



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Co-Chair
Jonathan Book, Co-Chair
Christopher Hussey

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

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0086
789 WASHINGTON STREET

Petitioner, Tina Ni Riain and Fearghal O'Riain, applied to the Building Commissioner for permission to remove and renovate the roof to all an increase the square footage of the unfinished attic space by approximately 1,044 square feet and also construct two rear balconies at 789 Washington Street. A copy of the application was filed with the Clerk's office as well. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed for January 19, 2017 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney, 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 January 5 and January 12, 2017 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:

789 WASHINGTON STREET to REMOVE ROOF AND CONSTRUCT THIRD STORY ADDITION in an T-5 (Two-Family and Attached Single-Family) Residence District, on JANUARY 19, 2017 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Tina Ni Riain) Precinct 11

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 5.09.2.a: Design Review**
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.50: Front yard Requirements**
4. **Section 5.60: Side Yard Requirements**
5. **Section 8.02.2: Alteration or Extension**
6. **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, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members, Jonathan Book and Stephen Chiumenti. The case was presented by the attorney for the petitioner, Cameron. Merrill, Merrill

& McGeary, 100 State Street, Suite 200, Boston, Massachusetts, 02109 who was present with the petitioner, Tina Ni Riain and Architect, Tom Dolle. Mr. Zuroff called the meeting to order at approximately 7:00 p.m.

Attorney Merrill introduced the project as a renovation which would add living space to the attic and modernize the current layout to meet the family's needs. The addition does not increase the footprint of the home or exacerbate any existing setbacks. After the living space is added, the building will still be significantly under the allowable FAR. The building will continue to be two units.

Attorney Merrill explained that the petitioner grew up in Brookline and purchased the property from her parents and now lives there with her husband, a co-owner and their two school aged children. The current layout and size of the apartment makes it difficult for her family to practically reside in the space. The proposal is a reasonable development which will allow the family to comfortably grow in their home.

Attorney Merrill described 789 Washington Street as a two story residential apartment building located north of Washington Square and the Driscoll School playground near the intersection of Downing Road. The site is surrounded by mostly two-family and some multi-family buildings. The abutter to the right is a three-story house and the abutter to the left is a two and a half-story house. The property slopes down towards the rear of the property where there is a landscaped patio area and fence surrounding the property.

Attorney Merrill described the neighborhood as having many properties with distinct roof character with multiple pitches, dormers and ridge lines. Further, several properties in the immediate proximity are more densely built upon their lots and encroach upon the setbacks.

Attorney Merrill stated that the applicant had previously worked diligently with the Preservation Commission and Subcommittee on a design after a Demolition Stay was imposed. After multiple public hearings, the Preservation Commission approved the design as it was respectful of the historic significance of the property and neighborhood character.

Attorney Merrill discussed the requirements of Section 9.05 of the Zoning Bylaw in that the specific site is an appropriate location for a three floor residential building; the use as developed will not adversely affect the neighborhood as it is similar to other uses in the neighborhood and the additional floor will not have an impact on the community; there will be no nuisance or serious hazard to vehicles or pedestrians as there is no impact on the community; adequate and appropriate facilities will be provided for the proper operation of the proposed use and the development will not have a significant adverse effect on the supply on housing available for low and moderate income people and will improve the supply of affordable housing within the Town.

Furthermore, Attorney Merrill argued a Special Permit under Section 5.09.2.a was appropriate given the effort by the petitioner to work with the Preservation Commission to ensure the renovations were within the character of the neighborhood.

The Chairman asked if anyone in attendance would like to speak, either in favor of or in opposition to the petition. There were no members of the public present to speak either in favor of or against the application. Prior to the meeting, the Petitioner submitted a letter in support of the project authored by Town Meeting Member, Precinct 13, Andrew Fisher and endorsed by neighbors at 5, 16, 17 and 25 Bartlett Crescent, 86, 94 and 122 Westbourne Terrace and 789 Washington Street, #1 and 793 Washington Street.

The Chairman called upon Ashley Clark, to deliver the comments of the Planning Board.

FINDINGS

Section 5.09.2.a – Design Review: Any structure or outdoor use on a lot any part of which is located in the G-1.75(CC) or L-0.5 (CL) Districts or which fronts on or is within 100 feet of: Beacon Street, Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street.

- a. Preservation of Trees and Landscape – The proposal does not require the removal of any trees or substantial landscaping, as the addition does not alter the footprint of the existing structure or extend

- b. Relation of Buildings to Environment – The proposed addition is not expected to have significant shadow impacts on neighboring properties. The building to the right is also three-stories. The building footprint will remain the same.

- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Though the addition does change the roofline of the structure and the house’s appearance from all sides, the home still remains within the character of the neighborhood which contains numerous three-story homes and apartment buildings.

Section 5.43 – Exceptions to Yard and Setback Requirements:

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Setback Requirements	Required	Existing	Proposed	Finding
Front Yard	15 ft.	12.2 ft.	12.2 ft.	Special Permit*
Side Yard (right)	10 ft.	7.4 ft.	7.4 ft.	Special Permit*
Side Yard (left)	10 ft.	8.7 ft.	8.7 ft.	Special Permit*

** The front and side yards are pre-existing, non-conforming and will not change with the conversion of the attic space. Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.*

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a nonconforming structure or use.

Ms. Clark stated the Planning Board is supportive of this project and the proposal went through numerous design review meetings with the Preservation Commission over the summer to develop a design for this third-story addition that fits in with the character of the neighborhood

and preserves the character of the home. Ms. Clark further stated the addition does not increase the footprint of the home or exacerbate any existing setbacks and will increase the living area for the homeowners who live on the second and third floors. Ms. Clark noted the abutting home to the right is three stories, as is an apartment building nearby and a third-story addition is not out of context with the neighborhood. Ms. Clark concluded stating that additional landscaping will serve as a counterbalancing amenity.

Therefore, the Planning Board recommends approval of the site plan by Everett M. Brooks Co. dated 11/3/2016 and the architectural plans by Dolle Architects dated 3/30/2016, subject to the following conditions:

1. Prior to issuance of a building permit, final elevations indicating all exterior alterations and proposed materials and 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 a final landscaping plan, 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 floor plans and 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 called upon Ashley Clark, Planner, to relay comments of Michael Yanovitch, Chief Building Inspector, of the Building Department. Ms. Clark said the Building Department has no objection to the requested relief. She said the relief could be issued by special permit and, if relief were to be granted, the Building Department would ensure compliance with the Building Code as well as any conditions of the grant.

After deliberating on the merits of the request for special permit relief, the Board voted unanimously that the requirements have been met for the issuance of a special permit pursuant to **Section 5.09.2.a** and made the following specific findings pursuant and **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. The development as proposed will not have a significant adverse 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:

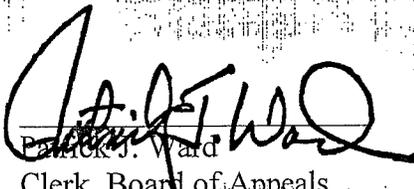
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Unanimous Decision of The Board of Appeals.

Filing Date: 2/6/2017


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals