



*Town of Brookline
Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0021
112 CENTRE STREET
OWNER: HRCA
BROOKLINE HOUSING
112-120 CENTRE COURT,
INC.

BOARD OF APPEALS

Jesse Geller, Chairman

Jonathan Book

Christopher Hussey

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Petitioner, Center Communities of Brookline, applied to the Building Commissioner for permission to alter the existing 12-story building at 112 Centre Street (known as the Cohen Residences) including (a) an approximately 500 square foot addition in the southwest corner of the first floor of the building to allow an expansion of the Community Room; (b) addition of a canopy measuring approximately sixteen feet (16') x fourteen and one-half feet (14' 6"), enabling the walkway from Centre Street to the front of the building to be covered; (c) an approximately 1,500 square foot total infill area on the first, second and third floors with no change to the exterior walls; (d) upgrades to landscaping on the front side of the building and to the western side of the building; (e) replacement of the façade; and (f) restriping of the parking spaces to ensure 64 spaces in the underground garage (with no change to the overall number of parking spaces) (the "Project"). 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 September 28, 2017 at 7:20 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

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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 September 14, 2017 and September 21, 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:

112 CENTRE STREET, BROOKLINE, MA 02446 - Lobby addition and renovations to 112 Centre St. tower include complete façade replacement in a(n) M-2.0 APARTMENT HOUSE District, on SEPTEMBER 28, 2017 at 7:20 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: HRCA BROOKLINE HOUSING) Precinct 9

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. § 5.20 – FLOOR AREA RATIO**
- 2. § 5.50 – FRONT YARD REQUIREMENTS**
- 3. § 5.91 – MINIMUM USABLE OPEN SPACE**
- 4. 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 was Chairman Mark G. Zuroff and Board Members Christopher Hussey and Kate Poverman.

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The Petitioner was represented by Attorney Ruth H. Silman of Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts 02110. Also in attendance was Rhonda Glyman, Executive Director of Center Communities of Brookline, the Petitioner, and the project's architect, Laura Cella-Mowatt of Davis Square Architects, 240A Elm Street, Somerville, Massachusetts 02144. Chairman Zuroff called the hearing to order at 7: __ p.m. Attorney Silman waived the reading of the public notice.

After a brief presentation by Ms. Cella-Mowatt describing the Project, Attorney Silman provided a brief summary of the historic zoning relief from 1976, 1996 and 1998. Ms. Silman requested that, to the extent the Project requires modification of the historic zoning relief, the Board so grant the modification(s). Ms. Silman argued that (a) the proposed renovation and minor infill portions of the Project are in the most appropriate location which is the existing 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) the Project will enable the continued supply of housing available for elderly low and moderate income people.

Attorney Silman argued that no dimensional variance is required for the Maximum Floor Area Ratio (FAR) for the Project because the zoning relief granted in 1996 changed the applicable Maximum FAR to 2.6 and the Project would have a Maximum FAR of 2.56 (the Maximum FAR in **Section 5.20/Table 5.01** of the Zoning Bylaw is 2.0 or 2.5 for Public Benefit Incentives). Ms. Silman stated that when the Board approved the subdivision of the original property in 1996 to enable a portion of that property to be deeded to the Town for the Senior Center, the Board increased the applicable Maximum FAR due to the smaller lot size. Ms. Silman presented the Board with a September 14, 2017 letter supporting the Petitioner's arguments on this point. A discussion ensued regarding the historic zoning relief and the impact of the 1996 zoning relief (BOA Case #3339-1996). The Board members

questioned whether the 1996 zoning relief had lapsed; Ms. Silman responded that there were no physical changes to the existing building in 1996 and the only reason for the zoning relief was to enable the subdivision of property. When the subdivision was recorded and the land divided, the zoning relief came into effect. Therefore, there could not have been any lapse of the zoning relief.

Attorney Silman next discussed the Minimum Usable Open Space for the Project, stating that the existing building does not conform to the Minimum Usable Open Space requirements of **Section 5.91** of the Zoning By-Law. Therefore, Ms. Silman requested that the Board modify the existing zoning relief and extend the pre-existing non-conforming status regarding Minimum Usable Open Space.

Attorney Silman then presented the Petitioner's request for a Dimensional Variance from the Front Yard Requirements of **Section 5.50** of the Zoning By-Law. This request is for new relief as the proposed canopy is a new structure, proposed to allow a covered walkway from the new front door of the building to the sidewalk at Centre Street. The Board engaged in a lengthy and robust discussion with Ms. Silman and Ms. Cella-Mowatt regarding the proposed canopy and the standard for a dimensional variance. Ms. Silman argued that although the topography of the property is relatively flat, the building itself is unique in that there is only one means of egress to a main street where vehicles may pick up residents, visitors or employees. When the property was subdivided, that eliminated the possibility of a possible off-street driveway/drop-off or pick-up area. Attorney Silman made an argument for **why a literal enforcement of the provisions of the By-Law would involve substantial hardship**. The proposed canopy will provide protection from the elements and shade for the elderly residents as well as visitors and employees of the Project.

Ms. Rhonda Glyman, Executive Director of Center Communities of Brookline, the Petitioner, explained the educational opportunities and community programming provided at the building.

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Attorney Silman summarized by stating that the **proposal does not derogate from the intention of the Zoning By-Law**. The Project will allow the continued use of the building for elderly affordable housing and the infill and additional 500 square feet of community space will benefit the interior programming at the building. Attorney Silman then made an argument for **why relief could be granted without substantial detriment to the public good**. Ms. Silman stated that the Petitioner held a neighborhood meeting to discuss the Project and collected several letters of support from the direct abutters as well as from residents of the neighborhood.

Chairman Zuroff asked if anyone wished to speak in favor of the application. Carmine Bruno of Hebrew Senior Life spoke in favor of the proposal. Chairman Zuroff asked if anyone wished to speak in opposition to the application. No one spoke in opposition to the proposal.

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

FINDINGS

Section 5.22 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	2.5* or 2.6** (100%)	2.46 (98.4%)	2.56** (102%)	Variance* or modification of prior ZBA case
Floor Area (s.f.)	103,480	102,000	105,963	

** An FAR bonus of up to 2.5 is allowed if a Public Benefit Incentive is provided (2.0 is the typical requirement). The Planning Board believes this project offers numerous public benefits to the Town.*

*** In 1996, the ZBA granted zoning relief that would allow an FAR of up to 2.6 for this property as a result of non-conformities created by the subdivision of the lot to create the Senior Center.*

Section 5.50 – Front Yard Requirements

Setback	Required	Existing	Proposed	Finding
Front Yard (Canopy)	25 feet	25 feet	< 1 foot	Variance*

* Under Section 5.43, the Zoning Board of Appeals shall not reduce the depth of a required front yard below 15 feet in M districts.

Section 5.91 – Minimum Usable Open Space

Open Space	Required	Existing	Proposed	Finding
Usable	10% of GFA (13,232 sq. ft.)	6.4% (6,500 sq. ft.)	5.6% (6,000 sq. ft.)	Variance or modification* of prior ZBA case

* In 1996, the ZBA granted zoning relief that decreased the open space below what was required when the rear lot for the Senior Centre was gifted to the Town.

MODIFICATIONS

If the Zoning Board of Appeals finds it necessary, it may grant modifications to the following prior zoning relief:

ZBA Case #3339 (1996) – The ZBA approved an application to subdivide the property at 112 Centre to create Lot B as a gift to the Town for construction of a Senior Center. The zoning relief included modifications to prior Special Permits to allow for additional non-conformities created by this subdivision (an FAR increase to 2.6 and reduced rear setback).

ZBA Case #3489 (1998) – The ZBA granted relief for a proposed Senior Center on the subdivided lot.

Ms. Clark stated that the Planning Board strongly supports the Project. Ms. Clark noted that the Planning Board recognizes that considerable upgrades are needed to the building so that it can continue to carry out its function as an independent living facility for seniors. Ms. Clark noted that the Planning Board has no objection to the proposed infill and views the proposed bump-out on the first floor to be subtle and minimally visible from the street, providing much needed additional common space. The Planning Board noted that the proposed canopy will blend in well with the newly proposed materials of

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the main structure and will not be an obstruction to the residents or those in the neighborhood. Ms. Clark stated that the Planning Board believes the improvements qualify as Public Benefit Incentives due to the contribution to the Town's affordable housing goals.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan dated September 11, 2017 by Nitsch Engineering and the floor plans and elevations dated July 28, 2017 by Davis Square Architects, 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 construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.
- 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.

Chairman Zuroff then called upon Deputy Building Commissioner Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that this is a great project and design that will benefit not only the residents but the surrounding neighborhood. Mr. Yanovitch stated that the open space is already non-confirming. Mr. Yanovitch invoked the statute of limitations provisions of Chapter 40A, stating that for certain elements of the existing building, they are pre-existing non-confirming and the Building Department has no authority because the six- or ten-year statute of limitations has run. Mr. Yanovitch stated that the variances run with the land and the parcel was granted a Maximum FAR of 2.6. Mr. Yanovitch stated that the Project does not making any major

modifications to the exterior of the structure with the exception of repairing it. Therefore, Mr. Yanovitch stated, the Building Department had no objection to the relief requested.

The Board deliberated on the merits of the proposal. Chairman Zuroff stated that the canopy is essential to maintaining the safety of the residents. The Board discussed extensively the hardship related to the building and the substantial need to upgrade the building. The Board discussed the fact that the building is different and unique and that the renovations are necessary to enable it to continue to be used to serve low and moderate income seniors. Board Member Poverman stated that the FAR was already increased to 2.6 and that the minimum usable open space is already a nonconformity; the other Board members agreed. The Board stated that the proposal meets the requirements for the grant of a dimensional variance from the front yard setback requirement under **Section 5.50** and for special permit relief under **Section 9.05** for reasons cited into the record. Chairman Zuroff stated that the proposal meets both the requirements for the grant of the requested special permit relief as well as a dimensional variance under G. L. 40A §10. Chairman Zuroff stated that relief can be granted without derogating from the Zoning By-Law.

The Board voted unanimously that no dimensional variance is required for the Maximum FAR because the 1996 zoning relief increased the Maximum FAR to 2.6 and the Project will comply with that limitation. The Board voted unanimously that there is no need for a variance from the Minimum Usable Open Space requirements because the building is already non-conforming. The Board found that the requirements have been met for the issuance of variance relief under G.L. c. 40A §10 from the provisions of **Section 5.50** and all sections requiring relief meet the requirements pursuant to **Sections 8.02.2** and **9.05**. Additionally, the Board found that the requirements have been met for the modification of the existing zoning relief to enable the Project.

The Board made the following specific findings pursuant to said **Section 9.05**:

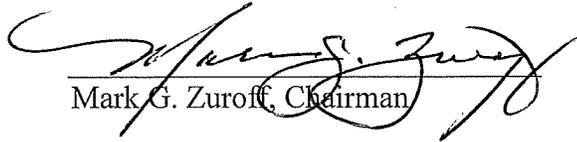
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- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate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

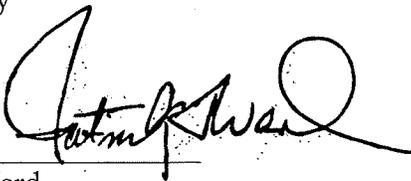
- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, indicating all counter balancing amenities, 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 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


Mark G. Zuroff, Chairman

Filing Date: 10-27-2017

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals