



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-00018
FOUR YEAR REALTY TRUST
18 CRAMOND ROAD, BROOKLINE, MA

Petitioner, Four Year Realty Trust, applied to the Building Commissioner for permission to construct a single-family home. 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 14, 2017, 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 August 31, 2017 and September 7, 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: **18 CRAMOND ROAD, BROOKLINE, MA 02467 - Construct Single Family Home in a(n) S-40 SINGLE-FAMILY on 09/14/2017 at 7:05PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) 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:

§5.09.2.N – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

Any additional relief the Board may find necessary.

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 Steve Chiumenti. 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 Petitioners, their architect, Claudia Noury-Ello (Noury-Ello Architects, 46 Waltham Street, Suite 4A, Boston, MA 02118) and John Haven (LeBlanc Jones Landscape Architects, Inc., 535 Albany Street No 5A, Boston, MA 02118).

Chairman Zuroff called the hearing to order at 7:05 p.m. Attorney Allen waived the reading of the public notice.

Allen stated that this case is cited under **Section 5.09.2.n** of the Zoning By-Law which provides that in granting a special permit for the construction of a new home, the Zoning Board of Appeals must find that the massing, scale, footprint, and height of the building are not substantially greater than, and the

proposed 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 indicated that a number of trees on the property were dying, and consequently, declining trees were removed from the property. Mr. Allen stated that the Petitioners along with their neighbors at 30 Cramond Road and 150 Heath Street, who are represented by Attorney Jeffrey Allen, Lawson & Weitzen, (88 Black Falcon Ave #345, Boston, MA 02210), have worked together to devise a robust landscape plan.

Mr. Allen then provided an overview of the property stating: The property is located in an S-40 District. In July 2016, The Preservation Commission upheld an initial determination of significance and placed a one-year stay of demolition on the house. He indicated that demolition has since occurred on the property and the Petitioners seek a special permit to construct a single-family home. He argued that the scale of the proposed home is in keeping with a number of homes in the neighborhood because not only is the architectural style consistent with the style of homes along Cramond Road and Heath Street, but the proposed FAR is comparable, if not less substantial, than the extent to which basement and attic spaces have been converted into habitable space in surrounding homes on Cramond Road and Heath Street. He contended that the proposed home is modest in relation to the homes on the neighboring streets including Cabot Street, Yarmouth Road, and Heath Street, and therefore is consistent with surrounding homes. Attorney Allen stated that relief is also sought under **Section 6.04** for the proposed circular driveway.

In support of the relief requested, Attorney Allen reviewed the relevant elements under **Section 5.09**:

a. Preservation of Trees and Landscape

Invasive and declining plant material have been removed and will be replaced with a mix of more desirable landscaping as depicted in the landscape plan submitted. This will serve as a

privacy screening between this and abutting properties. The abutters have reviewed this plan and at their request, changes to the landscape plan were made.

b. Relation of Buildings to Environment

The proposed dwelling is to be sited further from the required front and side yard setbacks. The proposed house is located approximately 50'. The front of the proposed residence is either consistent with, or exceeds the distance from the street than abutting properties.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood

The height of the proposed home is commensurate with, if not lower than, all of the adjacent homes in the immediate neighborhood. Most of the neighboring homes are 2 1/2 story brick or wood clapboard homes, traditional in style. The new home proposed for 18 Cramond will also be traditional.

e. Circulation

Two curb cuts are proposed from Cramond Road in order to provide thru-vehicular circulation to the front entry of the new dwelling, as well as the garage court. The northernmost curb cut from Cramond Road is proposed 40' further from Heath Street than the existing curb cut to provide a safe and efficient entry and exit to the property. Pedestrian circulation around the proposed house is accommodated by a series of stone walks and lawn paths.

f. Stormwater Drainage

The proposed drainage system has a Long Term Maintenance and Operations Plan that will include measures to be implemented during construction as well as post construction to ensure that the system operates as designed.

Mr. Allen then described relief under Section 9.05 of the Zoning By-Law stating: (1) the specific site is an appropriate location for the proposed use because this is a proposed single-family home in scale with surrounding homes; (2) the use will not adversely affect the neighborhood because a robust landscape plan which includes fencing was agreed upon by the Petitioners and abutters and will provide significant screening; (3) there will be no nuisance or serious hazard to vehicles or pedestrian because the proposed circular driveway will not necessitate backing out onto Cramond Road, therefore increasing safety for other vehicles and foot traffic; (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.

Chairman Zuroff asked whether anyone was present in support of the proposal. No one

commented in support of the proposal. Chairman Zuroff asked whether anyone was present in opposition to the proposal. No one commented in opposition to the proposal. Chairman Zuroff then asked whether anyone was present to proffer general comments on the proposal.

Jean Sharf, 155 Heath Street, Brookline, MA stated that she is not opposed to the proposal, however she indicated that she did not receive notice of the proposal.

Ms. Clark indicated that Mrs. Sharf contacted the Planning Department two weeks prior to the instant hearing indicating that she did not receive notice at her home address located at 155 Heath Street, Brookline, MA, but had received notice via the Brookline TAB advertisement. Ms. Clark indicated that upon inquiry at the Town of Brookline Assessors Department, it was found that notice was sent to a Pennsylvania mailing address listed for Mrs. Sharf. Ms. Clark indicated that she subsequently conveyed the same to Mrs. Sharf.

Mrs. Sharf commented that she would like to review the plans, and Mr. Allen stated that he will review the plans with her in detail following the hearing.

Chairman Zuroff then asked whether the exercise room is finished space. Ms. Noury-Ello stated that the space is not finished space. However, she indicated that she accounted for said space in the FAR calculations should the Petitioners elect to finish the space. She indicated that this space, labeled exercise room on the plans, could be finished within the allowed FAR.

Board Member Chiumenti asked for the width of the proposed driveway. Mr. Haven indicated that the driveway is 10 ft. wide. Board Member Hussey asked for topographical information of the subject property. Mr. Allen indicated that the lot is generally flat, notwithstanding a slight slope at the rear. Chairman Zuroff asked whether all landscaping is proposed. Mr. Allen stated that a few trees around the property edge are existing.

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

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 applicant has clear cut the lot of all trees. The applicant is proposing to replant trees and shrubs in the front yard as well as around the perimeter of the house in order to improve screening between the property and abutters. A landscape plan has been submitted with a plant list, but sizes and spacing of plant material has not been included.

b. Relation of Buildings to Environment

The proposed structure will be sited 50 feet from the front property line which is a similar setback to other properties on Cramond Road. The required setback is 20 feet. This setback is 4 feet larger than the setback of the existing house. The proposed house also exceeds side setbacks. The rear setback was decreased in order to move the structure further back on the property.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood

The height of the proposed home is similar to adjacent homes in the immediate neighborhood. Most of the neighboring homes are 2 1/2 story brick or wood clapboard homes, traditional in style. The new home proposed for 18 Cramond will also be traditional. Many of its characteristics will model the Georgian Revival style.

d. Open Space

The site's primary open space is located at the front and rear of the dwelling. The proposed site design exceeds the amount of open space requirements for a single-family residence in an S-40 district. The open space at the rear of the property consists of a play lawn, swimming pool, terraces, walks and buffer planting which comprises almost one-third acre.

e. Circulation

Two curb cuts are proposed from Cramond Road in order to provide thru-vehicular circulation to the front entry of the new dwelling, as well as the garage. The northernmost curb cut from Cramond Road is proposed 40' further from Heath Street than the existing curb cut, in order to provide a safe and efficient entry and exit to the property. Pedestrian circulation around the proposed house is accommodated by a series of stone walks and lawn paths.

f. Stormwater Drainage

Stormwater management will comply with Article 8.25. The proposed stormwater management system will be designed to reduce the peak rates of runoff and volume so that there is no increase from the existing conditions for the 2, 10, 25 and 100-year design storms. The proposed stormwater management system includes two infiltration structures in landscaped areas one in the northeast corner and one in the rear of the lot. The systems are designed to infiltrate or retain the 25-year 24-hour event (5.5" of rain).

The size of the infiltration system is based upon final soil testing results. There is no proposed connection to the municipal drainage system. Potential emergency overflows follow the existing drainage patterns toward the southwest.

The proposed drainage system has a Long-Term Maintenance and Operations Plan that will include measures to be implemented during construction as well as post construction to ensure that the system operates as designed. The plan has been submitted to the engineering department for review and approval.

g. Utility Service

All utilities will enter and leave the house underground. New water, sewer, gas and power connections are proposed. All utilities will be sized for a single-family house.

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.**

Section 5.22 – Floor Area Ratio

Floor Area	Allowed	Proposed	Allowed by Special Permit in 10 years	Finding
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Floor Area Ratio (% of allowed)	.15 (100%)	With unfinished attic and basement .13 (87%) With finished attic and basement .18 (120%)	.195 (130%)	Special Permit
Floor Area (s.f.)	6,534	With unfinished attic and basement: 5,573 With finished attic and basement: 7,836	8,494	

Section 5.43 – Exceptions to Yard and Setback Regulations
Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities

Setback	Required	Existing	Proposed	Finding
Front Yard (Driveway)	25 feet	n/a	19.7 feet	Special Permit*

** Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements, if a counterbalancing amenity is provided.*

Ms. Clark stated that the Planning Board is supportive of this proposal for a new house. She stated that the Board found the proposed structure to be reasonably sized for the neighborhood (as shown by an analysis provided by the applicant) and attractively designed. The Planning Board noted that the FAR, not including the unfinished basement and attic space, is below what is allowed. Although the applicant is not proposing to finish a basement room labelled an exercise room, it could be finished

within the allowed FAR. If the applicant finishes all of the basement and attic in the future, the increased FAR would conform to what is allowed in ten years under a special permit. She stated that the Planning Board felt that due to the large size of the lot, and the extensive new landscaping proposed, the impact on the neighborhood should be minimal. The Board felt that other homes of similar massing and scaling exist nearby and the lots in the area are wooded and provide ample screening. Ms. Clark stated that the Planning Board was satisfied with the proposed preliminary landscape plan presented by the project landscape architect and the conditions that were mutually agreed upon between the applicant and the direct abutters, but indicated that the final landscape plan should include sizes and spacing of plant material. Therefore, the Planning Board recommends approval of the site plan by Vaclaz Talacko, dated 8/9/17, and the architectural plans by Noury-Ello Architects, dated 8/7/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, 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. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all plant species, size and number of each. Said plan shall be conceptually consistent with the landscaping renderings presented to the Planning Board on September 7, 2017. The Perimeter Planting Plan on the subject lot shall be in compliance with a Perimeter Planting plan by Leblanc Jones Landscaping Architects, Inc. dated September 7, 2017 and presented to the Planning Board on September 7, 2017. If any changes are proposed to the Perimeter Planting plan, those proposed changes must be approved by the Assistant Director of Regulatory Planning after notice to and consultation with the abutters living at 30 Cramond and 150 Heath St. The Assistant Director of Regulatory Planning shall consult also with one of the landscape architects on the Planning Board prior to approving any requested modifications.
3. All new fencing on the property borders shall be a black rubber coated five-foot chain link fence.
4. Other than the removal of portions of the stone wall at the front of the property on 18 Cramond Street per the approved plans, the remaining portions of the wall shall be maintained, and any damage caused by tree removal or construction for the project shall be repaired prior to the issuance of a Certificate of Occupancy.

5. The gravel driveway shall be built in accordance with a plan dated September 7, 2017. Any change to the driveway shall go through a new permitting process if necessary, or if permitting is not necessary, shall be subject to approval by the Assistant Director of Regulatory Planning, after notice to and consultation with the abutters living at 30 Cramond St.
6. 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.
7. Prior to the issuance of a building permit, a Long-Term Maintenance and Operations Drainage Plan, including construction and post-construction measures, shall be approved by the Engineering Department.
8. 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 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 Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the recommendation of the Building Department. He indicated that the proposed home is consistent with like structures in the neighborhood Mr. Yanovitch stated that the Building Department has no objection to the proposal relief requested. Therefore, should relief be granted, the Building Department will work with the Petitioners to ensure compliance.

The Board then deliberated on the merits of the proposal. Attorney Allen indicated that Attorney Jeffrey Allen requested that Condition #2 be revised to read “Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all plant species, size, *location*, and number of each.” Attorney Allen also indicated that discussion regarding the materials of the proposed fence is ongoing. Therefore, he suggested that Condition #3 be revised to read “All new fencing on the property borders shall be composed of substantial materials subject to the review and approval of the Assistant

Director of Regulatory Planning after notice to, and consultation with, neighbors at 30 Cramond Road and 150 Heath Street.”

The Board then determined, by unanimous vote that the requirements for a special permit from Section 5.09.2.n and Section 6.04.5.c.1 pursuant to Sections 5.43 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 revised conditions:

1. Prior to the issuance of a building permit, 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. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all plant species, size, location, and number of each. Said plan shall be conceptually consistent with the landscaping renderings presented to the Planning Board on September 7, 2017. The Perimeter Planting Plan on the subject lot shall be in compliance with a Perimeter Planting plan by Leblanc Jones Landscaping Architects, Inc. dated September 7, 2017 and presented to the Planning Board on September 7, 2017. If any changes are proposed to the Perimeter Planting plan, those proposed changes must be approved by the Assistant Director of Regulatory Planning after notice to and consultation with the abutters living at 30 Cramond and 150 Heath St. The Assistant Director of Regulatory Planning shall consult also with one of the landscape architects on the Planning Board prior to approving any requested modifications.
3. All new fencing on the property borders shall be composed of substantial materials subject to the review and approval of the Assistant Director of Regulatory Planning after notice to, and consultation with, neighbors at 30 Cramond Road and 150 Heath Street.

4. Other than the removal of portions of the stone wall at the front of the property on 18 Cramond Street per the approved plans, the remaining portions of the wall shall be maintained, and any damage caused by tree removal or construction for the project shall be repaired prior to the issuance of a Certificate of Occupancy.


5. The gravel driveway shall be built in accordance with a plan dated September 7, 2017. Any change to the driveway shall go through a new permitting process if necessary, or if permitting is not necessary, shall be subject to approval by the Assistant Director of Regulatory Planning, after notice to and consultation with the abutters living at 30 Cramond St.

6. 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.

7. Prior to the issuance of a building permit, a Long-Term Maintenance and Operations Drainage Plan, including construction and post-construction measures, shall be approved by the Engineering Department.

8. 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 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


Mark G. Zuroff, Chairman

Filing Date: 10-27-2017

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

