



# Town of Brookline

## Massachusetts

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BOARD OF APPEALS  
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Christopher Hussey

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0050  
BRYNN JAFRY  
338 TAPPAN STREET, BROOKLINE, MA

Petitioner, Brynn Jafry, applied to the Building Commissioner for permission to convert the basement space into an additional unit. 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 13, 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 August 30, 2018 and September 6, 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:

**338 TAPPAN STREET, BROOKLINE, MA 02445 - Re-convert basement to 2-bedroom apartment in a(n) M-2.0 APARTMENT HOUSE on 09/13/2018 at 7:10 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Brynn Jafry) Precinct 12**

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**

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.90 - MINIMUM LANDSCAPED OPEN SPACE**

**§5.91 - MINIMUM USABLE OPEN SPACE**

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

**§8.02.2 – 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](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 G. Zuroff*

**Publish: 08/30/2018 & 09/06/2018**

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 November 8, 2018 at 7:10 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 reason as stated above. The Board thereupon voted to continue the hearing further to January 10, 2018 at 7:00 p.m. in the Select Board's Hearing Room. Present at the continued hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Lark Palermo. Also present at the hearing was Planner, Karen Martin.

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 present at the hearing were the Petitioner, Brynn Jafry, and the engineer for the project, Dan Ferriera.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described proposal stating that the Petitioner proposes to finish approximately 103 s.f. of the existing basement-level mechanical space and to convert the basement into a separate unit. He noted that the home is located in the M-2.0 Zoning District.

Attorney Allen then stated that the Petitioner seeks relief for floor area ratio, as the building is already over the allowed gross floor area. However, he argued that the proposed conversion of 103 s.f. of utility space to finished floor area is already existing with adequate ceiling height and should be included as existing gross floor area in calculations. He further explained that this portion of the basement level is used as laundry space, rather than the mechanical space shown on the plans and argued that the Deputy Building Commissioner would have counted this as finished space had this discrepancy been determined at the time of his plan review. He noted that the Petitioner also seeks relief for open space, but he argued that as open space is related to the gross floor area, a finding that the gross floor area in the utility space is already habitable would eliminate an increase to the required usable or

landscaped open space. Attorney Allen argued that if the Board were to find that the gross floor area of the unit has not changed, the relief for both FAR and open space would no longer be required. Attorney Allen further noted that the dwelling is currently non-conforming with regards to off-street parking as only two parking spaces are provided and six are required. He noted that the conversion of the basement to a proposed one-bedroom unit would require one additional parking space and bring the total requirement to seven spaces. Attorney Allen stated that the applicant was willing to rent a space nearby for the occupant of the new unit if necessary and has explored options. He noted, however, that the area does not allow for long term lease of a spot.

Chairman Zuroff asked what space was proposed to be converted. Attorney Allen noted that the 103 s.f. was not laid out as it was already habitable. Chairman Zuroff inquired as to whether the floor area ratio has changed. Attorney Allen responded that the Petitioner is proposing to shift a portion of existing laundry space, which was previously not distinguished, to living space.

Chairman Zuroff inquired whether any residents of the building rent spaces from the abutting parking lot. Attorney Allen noted that there is parking available for rent at both Star Market and Regent Circle but nothing for long term lease. He noted again that the Petitioner would be happy to cover and provide a rental spot for the new unit if needed.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for a four-unit building, as many buildings in the area have four or more units; the use will not adversely affect the neighborhood and there has been no opposition throughout the process for the addition of a garden unit; there will be no nuisance or serious hazard to vehicles or pedestrians because nothing in the back of the property is changing as a result of the conversion; adequate and appropriate facilities will be provided for the proper operation of a four unit dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

With respect to the variance for parking, Attorney Allen described the requirements for a variance under M.G.L. ch. 40A, sec. 10: There are circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located because the structure at 338 Tappan Street is an undersized lot with a significant change in elevation and on the National Register of Historic Places as a part of the Fillmore Terraces National Register District, a specific designation from the Beacon Street Historic District; furthermore 338 Tappan Street is the only building with a Flemish character. He continued that literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner because restricting the Petitioner from maximizing the available financial benefit of the property would cause financial hardship; and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law and allow the Petitioner to do the work necessary to keep up with the property and work to maintain the Flemish character. He also noted that any work done to create additional parking spaces on the property would result in substantial degradation from the original historic character of the structure.

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 Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

**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 green space in the front of this building will be removed in order to create a stairway and entrance to the lower level. One of the row houses in this group currently has a front entrance to a lower level unit.
  
- e. Circulation – The total of four units in the building requires 8 parking spaces but zero are provided.

**Section 5.20 – Floor Area Ratio**

M-2.0	Allowed	Existing	Proposed	Relief
FAR (%)	2.0 (100%)	2.41 (120%)	2.41 (120%)	Variance*
Gross Floor Area	5,040	5,987	6,089	

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

**Section 5.43 – Exceptions to Yard and Setback Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.91 – Minimum Landscaped Open Space**

M-2.0	Required	Existing	Proposed	Relief
Side Yard Setback	16 feet	none	none	Special Permit*
Minimum Landscaped Open Space	20%	8.5%	8.5%	Variance

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

Parking	Required	Existing	Proposed	Relief

<b>Off-Street Parking Spaces</b>	8	2	2	<b>Variance</b>
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**Section 6.02, Paragraph 1 – Table of Off-Street Parking Requirements**

**Section 8.02.2 – Alteration or Extension**

A special permit is required for alterations to a non-conforming structure.

**PLANNING BOARD COMMENTS**

The Planning Board is appreciative of the applicant’s efforts to improve the plans and clarify the proposal. Due to the fact that there will be no exterior changes taking place to the building, the Planning Board was supportive of this application should the Zoning Board of Appeals grant the requested variance relief.

**Therefore, should the ZBA grant the requested variance relief, staff recommends approval of the site plan by Carlos Ferreira, dated 11/27/2018 and floor plans and elevations by MF Engineering & Designs dated 10/10/2017, 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 Zuroff then called upon Karen Martin to deliver the comments of the Building Department. Ms. Martin stated that the Building Department was not present and provided no report, but the Planning Department would work with the Petitioner to ensure compliance with the conditions of this decision.

During deliberation, Board Member Schneider noted the difficulty of evaluating which relief required variances without the Building Commissioner present. She noted that she believes the proposal should be granted the special permit relief requested. She further noted that whether the variance argument is made for just parking or for parking, floor area ratio, and open space, the argument would

essentially be the same. Board Member Schneider noted that the structure is unique, it is a row house on a relatively small lot unlike some structures in the immediate facility, and there may not be room for additional open space because of the undersized lot. She further noted that she was not concerned about the number of parking spaces provided given the location and proximity to public transportation.

Chairman Zuroff opined that the proposal fell into the special permit category and he noted that he agrees that there are no proposed changes to the square footage of the building and that the additional parking space should not be an issue. He suggested that in this particular circumstance the Board reach beyond the application and grant the relief by special permit. He additionally noted that he would be amenable to allowing the variance for parking because a condition could be imposed to require that a spot be provided if needed in the future.

Board Member Palermo asked if the Board were to accept an alternative definition of floor area ratio whether any relief would be needed. Board Member Schneider noted that a special permit was needed for the conversion but that the variance for floor area ratio and open space would not be needed and would be allowed by right.

Chairman Zuroff noted that the Board was not acting on the request for the variance for floor area ratio and open space per se, but the Board was rejecting the Building Department's categorization of the living space noting that the living space is already there and the outside is not being changed, thus the Board recognized the application as a special permit application for the conversion. He noted that Board would require a further condition that the owner provides a parking space from the available rental spaces for the additional unit, should it be necessary.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for relief from **Section 5.05** for a conversion and **Section 8.02.2** for alteration or



extension of a non-conforming structure, all pursuant to **Section 9.05** of the Zoning By-Law 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 proposed home will be converted to a four-unit dwelling which is consistent with the neighborhood.
- b. The use as developed will not adversely affect the neighborhood because the number of units is consistent with the surrounding area and there has been no opposition to this proposal.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians and the property's on-site circulation will not change and the required exterior changes are already completed.
- d. Adequate and appropriate facilities will be provided for the proper operation of a four-unit structure.
- 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 to reject the Building Department's categorization of the living space noting that the living space is already there and the outside is not being changed. The Board finally determined by unanimous vote that the requirements for a variance from the application of **Section 6.02, Paragraph 1** for off-street parking requirements were met.

Accordingly, the Board voted unanimously to grant the requested 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.
3. The owner shall provide a rented parking spot at a nearby location for any future occupant of any unit if needed.
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

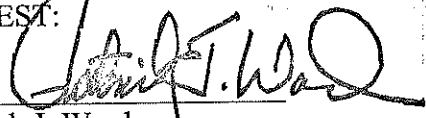
and elevations, stamped and signed by a registered architect, and 3) evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 2/25/19

  
Mark G. Zuroff, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals