



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Christopher Hussey

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0007
BOURNEWOOD HEALTH SYSTEMS
300 SOUTH STREET, BROOKLINE, MA

Petitioner, BourneWood Health Systems, applied to the Building Commissioner for permission to construct two additions for a total of 475 s.f. of additional gross floor area to the Dodge 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 March 29, 2018 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 March 15, 2018 and March 22, 2018 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:

300 SOUTH STREET, BROOKLINE, MA 02467 - Construct two additions for a total of 475 s.f. of additional gross floor area to the Dodge Building in a(n) S-7 SINGLE-FAMILY on 03/29/2018 at 7:10PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: ALLEN TR ROBERT L) Precinct 16

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:

§8.02.1 – ALTERATION AND EXTENSION

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 in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Christopher Hussey
Mark G. Zuroff*

Publish: 03/15/2018 & 03/22/2018

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 Johanna Schneider and Chris Hussey. Also present at the hearing were Zoning Coordinator and Planner, 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 Marcia Fowler, CEO of Bournewood Health Systems, the Petitioner.

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

Attorney Allen introduced Marcia Fowler, who spoke about the developments and progress since she began her tenure at Bournewood. Attorney Allen then described the proposal stating that the Petitioner proposes to construct two single-story additions for a total of 475 s.f. of additional gross floor area to the Dodge Building and to increase the number of in-patient beds by 12 to a total of 102. Attorney Allen articulated that the proposal includes off-siting a day program which would decrease the number of out-patients from 45 to 35. He continued that the business office would be moved off site, reducing the number of employees by 11 and thus reducing daily traffic. Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 8.02.1**, pursuant to **Section 9.05** to alter or extend a nonconforming use or structure. Attorney Allen added that the Petitioner also seeks a **Modification of BOA Decision #090011** condition six, which limits the number of in-patients on campus to 90.

Chairman Zuroff asked a clarifying question regarding the decrease in the number of out-patients. Ms. Fowler stated that space for the programs was already identified. Chairman Zuroff asked whether there had been any statistical decrease in the number of incidents between the patients and the community since operations shifted to Bournewood Health Systems. Ms. Fowler stated that the Town of Brookline provided statistics indicating a significant decrease in the number of phone calls from Bournewood to the Police Department. Attorney Allen added that Bournewood has hired Longwood Security for the campus.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the use because the proposed additions to the Dodge Building are minor, not visible from the street, and in keeping with the structure's current design; no dimensional relief is needed and while the property has been a psychiatric hospital for decades, the current operator has made a significant difference in communication with neighbors; there will be no nuisance or serious hazard to vehicles or pedestrians because the expansion is minor and the proposal will improve security of the Dodge Building and Bournewood as a whole; adequate and appropriate facilities will be provided for the proper operation of a psychiatric hospital; and there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen stated that under Section 8.02.1, an extension or alteration that does not exceed twenty-five percent of the existing volume or area or lengthen the economic life longer more than a reasonable period for amortization of the initial investment then a special permit may be granted. Attorney Allen stated that the proposed additions are within twenty-five percent of the existing gross floor area of the hospital, therefore, a special permit may be granted.

Chairman Zuroff then asked whether anyone was present to speak 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. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Ashley Clark, Zoning Coordinator and Planner, to deliver the findings of the Planning Board. Ms. Clark noted the following:

FINDINGS

Section 4.07 - Table of Use Regulations, Use #19 (Licensed Hospital)

Section 8.02.1 - Alteration or Extension of a Nonconforming Use

A hospital use is not allowed in a single-family district. Therefore, a variance is required, unless the extension or alteration does not exceed 25% of the existing volume or area or lengthen the economic life

longer more than a reasonable period for amortization of the initial investment then a **special permit** may be granted.

- **These proposed additions are within 25% of the existing gross floor area of the hospital.**
Therefore, a special permit maybe granted.

Modification of BOA Decision #090011

Modification of Condition #6 limiting the number of inpatients on campus to 90. This proposal requests to modify this number to 102.

Modification of BOA Decision # 1782 (1973)

No modification of this case needed.

STAFF ANALYSIS

The staff is supportive of the design changes to the Dodge Building and believes that the minor additions will not have a detrimental impact on the character of the building, the Bournewood campus or the neighborhood overall. The added square footage is allowable under the FAR and under Zoning By-Law Section 8.02.1 to expand a non-conforming use. However, the staff is concerned about the addition of 12 inpatient beds at the hospital. Significant concerns from neighbors regarding safety and security were expressed at previous Planning Board and Board of Appeals hearings as recently as 2009. The construction of the Kahn Building was permitted in 2009 under the condition that no additional inpatients would be treated at the hospital in the future. The applicant had stated at that time that the number and mix of patients at Bournewood would remain the same. Therefore, while the proposed design change is minimal, the staff requests that the applicant provide more information on the impacts of these ten additional inpatients and the security features that the Dodge building will provide. One of the reasons for allowing the new inpatient Kahn building was that it would have much better security features than the older buildings. The staff recommends that a new limit on patient numbers be imposed by the Board of Appeals.

PLANNING BOARD RECOMMENDATION

The Planning Board supported the minor design changes to the Dodge Building and felt that they were very minor and blended in well with the exterior of the existing building. The Board then discussed the proposed increase in the number of inpatients from 90 to 102. While the Board expressed concerns that it is not the most appropriate body to determine an allowable number of patients on the Bournewood campus, it ultimately decided to amend the condition of the previous ZBA **Case #090011** to limit inpatients to 102 and decrease partial hospitalization patients to 35. Any future increases will require the applicant to return to the ZBA. After considering a presentation by Marcia Fowler, Bournewood CEO, and comments from neighbors regarding noise and security issues, the Board asked the hospital to work to coordinate a mechanism for regular communication between the neighborhood and the hospital to address any ongoing issues and urged Bournewood to continue to implement their proposed mitigation issues including landscape screening, fences around outdoor recreation areas and overnight security officers.

Therefore, the Planning Board recommends approval of the site plan dated 2/15/18 and floor plans and elevations dated 2/15/2018 by Peterman Architects, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plan and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The applicant shall not increase the number licensed inpatients above 102 and shall reduce the number of partial hospital day patients to 35. Any increases in these numbers shall require the applicant to return to the Board of Appeals for its review and approval.
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, floor plans and 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 the Building Department has no opposition to this request. Mr. Yanovitch explained the burden is on the applicant to prove that they are not exceeding twenty-five percent, and he believes that the applicant has met that burden. He added that should the Board find that the proposal meets the criteria for the grant of the requested relief, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

During deliberation, Chairman Zuroff stated for the record that to the extent that the prior **BOA Decision #090011** is modified, this will be a modification of that decision and a new permit for construction.

The Board then determined, by unanimous vote that the requirements for a special permit from **Section 8.02.1**, pursuant to **Section 9.05** of the Zoning By-Law, respectively, were met, finding specifically under 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.

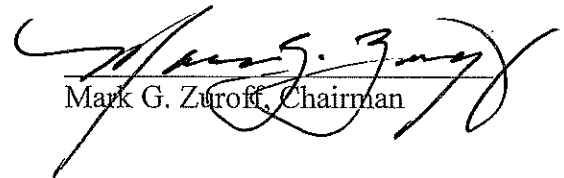
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will have no effect on the supply of housing available for low and moderate-income people.

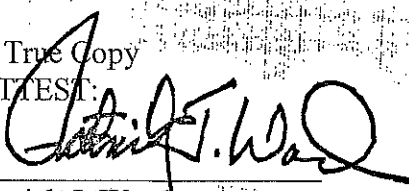
Accordingly, the Board voted unanimously to grant the requested special permit relief subject to the following conditions:

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 final landscaping plan 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 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

Filing Date: 5/4/2018


Mark G. Zurroff, Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals