



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zaroff
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. 2018-0001
759 REAL ESTATE LLC
71 WINCHESTER STREET, BROOKLINE, MA

Petitioner, 759 Real Estate LLC, applied to the Building Commissioner for permission to demolish the existing two-family house and construct a new nine unit apartment building with twelve underground parking spaces. 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 July 26, 2018 at 7:00 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 July 12, 2018 and July 19, 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:

71 WINCHESTER STREET, BROOKLINE, MA 02446 - Demolish existing 2-family house and construct a new 9 unit apartment building with 12 underground parking spaces in a(n) M-2.0

**APARTMENT HOUSE on 07/26/2018 at 7:00pm in the 6th Floor Select Board's Hearing Room
(Petitioner/Owner: Michael Kim) 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:

§5.09.2.D – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.44.3 - ACCESSORY UNDERGROUND STRUCTURES

§5.44.4 - ACCESSORY UNDERGROUND STRUCTURES

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

§6.04.2.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES

§6.04.4.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES

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 Zuroff*

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested that the hearing be continued to allow time to return to the Planning Board. The hearing was continued to August 16, 2018 at 7:05 p.m. in the Select Board's Hearing Room. At the

continued hearing, the Petitioner requested that the hearing be further continued for the same reasons as stated above. The hearing was continued to October 25, 2018 at 7:10 p.m. in the Select Board's Hearing Room, at which time, the Petitioner again requested that the hearing be continued for the same reasons as stated above. The Board thereupon voted to continue the hearing further to December 6, 2018 at 7:10 p.m. in the Select Board's Hearing Room. Present at the continued hearing were Chairman Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. Also present at the hearing were Deputy Building Commissioner, Michael Yanovitch and Assistant Director of Regulatory Planning, Polly Selkoe.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance were the Petitioners, Justin Fong and Dianne Li and the architect for the project, Michael Kim.

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

Mr. Allen then described the proposal stating that after five trips to the Planning Board, meetings with multiple attorneys representing abutters and abutters themselves, and many revisions, the Petitioners now seek relief to construct an addition to the existing building and convert the existing two-family dwelling into four units. He noted that the project has been significantly revised and reduced in size and now proposes four units as opposed to the original nine. Attorney Allen added that under the revised proposal there would be no underground parking, rather there would be six parking spaces in a tandem arrangement located in the existing parking area at the rear of the building. He further noted that the setbacks of the existing building would be maintained, and any additional building area would comply with setback and height requirements. Attorney Allen noted finally that the plans were unanimously approved by the Planning Board.

Michael Kim, Michael Kim Associates, 1 Holden St #3, Brookline, Massachusetts, then presented the progression of the proposal and the current plans.

Board Member Zuroff asked whether the parking was existing and whether the A/C condensers would be too loud. Mr. Kim noted that the condensers were located on the roof and partially covered by solar panels, to lessen any impact. He opined that the condensers would be fairly quiet. Mr. Kim also noted that the existing parking area would be expanded by recessing the rear building wall to allow for two additional parking spaces. Chairman Geller asked whether the rear yard setback would thereby become non-conforming. Mr. Kim noted that the rear setback is pre-existing non-conforming but that the non-conformity would not be increased.

Chairman Geller asked whether the parking lot had been reviewed to insure its functionality. Mr. Kim noted that much of the proposed parking area already exists and is in use and that the Petitioners would take the appropriate precautions to insure functionality.

Attorney Allen then stated that the Petitioners seek a special permit for relief from: **Section 5.60** and **Section 5.70** for side and rear yard setback requirements respectively, under either **Section 5.05** for conversions or **Section 5.43** for exceptions to yard and setback requirements; for **Section 5.09.2.d** for design review; and from **Section 8.02.2** to alter or extend a nonconforming use or structure, all pursuant to **Section 9.05**. Attorney Allen noted that revised plans presented to the Board include a more accurate calculation of gross floor area and additional drawings as requested by the Planning Board.

Attorney Allen argued that the requested relief meets the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed conversion to a four unit dwelling because it is abutted on one side by a six unit building, on the other side by an eleven unit building, and at the rear by a 212 unit building; the use will not adversely affect the neighborhood because the neighborhood is an M-2 dense district, the proposed four units are about three quarters of the allowed floor area ratio, the

height is in compliance, and the setbacks of the addition will comply with the new setback requirements calculated based on the increase in height; there will be no nuisance or serious hazard to vehicles or pedestrians because the project will provide the required number of parking spaces and make use of the existing parking facilities; the proposal makes use of the existing curb cut and will not disrupt the pedestrian environment; adequate and appropriate facilities will be provided for the proper operation of a four unit residential dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

Chairman Geller then asked whether anyone was present to speak in favor of the proposal. David Lescohier, 50 Winchester Street, Brookline, Massachusetts and Town Meeting Member of Precinct 11, spoke in favor of the proposal.

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal. Jonathan Davis, 125 Park Street, Brookline, Massachusetts, noting that he was neither in favor nor opposed to the requested relief, asked where the snow would be stored given that all of the area around the driveway and parking area is in use. Chairman Geller asked whether the Petitioner had developed a snow management plan. Mr. Kim noted that snow would be removed from the site. No one spoke in opposition to the proposal.

Chairman Geller then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Mrs. Selkoe noted the following:

FINDINGS

Section 5.09.2.d – Design Review

4. Community and Environmental Impact and Design Standards

Multiple dwellings with four or more units require a special permit subject to the design review standards listed under *Sec 5.09.4(a-1)*. **(STATEMENT PROVIDED BY THE APPLICANT WITH THE PLANNING BOARD REPORT.)**

Section 5.05 – Conversions

In the case of a conversion of a dwelling to create additional units in an F or M district, 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.

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Dimensional Requirements	Required	Existing	Proposed	Relief
Rear Yard	30 feet	21.2 feet	21.2 feet	Special Permit*/ Variance
Side Yard (left)	15.8 feet	11.9 feet	11.9 feet	Special Permit*/ Variance
Side Yard (right)	15.8 feet	16.2 feet	16.2 feet	Complies

**Under Section 5.05, the Board of Appeals by special permit may waive any of said dimensional requirements, 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.*

PLANNING BOARD COMMENTS

The Planning Board commended the applicant on making these significant changes and reductions to the proposal. The Board was very supportive of the new dimensions, the elimination of the parking garage and the design. The Board did raise questions about the very large size of the units and the constructability of the building’s additions but overall, the Board felt that this revised proposal will not be detrimental to the abutters or the neighborhood.

Therefore, the Planning staff recommends approval of the site plan and the architectural plans by Michael Kim Associates, dated October 2018, subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a final stamped site plan, floor plans and elevations (with materials indicated), subject to the review and approval of the Planning Board.
- 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 Planning Board.
- 3) 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.

- 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: a) a final site plan, stamped and signed by a registered engineer or land surveyor; b) final building elevations and floor plans stamped and signed by a registered architect; and c) evidence the decision has been recorded at the Registry of Deeds.

Chairman Geller 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 objection to this request. Mr. Yanovitch explained that Section 5.05 was the controlling citation but noted that Sections 5.60, 5.70 and 5.43 were cited as an alternative option if the requirements of 5.05 are not met. He noted that 5.05 does not require counterbalancing amenities. He concluded that should relief be granted, the Building Department will work with the Petitioners to ensure compliance with the Building Code.

Attorney Allen, in response to the Board's inquiry, noted that the Petitioners are okay with providing counterbalancing amenities.

Board Member Schneider asked whether there was a baseline applied by the Building Department by which a project is determined to be a conversion. Mr. Yanovitch stated that he and the Building Commissioner concluded that although the addition is large, due to the high percentage of the original structure retained, this is a conversion. Board Member Zuroff asked if there was a minimum threshold. Mr. Yanovitch noted that the Building Department utilizes a similar approach to that applied to the floor area ratio bonus section of the By-Law, noting that if it were more than fifty percent of the structure being removed, the project would not be deemed a conversion. He noted that Preservation uses a similar threshold for application of a demolition delay. He stated that this proposal would maintain sixty-six to seventy-five percent of the original structure.

Based on the revised site plan by Charles Brennan dated December 6, 2018, and the architectural plans by Michael Kim Associates, labeled "71 Winchester Permit Set – October 2018" revisions dated

August 29, 2018, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.60 and Section 5.70 under either Section 5.43 or Section 5.05 for side yard and rear yard setbacks, for Section 5.09.2.d for design review, and from Section 8.02.2 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 because the four unit dwelling will be consistent with the surrounding properties, which include a six unit dwelling, an eleven unit dwelling, and a 212 unit dwelling.
- b. The use as developed will not adversely affect the neighborhood because the lot is in the dense M-2.0 district surrounded by other buildings with many units.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because there will be no change to the existing curb cut and the required number of parking spaces will be provided.
- d. Adequate and appropriate facilities will be provided for the proper operation of a four unit dwelling.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

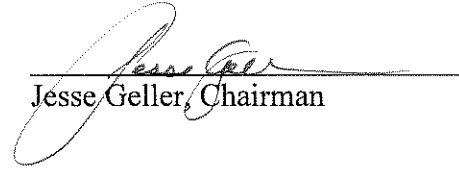
Accordingly, the Board voted unanimously to grant the requested special permit relief subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a final stamped site plan, floor plans and elevations (with materials indicated), subject to the review and approval of the Planning Board.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Planning Board.
- 3) 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.
- 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: a) a final site plan, stamped and signed by a registered engineer or land surveyor; b) final building elevations and floor

plans stamped and signed by a registered architect; and c) evidence the decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

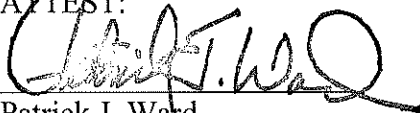
Filing Date: 01/07/19



Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals.