE, MA

Petitioner, Brian Lester, applied to the Building Commissioner for permission to finish 982 square feet of basement space. The application was denied and an appeal was 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 November 10, 2016 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 27, 2016 & November 3, 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: 23 Browne Street to finish 982 square feet of basements in an SC-7 (Single-Family and Converted for Two-Family) Residence District., on November 10, 2016 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Brian Lester) *Precinct 15*

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

- 1. Section 5.20: Floor Area Ratio**
- 2. Section 5.71 Projections into the Rear Yard**
- 3. Any additional relief the Board may find 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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@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 Steve Chiumentì. Zoning Coordinator, Ashley Clark was also present at the hearing. 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. The Petitioner, Brian Lester and his wife, Shirah Rosin was also present, along with project architect, Kent Duckham, Duckham Architecture & Interiors, 53 Central Avenue, Needham, MA 02494.

Chairman Book called the hearing to order at 7:30 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that 23 Browne Street is located in the SC-7 District. Attorney

Allen stated that the subject home is located in the Cottage Farm Local Historic District and that the Petitioner has made improvements to the home, working closely with the Preservation Commission to maintain historic features on the home.

Attorney Allen stated that the proposal does not include any exterior modifications and does not increase the existing footprint.

Board Member Hussey asked whether the finished basement meets egress code. Mr. Duckham stated that there is a bench in the basement and a window that was preserved during the Preservation process which meets egress size.

Attorney Allen stated that the Petitioner seeks relief from **Section 5.20** of the Zoning Bylaw in order to finish 982 sq. ft. of basement space into habitable space.

Attorney Allen specified that the nonconforming FAR is pre-existing. Attorney Allen stated that the maximum allowable FAR in the SC-7 District is .35 and noted that the Petitioner are currently at .68. Attorney Allen stated that the finished basement will increase the FAR to .83. Attorney Allen stated that case law precedent has established that under Chapter 40A, Section 6, the owner of a nonconforming single-family or two-family house needs a variance for any reconstruction that creates a new nonconformity. Attorney Allen continued that case law has further established that an owner can however expand an existing nonconformity via a special permit granted under Massachusetts General Laws Chapter 40A, Section 6, provided there is a finding that such expansion is not substantially more detrimental than the existing nonconformity to the neighborhood. Deadrick v. Zoning Board of Appeals of Chatham, 85 Mass.App.Ct. 539. Attorney Allen commented that the relief requested will increase an existing non-conformity, without creating any new non-conformities, and will not create any substantial detriment to the neighborhood.

Attorney Allen then discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location for such use because the use will remain the same; (2) the use will not adversely affect the neighborhood as it will only affect the interior of the home and is staying within the existing footprint; (3) there will be no nuisance or serious hazard to vehicles or pedestrians; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the proposal will not have any effect on the supply on housing available for low and moderate income people.

Chairman Book asked whether anyone would like to speak in favor of, or in opposition to the proposal. There was no public comment.

Ms. Clark then delivered the findings for the Planning Board:

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 100%	.68 194%	.83 235%	Special permit/Variance*
Floor Area (s.f.)	2,364	4,592	5,574	

* Under Deadrick, the Board of Appeals may allow an extension of an existing non-conformity if it finds there is no substantial detriment to the neighborhood.

Ms. Clark stated that the Planning Board is not opposed to this proposal to finish 982 square feet in the basement at 23 Browne Street. The building footprint exterior will remain the same and the conversion should have no impact to abutters. Therefore, the Planning Board recommends approval of the plot plan by Verne T. Porter dated 9/29/2016 and basement floor plans by Kent Duckham dated 9/6/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, final basement floor plans shall be submitted to the Assistant Director of Regulatory Planning for review and approval.

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; 2) final basement floor plan; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Clark then delivered the opinion of the Building Department. She stated that the Building Department has no objection to the relief as requested. The Deputy Building Commissioner will ensure that all egress meets code. The Building Department therefore will work with the Petitioner to ensure compliance should relief be granted.

During deliberation, Chairman Chiumenti asked about the facilities in the basement. Attorney Allen stated that there is a bathroom and play space in the basement. Chairman Book stated that he is supportive of the proposal and the standards under M.G.L. Chapter 40A, Section 6 and **Section 9.05** of the Zoning Bylaw have been satisfied.

The Board then determined, by unanimous vote that the requirements for a special permit under M.G.L. Chapter 40A, Section 6, **Section 5.20** of the Zoning By-Law pursuant to Section **9.05** of the Zoning By-Law were met. The Board specifically found that the additional FAR created by finishing the basement is not substantially more detrimental than the existing non-conformity to the neighborhood. The Board also made the following specific findings pursuant to said **Section 9.05**:

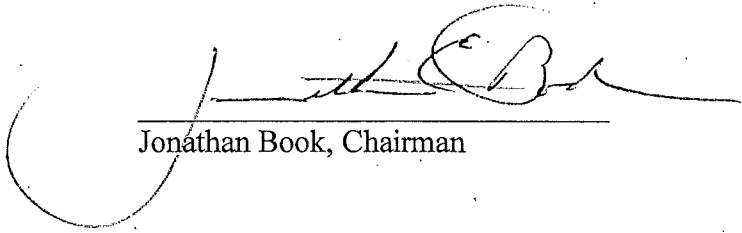
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 subject to the following conditions:

1. Prior to the issuance of a building permit, final basement floor plans shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
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; 2) final basement floor plan; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

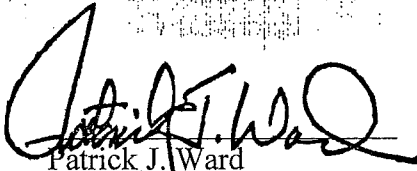
Unanimous Decision of
The Board of Appeals

Filing Date: 11/28/2016



Jonathan Book, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals