



# Town of Brookline Massachusetts

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

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zurroff  
Christopher Hussey

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TOWN OF BROOKLINE  
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2018 JUL -6 A.M.

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0047  
AURA ON FULLER LLC  
10 FULLER STREET, BROOKLINE, MA

Petitioner, Aura on Fuller LLC, applied to the Building Commissioner for permission to convert an existing three-family residential building to a four-family residential building through the renovation of the basement level into a dwelling unit and addition of a roof deck for unit 3. 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 15, 2018 at 7:20 PM., in the Select Board'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 1, 2018 and March 8, 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:

**10 FULLER STREET, BROOKLINE, MA 02446 - Conversion of an existing 3-family residential building to a 4-family residential building through the renovation of the basement level into a dwelling unit. Addition of roof deck for Unit 3. in a(n) M-1.5 APARTMENT HOUSE on 03/15/2018 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: ALLEN ROBERT JR) 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:

**§5.05 - CONVERSIONS**

**§5.09.2.D – DESIGN REVIEW**

**§5.20 - FLOOR AREA RATIO**

**§5.30 - MAXIMUM HEIGHT OF BUILDINGS**

**§5.50 - FRONT YARD REQUIREMENTS**

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**§5.90 - MINIMUM LANDSCAPED OPEN SPACE**

**§5.91 - MINIMUM USABLE OPEN SPACE**

**§6.01.2.A – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES**

**§6.02, Paragraph 1 - TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS**

**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](http://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](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

**Publish: 03/01/2018 & 03/08/2018**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Jesse Geller and Board Members Mark Zuroff and Chris Hussey. Also present at the hearing were Zoning Planner & 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 were the Petitioner, Jonathan Parkes, and the architect for the project, Dartagnan Brown.

Chairman Geller called the hearing to order at 7:20 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal stating that the Petitioner proposed to convert an existing three-family residential building to a four-family residential building through the renovation of the basement level into a dwelling unit. He added that the proposal was also to add a roof deck for the exclusive use of Unit 3. Attorney Allen stated that the proposal went to the Planning Board twice, and he described the revised conditions that were supported by the Planning Board. He stated that the proposed new basement unit would be 1,342 s.f. and contain two bedrooms and one and a half bathrooms. Attorney Allen noted that the basement space is currently seventy percent above grade, the ceiling height is 8 feet 3 inches and the proposal would require minimal exterior modification. He added that there would be one off-site parking space provided in perpetuity. He noted that the Planning Board unanimously supported the revised proposal presented at the second Planning Board meeting.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 5.50** under **Section 5.43** for a pre-existing non-conforming front yard setback, from **Section 5.91** under **Section 5.05** for minimum usable open space, a pre-existing non-conforming condition that the proposal improves, from **Section 5.90** under **Section 5.05** for pre-existing non-conforming landscaped open

space, and design review under Section 5.09.2.d because of exterior alterations associated with multiple dwellings with four or more units on the premises. Attorney Allen added that the Petitioner seeks a variance for relief from Section 6.02, Paragraph 1 under Section 6.01.2.a for off-street parking requirements (a pre-existing non-conforming condition with no existing parking spaces and one proposed parking space for one unit), and from Section 5.20 for floor area ratio.

Attorney Allen described the location of 10 Fuller Street in the M-1.5 District. He noted that eight of the other buildings in the district have garden units. He added that 10 Fuller has one of the smallest lots in the district; that the only smaller lot has six units and a same-sized lot has four units. Attorney Allen noted that the dimensional requirements were all pre-existing non-conforming. Mr. Allen added that the FAR relief was being sought to go from 1.8 to 2.2. He further explained that the additional FAR is not adding to the footprint of the building, but rather converting a portion of the basement to a unit.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for a four unit building since all of the abutting properties have four or more units; the use will not adversely affect the neighborhood because there will only be moderate exterior changes, and noting the fact that no neighbors have appeared in opposition at this hearing or to the Planning Board Meeting for this proposal ; there will be no nuisance or serious hazard to vehicles or pedestrians and increased bike storage will benefit the area; adequate and appropriate facilities will be provided for the proper operation of a four unit building; and there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen added that the supply of housing available for low and moderate income people would be positively impacted by the proposal through providing a garden level unit. He added that removing the trash receptacles from the exterior and storing them inside the building, and clearing out the overgrown bushes (which the Petitioner proposes to do)

would be the counterbalancing amenities for the dimensional relief under Section 5.43 of the Zoning By-Law.

Mr. Allen then stated that a variance should be granted for Section 6.02 and Section 5.20, arguing that the requirements under M.G.L. Chapter 40A, Section 10 were met. Attorney Allen contended that the building was built in 1900 and construction provided for street level units based on the fact that the garden level is seventy percent above grade; the lot is one of the smallest lots in the district and the structure is the only building in the district that does not have a garden level unit, which makes it unique to the district; a literal enforcement of the By-Law would involve substantial hardship to the Petitioner who is putting a significant amount of money into the renovation and upgrade of the building; the additional unit offsets these costs. Furthermore, Attorney Allen stated that the additional FAR requiring the variance is already existing, easily convertible, and allows the property to be used to its fullest. Attorney Allen argued that the proposal would add interior storage for bikes and trash receptacles and provide one off-street parking spot that is not currently provided; all of which would benefit the public and provide no substantial detriment to the public good. He concluded that the right of way for a passageway in the rear prevents installation of on-site parking.

During discussion, Chairman Geller pointed out that the lack of a rear yard made the property unique within the Zoning District, which Mr. Geller acknowledged is a small Zoning District. Chairman Geller further opined that the Petitioner faces economic challenges while the surrounding buildings all have garden units. Attorney Allen added that the surrounding buildings are all restored as well and this proposal would allow for 10 Fuller Street to be restored.

Board Member Hussey asked the architect to discuss the restoration. Dartagnan Brown stated that the proposal would bring the building up to code by providing adequate means of egress and sprinklers to the building.

Chairman Geller then asked whether anyone wanted to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Geller then asked whether anyone wanted to speak in opposition to the proposal. No one spoke in opposition to the proposal.

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

**FINDINGS**

**Section 5.05 – Conversions**

In the case of a conversion ... in an F or M district, the structure shall conform to all dimensional requirements specified in 5.01. However, the Board of Appeals may waive by special permit any of said dimensional requirements, provided that no previously existing nonconformity to such requirements is increased and provided that all other requirements are met.

**Section 5.09.2.d – Design Review**

Exterior alterations associated with multiple dwellings with four or more units on the premises require a **special permit** subject to design review standards listed under **Section 5.09.4 (a-m)**. The most relevant design review sections are described below:

- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The existing basement is approximately 70% above grade with front windows that face Fuller Street. There will be minimal exterior modifications that will not impact the relation of the building to the street. There are similar basement conditions along this entire block.
- e. Circulation  
The proposal will not add any additional vehicle traffic to the site or neighborhood. One off-site parking space will be provided.

**Section 5.20 – Floor Area Ratio**

<b>M-1.5</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>FAR (%)</b>	1.5 (100%)	1.8 (120%)	2.2 (146%)	<b>Variance*</b>
<b>Gross Floor Area</b>	5,796 sf	7,263 sf	8,753 sf	

\* Relief under Deadrick does not apply to dwellings greater than two units

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.50 – Front Yard Requirements

Section 5.90 – Minimum Usable Open Space

Section 5.91 – Minimum Landscaped Open Space

<b>M-1.5</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front-Yard Setback</b>	18.5 feet	15 feet	15 feet	<b>Special Permit*</b>
<b>Minimum Landscaped Open Space</b>	10%	none	5%	<b>Special Permit**</b>
<b>Minimum Usable Open Space</b>	15%	none	3%	<b>Special Permit**</b>

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

\*\* Special Permit available under Section 5.05 as cited above

Section 6.02, Paragraph 1 – Table of Off Street Parking Requirements

<b>Parking</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Off-Street Parking Spaces</b>	8	0	1	<b>Variance</b>

Section 6.01.2.a – General Regulations Applying to Required Off-Street Parking Facilities

In F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements of §6.02 and §6.05. However, the Board of Appeals by special permit under Article IX may waive not more than one-half the number of parking spaces required under §6.02 and §6.05.

PLANNING STAFF ANALYSIS

The Planning staff recognizes that the creation of a basement unit will have minimal impact on the design of the building or streetscape. The unfinished basement space already exists and there will be only minor exterior modifications. The staff appreciates that the applicant incorporated feedback from the Planning Board’s first meeting to add additional common trash and storage space, reducing the deck

and adding a green roof and removing trash barrels from the front yard. The staff remains concerned about setting a precedent allowing additional units in multi-family dwellings that are already at or above the allowable FAR. Because there are no FAR bonuses available for M districts and because Deadrick only applies to one- and two-family dwellings, the applicant requires a variance to add additional habitable space as well as for an exception to the parking requirements. If the increased density is allowed, the impact should be mitigated by having the unit be an affordable unit, thus increasing the affordable housing supply in Brookline, which is a stated goal cited in the Zoning By-Law. (See Brookline Zoning ByLaw, Art. I, Sec. 1.00 - Purpose and Interpretation.)

### **PLANNING BOARD RECOMMEDATION**

The Planning Board supported the changes made in these revised plans. The Board commended the architect for incorporating the changes that the Board had suggested at the previous meeting including the additional trash and common storage, bike storage, removal of trash barrels from the front yard and large green roof area. The Board decided that it will not require that the new unit be a below market rate affordable unit, but recognized that by reducing the size of the unit substantially, the unit will be more affordable in comparison to larger market rate units in Coolidge Corner.

**Therefore, should the Board of Appeals find that the statutory requirements for a variance are met, the Planning Board recommends approval of the site plan by Stephen Desroche, dated 9/13/2017 and floor plans and elevations by EMBARC Studios dated 2/13/2018, 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 review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities, subject to review and Approval by 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, and 3) evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

Chairman Geller then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no

opposition to this request and would like the building to be brought up to code. Mr. Yanovitch concluded that should relief be granted by the Board, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

During deliberation, Board Member Zuroff, although sympathetic to the application, questioned whether the proposal meets the requirements for a variance under M.G.L. Chapter 40A Section 10, in particular, whether any hardship was established.

Chairman Geller, in response, opined that the lot is unique to the zoning district because of the lack of rear and side yard and added that the economic disadvantage of the property as comparative to the ~~others within the zoning district was marginally sufficient to establish a hardship under M.G.L.~~ Chapter 40A Section 10.

Board Member Hussey expressed encouragement for the life safety improvements that would come with the proposal.

On inquiry from the Board, the Board received clarification from the Deputy Building Commissioner as to the amount of renovation needed to require fire and safety upgrades.

Attorney Allen requested that the hearing be continued to allow for time to prepare a memorandum on the substantial hardship for the Board. The hearing was continued to May 3, 2018 at 7:15 p.m. in the Select Board's Hearing Room.

Present at the continued public hearing were Chairman Jesse Geller and Board Members Mark Zuroff and Chris Hussey. After re-opening the Hearing on May 3, 2018, Chairman Geller stated that the hearing would be limited to discussion regarding the memorandum and the deliberation on the variances requested.

Board Member Zuroff asked whether Attorney Allen was requesting a variance or a special permit. Attorney Allen articulated that since November 2016 all of the potentially habitable attic and basement

space should be counted toward the FAR as pre-existing non-conforming. Mr. Allen then reviewed his Memorandum in support of granting the requested variance. A discussion ensued between Mr. Geller and Mr. Zuroff concerning whether the Petitioner had sufficiently established a hardship as contemplated by M.G.L. Chapter 40A Section 10.

In reliance on the above referenced plans, the Board then determined by unanimous vote that the special permit requirements for relief from Section 5.50 under Section 5.43, from Section 5.90 and Section 5.91 under Section 5.05, and design review under Section 5.09.2.d 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.

The Board also determined by unanimous vote that the requirements for a variance from application of Section 6.02, Paragraph 1 under Section 6.01.2.a for off-street parking requirements and from Section 5.20 were met.

Accordingly, the Board voted unanimously to grant the requested special permit and variance 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 review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities, subject to review and Approval by the Assistant

Director for Regulatory Planning. Trash barrels will be removed and storage of trash barrels will be permanently prohibited from the front yard setback.

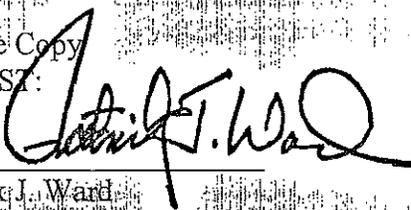
3. Prior to the issuance of a Building Permit, Applicant shall provide a written instrument of conveyance or lease for one off-site parking spot for use by one occupant of the building. It is understood that said parking may be a year to year lease, however one parking spot must continue to be provided in perpetuity. The Applicant shall continue to provide evidence of parking to the Assistant Director for Regulatory Planning when requested. Should the units be converted into condominiums in the future, the condominium documents shall include this condition with a copy provided to the Building Commissioner.
4. 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, 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: July 6, 2018

  
Jesse Geller, Chairman

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals