



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

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2017 AUG -4 A 11:

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0013
STUART BROWN
76 DENNY ROAD, BROOKLINE, MA

Petitioner Stuart Brown applied to the Building Commissioner for permission to increase the height of the basement ceiling to accommodate potential future expansion in a new 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 April 6, 2017 at 7:00 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 23, 2017 and March 30, 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: 76 DENNY ROAD – Raise existing ceiling to accommodate potential future expansion #2017-0013 in an S-15 (Single-Family) Residence District, on April 6, 2017 at 7:15 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: 76 Denny Road LLC) *Precinct 13*

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.

- 1. Section 5.09.2.n: Design Review**
- 2. Any additional relief the Board may find necessary**

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*

On July 13, 2017, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Mark Zuroff and Christopher Hussey. Also present at the hearing was Planner and Zoning Coordinator, Ashley Clark and Michael Yanovitch, on behalf of the Building Department. 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 present was the Petitioner, Stuart Brown.

Chairman Schneider called the hearing to order at 7:00 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the property is located in an S-15 District. Attorney Allen explained that the Petitioner purchased the subject home from a developer who constructed the home at risk. He indicated that although the home was initially proposed as an as-of-right

development, it was subsequently constructed such that the basement ceiling height now requires a special permit under zoning.

Attorney Allen argued that **Section 5.09.2.n** of the Zoning By-Law provides that in granting a special permit for the construction of a new home the Board must 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. Attorney Allen submitted a zoning chart which he argued demonstrates that the proposed home is not inconsistent with the neighborhood.

Attorney Allen noted that the Planning Board conditioned its approval on the removal of two window wells in the basement in order to reduce the likelihood that the basement may be finished in the near future. However, Attorney Allen argued that the recommendation exceeds the scope of review under **Section 5.09.2.n** of the Zoning By-Law because, the massing, scale, footprint and height are not inconsistent with the neighborhood. Attorney Allen contended that the removal of the window wells alters the physical appearance of the home. Attorney Allen contended that **Section 5.09.2.n** of the Zoning By-Law seeks to put limitations on what can be finished in the future but it does not restrict a homeowner's ability to finish in the future. Therefore, he maintained that the window wells are an opportunity to provide additional light in the future, should the space be ever built out.

Attorney Allen then reviewed 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 the proposed use because the proposed home, like the prior home, will be a single-family dwelling; (2) the use will not adversely affect the neighborhood because the neighborhood consists of

similarly constructed homes; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because the proposed driveway is similar to the previous driveway and allows vehicles to turn around on the property and exit onto the street without having to back into the street; (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.

A discussion regarding the parameters of **Section 5.22** of the Zoning By-Law ensued.

Board Member Hussey asked whether a landscape plan was submitted. Attorney Allen stated that the Petitioner will improve the existing landscaping and has discussed a developing landscaping plan.

Petitioner Stuart Brown stated that he has spoken with the neighbor at 60 Denny Road. Mr. Brown indicated that at the neighbor's request, he will remove a fence located on his property, at the corner of Denny Road and Fairway Road, which the neighbor expressed currently interferes with traffic sightlines. Upon removing the fence, Mr. Brown indicated that he will replace the existing landscaping, directly behind the existing fence, with native trees that improve the visibility. He indicated that he has enlisted a landscape architect to assist with this undertaking.

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

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

FINDINGS

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
Floor Area Ratio (% of allowed)	.25 (100%)	.25 (99.8%) w/o attic/bsmt .35 (139%) with attic/bsmt	.325 (130%)
Floor Area (s.f.)	4,617	4,610 w/o attic/bsmt 6,418 with bsmt and attic	6,002

Section 5.09.4 – Design Standards

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

- a. Preservation of Trees and Landscape – Many of the trees on this lot have been removed during construction; however, the applicant states that appropriate and complementary landscaping will be replaced after the construction is complete. The current trees along Fairway Road block sight lines for drivers entering from Denny Road. The owner has been asked by neighbors to improve this sight line.
- b. Relation of Buildings to Environment – The massing will have little to no shadow impact on neighboring homes beyond what existed previously.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The neighborhood features a variety of homes and design features including a mix of Colonial, Victorian, Tudor and Contemporary homes on varying sized lots. The two closest abutters each have contemporary exteriors. (Attached photos show the variety of styles of nearby homes).

Section 5.09.2. n

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.**

Ms. Clark stated that although the Planning Board is very concerned that the original developer of this new single-family house purposely circumvented Section 5.09.n of the Zoning By-Law, the Planning Board does not want to penalize the new homeowner and therefore will not oppose approval of this request. The Planning Board found that the overall massing, setbacks and height of this dwelling are consistent with the other homes in this neighborhood, which includes a wide variety of architectural styles and house sizes. She stated that the Planning Board, however, recommended that the window wells on the two front corners of the home be eliminated as they felt that their size and depth makes them unattractive intrusions in the front yard of the house. Ms. Clark stated that the Planning Board declared that this measure would reduce the likelihood that the basement will be used as habitable space in the near future – prior to the 10-year waiting period before such space can be finished by Special Permit. Therefore, the Planning Board recommended approval of the site plan by Michael Clifford, Land Surveyor, dated 11/10/16, and the floor plans and elevations by Thomas Catalano, dated 11/17/2016, 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 including removal of the window wells and windows at the two front corners of the house.
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 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 Schneider then called upon Mr. Yanovitch to deliver the recommendation of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief requested. Therefore, should relief be granted, the Building Department will work with the Petitioner to ensure compliance.

The Board then deliberated on the merits of a special permit as requested. Board Member Hussey recommended removal of the two front facing window wells. He also recommended that a landscape plan, in consultation with the neighbors, subject to the review and approval of the Assistant Director of Regulatory Planning and neighbors, be incorporated as a final zoning condition. Board Member Zuroff concurred with the recommendation of the landscape plan and recommended that the window wells be smaller. Chairman Schneider stated that the proposal is consistent with structures in the neighborhood and agreed with the removal of the window wells.

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**:

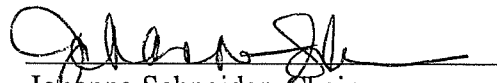
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

- 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:

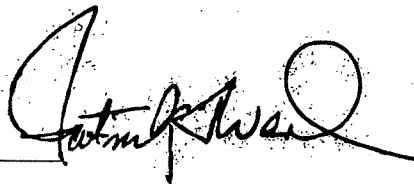
1. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit final site plans, floor plans and elevations, and a landscape plan, subject to the review and approval of the Assistant Director of Regulatory Planning including removal of the window wells and windows at the two front corners of the house.
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 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


Johanna Schneider, Chairman

Filing Date: 8/4/17

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeal