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Patrick J. Ward, Clerk

BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0018  
130 HARVARD STREET  
ROWE, FRANCESCA

Petitioner, Francesca Rowe, applied to the Building Commissioner for permission to perform interior alterations to convert one existing retail space into two residential units for a total of five residential units. 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 May 11, 2017 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 April 27, 2017 and May 4, 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:

**130 HARVARD STREET to PERFORM INTERIOR ALTERATIONS TO CONVERT ONE EXISTING RETAIL SPACE INTO TWO RESIDENTIAL UNITS FOR A TOTAL OF FIVE RESIDENTIAL UNITS in a L-1.0 Local Business District, on MAY 11, 2017 at 7:30 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner/Owner: Francesca Rowe) Precinct 7**

*Zoning Board of Appeals Decision*

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 4.07, Table of Use Regulation: Use # 6 (footnote)**
2. **Section 5.05: Conversion**
3. **Section 5.07: Dwellings in Business and Industrial Districts**
4. **Section 5.09.2.d: Design Review**
5. **Section 5.60: Side Yard Requirements**
6. **Section 5.70: Rear Yard Requirements**
7. **Section 5.91: Minimum Usable Open Space**
8. **Section 6.02, Paragraph 1: Table of Off-Street Parking Space Requirements**
9. **Section 6.02.2.a: General Regulations Applying to Off-Street Parking Facilities**
10. **Section 6.04.5.a: Design of All Off-Street Parking Facilities**
11. **Section 8.02.2: Alteration and Extension**
12. **Modification, as necessary, of BOA case # 2991, September 28, 1989**
13. **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](http://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](mailto: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 was Chairman Jesse Geller and Board Members Christopher Hussey and Mark Zuroff.

The Petitioner was represented by Attorney Dermot Doyne, 84 State Street, Boston Massachusetts, 02109. Also in attendance was the Petitioner, Francesca Rowe and the project's architect, Benjamin Ber, Neh-Koo-Dah Architecture, 2001 Beacon Street, #210A, Boston,

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Massachusetts 02135. Chairman Geller called the hearing to order at 7:30 p.m. Attorney Doyne waived the reading of the public notice.

Attorney Doyne argued in favor of a use variance pursuant to **Section 9.09.d** of the Zoning By-Law which allows the Board of Appeals to grant a use variance provided the statutory variance requirements are met under G.L. c. 40A §10, and if the existing structure is compatible with its vicinity and is either of historical or architectural significance which shall be preserved or restored in a manner sufficient to justify the relief granted. Mr. Doyne stated as follows in support of the requested use variance: (a) the subject structure is historically significant due to its architectural and cultural features, (b) the owner intends to restore the structure consistent with its appearance at the time period it represents and (c) the structure is important to this section of Harvard Street which includes several similar historic structures from the late 19<sup>th</sup> century.<sup>1</sup> Attorney Doyne further stated that the Petitioner will work with a historic preservation expert to restore the exterior of the building with appropriate materials.

Attorney Doyne next discussed the zoning relief required from the Board of Appeals to grant required special permit relief under **Section 9.05** of the Zoning By-Law. Mr. Doyne argued that (a) the specific site is an appropriate location for such use; (b) there will be no adverse effect on 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 and proposed use; and (e) there will be no effect on the supply on housing available for low and moderate income people.

Attorney Doyne then argued that the proposal does not derogate from the intention of the Zoning By-Law. Attorney Doyne stated that although the Zoning By-Law allows for no more than 40% of the

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<sup>1</sup> The Petitioner submitted with application a newspaper article depicting a photo of the then newly constructed home. *Residence on Harvard Street, The Chronicle, September 12, 1891, Vol. XVII-No. 37 at 1. Available at the Brookline Library Reference Library on Microfilm.*

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first store to be dedicated to residential use, in this case, the structure does not integrate with the commercial strip further down Harvard Street. Attorney Doyne further supported his argument by stating that the Town's Economic Development Division has no objection to the conversion of the commercial space to residential use, due to its distance from the main commercial area.

Attorney Doyne argued relief could be granted without substantial detriment to the public good. Mr. Doyne stated that the Petitioner canvassed the neighborhood to discuss the proposal and collected several letters of support from the direct abutters as well as from residents of Auburn Court in support of preserving this home.<sup>2</sup> Mr. Doyne further added that the building footprint will not change with this proposal and emphasized it will be a return to a previous use.

Subsequently, Attorney Doyne made an argument for why a literal enforcement of the provisions of the By-Law would involve substantial financial hardship. Mr. Doyne stated that the Petitioner has been unsuccessful in her pursuit to lease out the existing space for commercial purposes and has suffered economic hardship due to the historic shape and size of the structure and that inability results in a loss in rental income. Attorney Doyne argued that the only way to make the property economically viable is by converting the space to residential use. He noted that the hardship from the loss of rental income is exacerbated by costs associated to make appropriate exterior renovations to maintain the historic home.

Chairman Geller discussed with the Board the desirability of placing an additional condition on the property in connection with any relief, should relief be granted, to ensure the exterior of the structure will be preserved and maintained in its historic condition. Chairman Geller confirmed with the Applicant that the Applicant agrees to a condition that will ensure the historical character and detail of the exterior of the structure.

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<sup>2</sup> The Petitioner submitted 11 letters of support dated March 20, 2017.

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Chairman Geller confirmed with Attorney Doyne that the proposal requires both special permit relief and variance relief. Mr. Doyne stated that the parking and setback requirements can be remedied through special permit relief. Deputy Building Commissioner, Mike Yanovitch, clarified that G.L. c. 40 §10 states that a use variance is only available if expressly allowed by provision in the local town by-law. Mr. Yanovitch reiterated that the Zoning By-Law does provide provisions for the grant of a use variance under **Section 9.09.1.**

Architect Bennie Ber, stated that in order to satisfy the requirements under **Section 5.43** for counterbalancing amenities, they are proposing to provide landscaping in the front yard as well as enhance the architectural elements on the front of the home.

The Board discussed their concern over the proposed parking plan. Board Member Zuroff expressed a concern regarding cars backing out from the driveway onto Auburn Street. Mr. Yanovitch stated that as an alternative the Board could require the relocation of the space to the existing driveway accessed from Harvard Street. Chairman Geller was concerned this solution would be difficult to manage with four residential units each having a space for a car. Chairman Geller continued that this might present a greater risk because it would require coordination of four parking spaces among four different apartments backing onto Harvard Street and that the Board must weigh out the risks of having four cars back out onto Harvard Street versus three cars backing onto Harvard Street and one car backing out onto Auburn Street (as already exists). Board Member Hussey agreed with Mr. Geller's concern and stated his preference was not to add another parking space where three currently exist but rather to retain the current configuration.

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Attorney Doyne argued that the subject site is unique for this zoning district.<sup>3</sup> Mr. Doyne then discussed the parking conditions on the subject property with the Board and clarified that one of the residential units will not be provided with a parking space. Attorney Doyne stated that the petitioner is requesting parking relief based on the fact that the property is walkable to public transit and is centrally located between Brookline Village and Coolidge Corner.

Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in favor. Mr. Geller asked if anyone wished to speak in opposition to the application. No one spoke in opposition.

Ms. Rowe stated that she would love to restore the home and would really appreciate the opportunity to preserve the building.

Chairman Geller then called upon Zoning Coordinator, Ashley Clark to deliver the findings of the Planning Board.

**FINDINGS**

Section		Relief
<b>Section 4.07</b> , Table of Use Regulation: Use #6 (footnote):	In L and G districts, the ground floor of a building must have no more than 40% of its frontage along a street devoted to residential use, including associated parking or lobby use.	<b>Use Variance*</b>
<b>Section 5.05</b> : Conversion	In an SC, T, F or M district the Board may waive dimensional requirements by special permit except minimum lot size	<b>N/A: L-1.0 Zoning district</b>

\*Under **Section 9.09**, a **use variance** may be granted to preserve a historically or architecturally significant building.

Dimensional Requirements*	Required	Existing Proposed &	Relief
<b>Section 5.60</b> : Side Yard Setback	14.8**	10.0'	Special Permit <sup>1</sup>
<b>Section 5.70</b> : Rear Yard Setback	20.1'	11' 10"	Special Permit <sup>1</sup>

<sup>3</sup> Subject property is on a corner and the only triangular shaped lot in an L-1.0 (Local Business) Zoning District, which is comprised mostly of commercial buildings.

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<b>Section 5.91:</b> Minimum Usable Open Space	20%	0 SF	Special Permit <sup>2</sup>
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\* Dwellings in business districts shall conform to minimum side and rear yard requirements of the M district with the same maximum permitted FAR, dimensions shown are for M-1.0 zoning districts.

\*\*Side Yard Setback Calculated according to the following formula:  $10 + L/10$ . L= 48 feet.

<sup>1</sup> Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

<sup>2</sup> Under **Section 5.07**, the Board of Appeals may waive usable open space requirements if they find it would promote reasonable development of the site compatible with adjacent buildings and the surrounding area.

Parking Requirements	Required	Proposed	Relief
<b>Section 6.02</b> , Paragraph 2: 1.4 spaces/1bed, 2 spaces/2bed	8	4	Special Permit*
<b>Section 6.04.5.a:</b> Design of All Off-Street Parking Facilities: Parking stalls in parking lots shall be set back from the street lot line, a minimum of five feet and further to whatever extent may be necessary in the specific situation, as determined by the Building Commissioner, to avoid the probability of cars backing or otherwise maneuvering on the sidewalk upon entering or leaving the stalls.	5'		Special Permit <sup>1</sup>

\*Under **Section 6.01.2.a**, The Board of Appeals may waive by special permit under Article IX up to one-half the number of parking spaces required. In this case, the applicant needs the maximum of (4) parking spaces waived.

<sup>1</sup> 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 and Extension

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

**Modification, as necessary, of BOA case #2991, September 28, 1989:** Variance and Special Permit relief was granted in 1989 for FA. No modification is necessary.

**Section 5.09.2.d: Design Review**

**4. Community and Environmental Impact and Design Standards**

Multiple dwellings with four or more units require a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. The relevant sections of the design review standards are described below:

Preservation of Trees and Landscape: This proposal does not require the removal of any trees.

Relation of Buildings to Environment: The proposal does not change the physical massing or footprint of the building.

Relation of Buildings to the Form of the Streetscape and Neighborhood: No change in how this building relates to the form of the streetscape and neighborhood.

Open Space: The proposal does not change the preexisting, nonconforming open space requirement.

Heritage: This proposal maintains the exterior of this historic Brookline home and returns the ground floor to residential use. The Applicant has noted this conversion from retail to residential is important for the owners to be able to maintain the home as the antique store is no longer an economically viable option for this ground floor space.

Ms. Clark stated that the Planning Board does not oppose this proposal to convert the ground floor of the antique store to two, one bedroom residential units. Ms. Clark noted that there are already three residential units on the second floor. Ms. Clark stated that the Planning Board appreciates that the owner is seeking to preserve this prominent building, a requirement for granting a use variance under **Section 9.09.d** of the Zoning By-law. The proposal requires a use variance due to a provision that requires no more than 40% of a building's frontage on the ground floor being dedicated to residential use; the intent of this section is to maintain and protect retail environments. Ms. Clark added that the Planning Board, through discussions with the Economic Development Division, feels that this is not a concern in this case, because the house lies outside of the main commercial strip on Harvard Street.

Ms. Clark stated that the Planning Board, however, does have a concern regarding the safety of a car backing out onto Auburn Street. The owner will be seeking permission for a curb cut on Auburn Street to legalize this existing parking condition and should, at that time, discuss with the Director of Transportation and Engineering whether there are any appropriate safety measures that should be implemented.

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Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Peter Nolan, dated 10/19/2016 and architectural floor plans and elevations dated 1/13/2017 subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor 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 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 discuss with Director of Transportation and Engineering whether any safety measures should be provided for the parked car that will back out onto Auburn Street and, if so, should implement those.
- 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 building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Chairman Geller then called upon Deputy Building Commissioner Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch reviewed the arguments the Petitioner's attorney made for a variance and confirmed both the Economic and Preservation Planners do not feel this proposal derogates from the intention of the By-Law. Mr. Yanovitch stated that the petitioner is not changing the exterior of the structure with the exception of repairing it. Therefore, Mr. Yanovitch continued, the Building Department had no objection to the relief requested and, if the Board finds that the proposal meets the criteria for the grant of a special permit as well as a variance under G.L. 40A, the Building Department will work with the Petitioner to ensure compliance.

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The Board deliberated on the merits of the proposal. Chairman Geller stated that the proposal meets the requirements for the grant of special permit relief from the specified dimensional requirements pursuant to Sections 5.43 and 9.05 of the Zoning By-Law for reasons cited into the record.

Chairman Geller noted that the proposal provides a rare opportunity to retain an historic structure. He cited concerns over the parking arrangement, but weighed these against the benefit of preserving the historic structure. Chairman Geller stated that the proposal meets both the requirements for the grant of the requested special permit relief as well as a use variance under G. L. 40A §10, as expressly allowed pursuant to Section 9.09.1.d of the Zoning By-Law. Chairman Geller reiterated that this historic structure, located in a business district, is such that it is no longer viable as a commercial use. Chairman Geller commented that relief can be granted without derogating from the Zoning By-Law but that he felt, in addition to the proposed counter balancing amenities, it would be appropriate to add a condition requiring preservation of the historic façade and exterior of the building.

Board Member Zuroff added to Chairman Geller's remarks that the subject property is in a highly accessible public transport area. Mr. Zuroff stated that in the past the Board of Appeals has waived parking requirements and felt the combination of proximity to public transportation and the opportunity to preserve an historic structure qualifies this proposal for similar relief. Board Member Zuroff was in support of granting both variance and special permit relief.

Board Member Hussey concurred and was in favor of granting relief.

Subject to the conditions provided below, the Board voted unanimously that the requirements have been met for the issuance of special permit relief: (i) from application of the provisions of Sections 5.60, 5.70, 5.91 and 6.04.5.a of the Zoning By-Law pursuant to the provisions of Sections 5.05, 5.43, 5.07 and 9.05 of the Zoning By-Law, respectively, (ii) Sections 5.09.d and 8.02.2 of the Zoning By-Law, and (iii) from application of Section 6.02 pursuant to Sections 6.01.2.a and 9.05 of the Zoning By-

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Law. Finally, the Board found that the requirements have been met for the issuance of variance relief under G.L. c. 40A §10 and **Section 9.09.d** of the Zoning By-Law from application of the provisions of **Section 4.07** of the Zoning By-Law.

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 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 as provided above subject to the following revised conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, in part evidencing restoration of the facades of the structure to their historic condition, 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 landscaping plan, indicating all counter balancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) The exterior of the structure shall be maintained in its historic condition and appearance.
- 4) Prior to the issuance of a building permit, the applicant shall submit a final parking plan identifying three parking spaces accessed from Harvard Street and one parking space accessed from Auburn Street consistent with the plans specified above for the review and approval of the Director of Transportation and Engineering, and for determination of whether any safety measures should be provided for the parked cars that will back out onto the street and, if so, the applicant shall implement them.
- 5) Prior to the issuance of a building permit, the applicant shall submit to the Building

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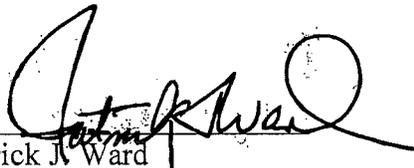
Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 6-9-17

  
Jesse Geller, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals