



Town of Brookline

Massachusetts

Town Hall, 1st Floor
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Patrick J. Ward, Clerk

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BOARD OF APPEALS
Rose Geller, Chairman
Jonathan Book
Christopher Hussey

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0009
VIJAY & KIRAN KUCHROO
90 YARMOUTH RD, BROOKLINE, MA

Petitioners, Vijay & Kiran Kuchroo, applied to the Building Commissioner for permission to construct a new single-family home. 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 March 23, 2017 at 7:10 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 March 9, 2017 & March 16, 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:

90 Yarmouth Road - Construct a new single family dwelling in S-40 (Single-Family) Residence District, on March 23 at 7:10 PM in the 6th Floor Selectmen's Conference Room (Petitioner/Owner: 90 Yarmouth Realty Trust) 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 5.09.2.n: Design Review

2. 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 Jesse Geller and Board Members Christopher Hussey and Kate Poverman. Deputy Building Commissioner, Michael Yanovitch and Planner and Zoning Coordinator, Ashley Clark were also present at the hearing. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445.

Chairman Geller called the hearing to order at 7:20 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the property is located in an S-40 District in a neighborhood comprised primarily of large single-family homes. He continued that the Petitioners underwent

review by the Preservation Commission and a one year delay was imposed, which delay previously expired. He stated that the Petitioners were in the process of engineering review when Town Meeting voted on Section 5.09.2.n triggering relief for the instant proposal and that the Petitioners were given a conditional permit to build allowing them to proceed with construction at their own risk.

Attorney Allen stated that the Petitioners seek relief from Section 5.09.2.n of the Zoning By-Law, to construct a new home, under which the Board may set limitations on what space may be counted toward FAR in the future.

Attorney Allen commented that the proposed home fits in with the surrounding neighborhood and opined that Section 5.09.2.n may be reviewed by the standards of a special permit set forth in Section 9.05 of the Zoning By-Law. Attorney Allen argued: (1) the specific site is an appropriate location for such use because the proposed home is in a single-family zoning district, on a small private way, not visible from any public way, and maintains the same setback as the previous home; (2) the proposed use will not adversely affect the neighborhood because the proposed structure will be setback over 40 feet from the street and 11 neighbors have submitted letters in support; (3) there will be no nuisance or serious hazard to vehicles or pedestrians as the existing driveway entrance will be maintained; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply of housing available for low and moderate income people.

Board Member Poverman inquired about the space included in the calculations reflected in the Planning Board Report and architectural plans. Mr. Yanovitch responded that Section 5.09.2.n of the Zoning By-Law requires calculations to include space that is otherwise uninhabitable to determine the parameters by which the design review special permit will be

granted.

Chairman Geller asked Mr. Allen to provide the site's context as it compares to massing, scale, footprint and setbacks of the other buildings in the neighborhood. Attorney Allen described the homes on Yarmouth Road and the surrounding neighborhood stating that the proposed home is consistent with abutting structures in the neighborhood. Attorney Allen stated that pictures of the surrounding neighborhood were submitted to the Planning Department to supplement the proposal.

Chairman Geller asked Mr. Yanovitch to opine on the standard of review for Section 5.09.2.n of the Zoning By-Law. Mr. Yanovitch stated that in addition to the density and floor area of abutting structures, Section 5.09.2.n triggers review of like houses in like neighborhoods. He argued that the requirements of Section 5.09.2.n of the Zoning By-Law act as a safeguard where a structure does not fit into a neighborhood and that it must be interpreted in a manner consistent with the standards set forth in Section 9.05 of the Zoning By-Law .

Chairman Geller asked whether anyone wanted to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Geller asked whether anyone wanted to speak in opposition to the proposal. No one appeared in opposition to the proposal.

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

FINDINGS:

Section 5.09.4 – Design Standards

The most relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape – The proposed plan involves significant grading of the site, fill and installation of drainage systems that will require the removal of existing landscaping. Significant planting and screening will be replaced and added as part of the proposed landscape plan.

b. Relation of Buildings to Environment – The proposed structure will improve the relationship to the structures immediately surrounding the site by maintaining the same “streetscape” that is prevalent throughout the neighborhood. Similar front yard setbacks will be maintained.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The scale of the structure keeps with all the other homes on the street based on side lot coverage and FAR. The existing structure is 125’3” in length while the proposed structure is only 105’6” in length, thereby reducing the overall streetscape by 20’ when viewed from the street.

Section 5.09.2. n- any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning By-Law on similarly sized lots in the neighborhood. **In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant’s representation of the intended amount of future conversion.**

Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio (FAR)

Floor Area	Allowed	Proposed	Allowed by Special Permit After 10 years	Finding
Floor Area Ratio (% of allowed)	.15 (100%)	.148 (98.6%) w/o attic/bsmt .20 (133%) with attic/bsmt.	.195 (130%)	Special Permit/ Variance
Floor Area (s.f.)	6,787	6,529 w/o attic/bsmt 8,823 with bsmt, and above garage 9,498 with bsmt, above garage and attic	8,824	

Ms. Clark stated that the Planning Board supported the proposed new house. She commented that the Planning Board noted that there is a great variation in the sizes and styles of the other houses in the neighborhood. Therefore, the Planning Board recommended approval of the site plan by Verne Porter, Land Surveyor, dated 8/12/16, and the architectural plans by Apkarian Architects, dated 8/25/2016, subject to the following conditions:

1. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-Law sections, must comply with §5.22 of the Zoning By-Law.
3. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit a final landscaping plan, showing heights and design of any retaining walls, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a Certificate of Occupancy, 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 or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Geller called upon Mr. Yanovitch to deliver the recommendations of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief requested noting that a basis on which relief may be granted is that the proposed home fits the standard of like houses in like neighborhoods. He continued that the proposal is not an overly large home for this neighborhood and is comparative to the house to lot size ratio in the neighborhood. Therefore, he concluded that should relief be granted, the Building Department will work with the Petitioners to ensure compliance.

The Board then deliberated on the merits of a special permit as requested. Chairman Geller stated that the proposal is worthy of relief and that the proposed home is consistent with what exists in the neighborhood. Board Member Hussey stated that he is supportive of the proposal.

The Board then determined, by unanimous vote that the requirements for a special permit under **Sections 5.09.2.n** of the Zoning By-Law pursuant to **Section 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 subject to the following conditions:

1. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-Law sections, must comply with §5.22 of the Zoning By-Law.
3. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit a final landscaping plan, showing heights and design of any retaining walls, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a Certificate of Occupancy, 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

or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

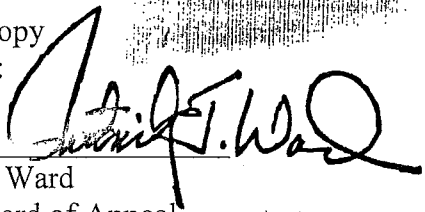
Unanimous Decision of
The Board of Appeals



Jesse Geller, Chairman

Filing Date: 5-11-17

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeal