



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
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0019
AGE REAL ESTATE INVESTMENT, LLC
161 NAPLES ROAD, BROOKLINE, MA

Petitioner, AGE REAL ESTATE INVESTMENT, LLC, applied to the Building Commissioner for permission to convert single-family dwelling into a two-family dwelling and construct an addition. 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 October 19, 2017 at 7:20 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 October 5, 2017 and October 12, 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:

161 NAPLES ROAD, BROOKLINE, MA 02446 - Convert existing single family dwelling to a two family dwelling and construct addition in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-

FAMILY on 10/19/2017 at 7:20PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: ALLEN TR ROBERT L) 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:

§5.05 - CONVERSIONS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.51 - PROJECTIONS INTO FRONT YARDS

§5.60 - SIDE YARD REQUIREMENTS

§5.71 - PROJECTIONS INTO REAR YARDS

§8.02.2 - ALTERATION AND EXTENSION

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 lgellineau@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. 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 representative for the Petitioner, Scott Butcher and project architect, Kent Duckham.

Chairman Zuroff called the hearing to order at 7:30 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen stated that the property is located in the T-5 District. He indicated that the property is currently a single-family home but was previously used as a boarding house. The surrounding neighborhood has two five-story multifamily properties and at the end of the street (Boston territory) and has a mix of two-family, townhouses and multi-family residences.

Attorney Allen stated that the Petitioner is not looking to demolish the existing building rather rehabilitate and put an addition on the building and convert it from a single family into a two-family dwelling. Attorney Allen stated that all dimensional setbacks will remain the same, and that this proposal is only cited for conversion under Section 5.05 of the Zoning By-Law and Section 8.02.2 for the requested alteration. Mr. Allen indicated that as part of the adding to the rear of the property, the Petitioner worked with the Preservation Commission who felt that this proposal retains the historic characteristics on the home.

Mr. Allen stated that the Petitioner held a neighborhood meeting last month to discuss the proposal with his neighbors. The Neighbor to the left of the property (165 Naples) asked the Petitioner to incorporate a fence which has been agreed to. The neighbors to the right (157/159 Naples) were concerned about landscaping and drainage and the Petitioner was able to address their concerns by agreeing to slope the new driveway and agreeing to install low lying evergreen shrubs along the property line between the driveway on the subject property and a sidewalk easement that is adjacent to their property.

Attorney Allen asked whether the Board had any questions regarding the proposal, which could be addressed by project architect, Kent Duckham. Finding that there were no questions relative to the proposal at the time, Attorney Allen then described relief under Section 9.05 of the Zoning By-Law

stating: (1) the specific site is an appropriate location for such use because the neighborhood is comprised of a mix of multifamily homes two family homes and townhouses; (2) the proposed use will not adversely affect the neighborhood where a neighborhood meeting was held and comments from the meeting have been incorporated into the final plan; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because while this proposal will increase the parking on site, it will not change the traffic pattern on the site. The location of the parking and curb cut will remain the same and therefore will not create unsafe traffic conditions for other vehicles and pedestrians; (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 on housing available for low and moderate-income people.

Chairman Zuroff asked for clarification on the proposed counterbalancing amenities. Mr. Allen stated that the proposed fence, sloping driveway, and additional plantings will all serve as counterbalancing amenities.

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

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. Carol Spack, 1 Osborne Road, Brookline, MA spoke in opposition to the proposal. Mrs. Spack stated that she is concerned that this proposal will contribute to increasing density issues in Brookline. She indicated that Naples Road is primarily a single-family neighborhood and proposals such as this one, create an urban environment that is not compatible with the neighborhood.

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

FINDINGS

Section 5.05 – Conversion

Section 8.02.2 – Alteration or Extension

By-law Section	By-law	Relief
§5.05: Conversion	In the case of a conversion of a single-family detached dwelling to a two-family dwelling in an SC, the structure shall conform to all dimensional requirements in Section 5.01, however, the Board of Appeals by special permit may waive any of said dimensional requirements except minimum lot size , provided that no previously existing non conformity to such requirements is increased and provided that all other requirements of this by-law for such conversions are met.	Special Permit: In this case, the existing side yard setback and front yard projection are nonconforming. This is not increased with this proposal.
§8.02.2: Alteration or Extension	A <u>special permit</u> is required to alter a pre-existing non-conforming structure or use.	Special Permit: The side yard setback on the structure is a pre-existing non-confirming condition.

Dimensional Requirements	Required	Existing	Proposed	Relief
§ 5.51 Projections into front yards	15'	14.9'	14.9'	Special Permit*
§5.60: Side yard Requirements Side yard setback (structure)	10'	4.7'	4.7'	
§5.71 Projections into rear yards	30'	<30'	<30'(no change)	
§5.30 Max height of building	35'	37.25'	37.25'	

***Section 5.05** requires any preexisting nonconformity to be legalized because of the intensification of use. **Section 5.43** provides a special permit route to legalization of the preexisting nonconformities, including the side yard setback as well as the projections into the front and rear yard, as long as counterbalancing amenities are provided.

Ms. Clark stated that The Planning Board is pleased to see a conversion in the T zoning district that takes advantage of the existing architecture to expand, instead of a complete demolition. The addition is designed to match the existing home and to maintain the existing footprint. The Planning Board would like to see screening along the side of the home that needs setback relief. **Therefore, the Planning Board recommends approval of the site plan by Stephen Desroche dated 9/18/2017 and**

floor plans and elevations by Duckham Architecture dated 7/6/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (4) 11" by 17" final site plans, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit 3 copies of a final landscaping plan indicating and all counterbalancing amenities, subject to the review and approval of the Assistant Director for 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 floor plans and elevations stamped and signed by a registered architect 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. Mr. Yanovitch stated that the property is located in an T-5 District which is zoned for two family homes. Therefore, Mr. Yanovitch stated that the Building Department has no objection to the proposal relief requested and believe that the relief is minor. He indicated that should relief be granted, the Building Department will work with the Petitioners to ensure compliance.

The Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.05** 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 revised conditions:

Therefore, the Planning Board recommends approval of the site plan by Stephen Desroche dated 9/18/2017 and floor plans and elevations by Duckham Architecture dated 7/6/2017, subject to the revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit, via PDF, (1) 11" by 17" final site plans, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit, via PDF, (1) 1 copy of a final landscaping plan indicating and all counterbalancing amenities, subject to the review and approval of the Assistant Director for 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 floor plans and elevations stamped and signed by a registered architect 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: 11-20-17

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

