



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0036
371-373 HARVARD STREET, LLC
371-373 HARVARD STREET, BROOKLINE, MA

Petitioner, 371-373 Harvard Street, LLC c/o Lee Goodman, applied to the Building Commissioner for permission to construct a roof deck on the rear portion of the building. 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 July 13, 2017 at 7:10 PM., 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 Petitioners, 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 June 29, 2017 and July 6, 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: 371-373 Harvard Street to construct a roof deck in a M-2.0 (Apartment House) Residence District, on July 13, 2017 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: 371-373 Harvard Street LLC) Precinct 8

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 5.43: Exception to Yard and Setback Regulation
2. Section 5.70: Rear Yard Requirements
3. Section 8.02.2: Alteration or Extension
4. 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

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Christopher Hussey and Mark Zuroff. Also present at the hearing were Zoning Coordinator, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the proprietor for the Petitioner, Lee Goodman, and architect Dan Artiges, Embarc Studios, 60 K Street, 3rd Floor, Boston, MA 02127.

Chairman Schneider called the hearing to order at 7:10 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen stated that the property is located in an M-2.0 district, and is best known for being the home of the iconic Irving's Toy Store. Mr. Allen stated that relief is sought under **Section 5.70** of

the Zoning By-Law for the construction of a roof deck. He indicated that the proposed fourth floor roof deck will maintain the pre-existing nonconforming setback. Mr. Allen stated that there is currently no open space on the property, but noted that the deck will provide new open space to the building.

Attorney Allen stated that the Petitioner reviewed the proposed plans with his neighbors including the direct abutter at 369 Harvard Street who is supportive of the request. Attorney Allen pointed out that there is also a proposed roof deck on the second floor. He clarified that the second floor roof deck does not require any relief.

Architect for the proposal, Dan Artiges, then reviewed the proposed plans. Mr. Artiges stated that the existing building is four stories and the proposal includes four units. He reiterated that there is a proposed second floor roof deck which may be constructed by-right, and that relief is requested solely for the fourth floor roof deck. Mr. Artiges indicated that the proposed fourth floor roof deck utilizes the existing 2-3 foot parapet around the perimeter of the building, will maintain the 13.3 feet nonconforming rear yard setback, and will not expand the footprint of the building. He further stated that the parapet facilitates in obscuring the fourth floor deck from view. Mr. Artiges indicated that the fourth floor roof deck will add 595 square feet of open space and is exclusively accessible to the fourth floor unit. Mr. Artiges noted that there are existing roof decks on surrounding properties.

Chairman Schneider asked Attorney Allen to confirm whether the proposed second floor roof deck is compliant with the Town Zoning By-Law, and may be constructed without relief; Attorney Allen confirmed that it is fully compliant. Mr. Yanovitch noted that the second floor roof deck is also compliant with Massachusetts State Building Code.

Board Member Zuroff asked whether the Petitioner considered pulling the roof deck back from the parapet to further reduce visibility. Attorney Allen indicated that the option was considered but the

proposed utilization of the parapet will sufficiently shield the roof deck. Mr. Zuroff suggested that planters be placed in between the edge to provide additional screening.

Mr. Allen then set forth his argument as to why relief under **Section 9.05** of the Zoning By-Law is appropriate in this case. As stated by Mr. Allen, (1) the specific site is an appropriate location for such use because the building is located in an M-2 District, the front face of the building will remain the same, and decks are not unique to the neighborhood; (2) the proposed use will not adversely affect the neighborhood because the fourth floor deck will not be visible to any neighbors as the existing parapet will shield the roof floor; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because current vehicular patterns will be maintained; (4) adequate and appropriate facilities will be provided for the proper operation of the proposed use; and (5) there will be no effect on the supply of housing available for low and moderate income people.

Chairman Schneider then asked whether anyone was present in favor of the proposal. William Ewall, 22 Linden Street, Brookline, stated that he is impressed with the quality of the proposed work. Mr. Ewall suggested that the parapet would not be visible from the street and that there is no detriment to the building because it is a uniquely private building given its height which differs from surrounding properties to the rear of the subject premises.

Chairman Schneider then asked whether anyone was present to speak in opposition to the proposal. Carol Deanow, 367 Harvard Street, Brookline, indicated that she is not in opposition but wanted to reiterate concerns regarding roof decks in general as they relate to privacy, noise and security.

Chairman Schneider then called upon Ashley Clark, Zoning Coordinator & Planner, to deliver the findings of the Planning Department.

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.70 – Rear Yard Setback

Dimensional Requirements	Required	Existing	Proposed	Relief
Rear Yard Setback (roof deck)	30'	13.3'	13.3'	Special Permit*

** 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 pre-existing non-conforming structure or use.

Ms. Clark stated that the Planning Board does not oppose this proposal because the roof deck is a part of an overall building renovation that will improve the mixed use multi-unit residence and commercial structure. She stated that the Planning Board noted that the addition of the roof deck does not increase any existing setbacks and that due to the configuration of surrounding buildings, there is substantial distance between the roof deck and the closest abutters, so noise issues should be minimal.

Therefore, the Planning Board recommended approval of the site plan by Paul Tyrell dated 3/21/2016 and architectural plans by Embarc, dated 6/12/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) 11x17 copies of final site plans, 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 landscape plan indicating all counterbalancing amenities including planters 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 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.

Chairman Schneider then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the recommendation of the Building Department. Mr. Yanovitch stated that the Building

Department has no objection to the relief requested and has reviewed the plan with the Petitioner. Mr. Yanovitch stated that the Building Department will continue to work with the Petitioner to ensure compliance should relief be granted.

During deliberations, Board Member Zuroff strongly recommended the installation of planters on the roof deck to ensure privacy. Board Member Schneider stated that the relief requested is minimal since it will not change any existing dimensions.

The Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.70** pursuant to **Section 8.02.2** and **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 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 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) 11x17 copies of final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
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has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 8-9-17



Johanna Schneider, Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

