



Town of Brookline

Massachusetts

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2019 MAR 25 P 12:51

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0003
691-693 HEATH STREET LLC
47 WAVERLY STREET BROOKLINE, MA

Petitioner, 691-693 Heath Street LLC, applied to the Building Commissioner for permission to construct new additions including a new third floor and to convert the property to a two-family dwelling. 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 7, 2019 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 Robert L. Allen, Jr., their attorney 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 February 21, 2019 and February 28, 2019 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:

47 WAVERLY STREET, BROOKLINE, MA 02445 - Construct additions including new third floor and convert to a two family dwelling in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-

**FAMILY on March 7, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room
(Petitioner/Owner: George I. Warner) Precinct 6**

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

§5.50 - FRONT YARD REQUIREMENTS

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

§5.71 - PROJECTIONS INTO REAR YARDS

§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.

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 the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

***Jesse Geller, Chair
Mark Zuroff***

Publish: 2/21 & 2/28

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. 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, John Mannix, and the architect for the project, George Warner of Warner & Cunningham, Inc.

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

Board Member Meiklejohn disclosed, as required by M.G.L. c. 268A, s. 23(b)(3), that he was personally acquainted with the architect for the proposal, George Warner and George's business partner, Lisa Cunningham. He noted that he previously disclosed this information to Town Counsel in writing and stated that he believed he would be able to exercise impartially in his duty as a Member of the Zoning Board of Appeals despite this acquaintance.

Attorney Allen then described proposal stating that the Petitioner proposes to construct additions and convert the dwelling into a two-family dwelling. He noted that the property is located in the T-5 Zoning District. He stated that the Petitioner seeks to add the second unit in the basement. Mr. Allen further noted that the proposal received the unanimous support of the Planning Board and that the Petitioner has been working with the neighbors to develop the proposal. He stated that minor changes were made to the plan set between the Planning Board and the present hearing to accommodate neighbor concerns regarding the proposed dormer and to include 123 s.f. of additional gross floor area in the basement. He noted that the proposal would include a full renovation of the home. The proposed basement unit would be created in 889 square feet of currently unfinished space, which Attorney Allen contended, would still count as habitable space in Brookline. The proposal would add 623 square feet of new habitable space

and a total of 1,547 square feet of previously unoccupied space for a total of 3,353 square feet and an FAR of .95, which is below the allowed FAR of 1.0.

Attorney Allen then stated that the Petitioners seek a special permit under **Section 5.05** for the conversion of a single family to a two-family, an allowed use in this T district, a special permit for relief from **Sections 5.50, 5.60, 5.70, and 5.71**, under **Section 5.43**, for pre-existing non-conforming front, side, and rear yard setbacks and the setback of an existing deck, and from **8.02.2** for alteration and extension, all pursuant to **Section 9.05**.

Attorney Allen introduced George Warner, the architect for the proposal. George Warner, Warner & Cunningham Inc., 397 Newton Street, Brookline, Massachusetts, presented the plans to the Board. Mr. Warner illustrated the proposal and noted that the third story would be added with a Mansard-style roof and would be compliant with height.

Board Member Meiklejohn asked clarifying architectural questions. He asked whether the roof was what triggered the partial demolition of the property. Attorney Allen answered affirmatively. Board Member Meiklejohn asked whether there was any room between the roof and the maximum height allowed and where the height was measured from. Mr. Warner noted that the structure would comply with height and stated that the height was measured from record grade. Board Member Meiklejohn inquired as to the space between the parking and the proposed entrances/ exits. Mr. Warner described the space and stated that approximately three and a half feet of space would exist between the structure and the parked cars.

Attorney Allen described the standards of **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed conversion and additions because the proposed addition will be consistent with other homes in the neighborhood and the use is allowed in the district; the proposed height will be in compliance with the Zoning By-Law; the use will not adversely affect the neighborhood because the home will be used as a two-family dwelling, as is consistent with the neighborhood, the footprint of the

building will not change, and the Petitioner will invest in restoring the building from the current state; there will be no nuisance or serious hazard to vehicles or pedestrians because the property will comply with required parking; adequate and appropriate facilities will be provided for the proper operation of a two-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people. He argued that the garden level unit would create a more affordable unit in an area that needs it. Attorney Allen added that the counterbalancing amenity for the setback relief would be landscaping and fencing.

Chairperson Schneider then asked whether anyone was present to speak in favor of the proposal. Dan Discenza, 37 Waverly Street, Brookline, Massachusetts, spoke in favor of the proposal. Mr. Discenza expressed support for the proposed building and design and inquired as to the neighbors' rights to ensure the presented building is built. Chairperson Schneider explained that conditions to the relief would serve to address this concern.

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

Chairperson Schneider then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

FINDINGS

Section 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.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.71 – Projections into Rear Yards

	Required	Existing	Proposed	Relief Required
Front Yard Setback	15 feet	8.4 feet	8.4 feet	Special Permit*/Variance
Side Yard Setback (left)	10 feet	1.8 feet	1.8 feet	Special Permit*/Variance
Rear Yard Setback	30 feet	~18 feet	~18 feet	Special Permit*/Variance
Rear Yard Setback (Deck)	20 feet	~15 feet	~15 feet	Special Permit*/Variance

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

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 was supportive of this proposal. The Board felt that because both homes to the left and right are already three stories each, this applicant should also have the ability to add a third-story that still keeps the home within the allowable FAR. Despite the closeness of the homes, the Board noted that the setbacks are not changing and the home will remain 47 Waverly Street 3 within the same footprint. The Board encouraged the applicant to use pervious materials for the driveway.

Therefore, the Planning Board recommends approval of the site plan dated 11/12/2018 by Douglas L. Johnston and the floor plans and elevations by Warner + Cunningham, Inc. dated 11/17/2018, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a site plan, floor plans and elevations, subject to review and approval by 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 review and approval by the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit for each house, the applicant shall submit to the Building Commissioner, for review and approval for conformance to the Board of Appeals Decision: a) final floor plans and elevations stamped and signed by a registered architect; b) a final site plan, stamped and signed by a registered engineer or land surveyor; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Martin noted that the floor plans and elevations by Warner + Cunningham, Inc. as presented were dated 3/7/2019.

Chairperson Schneider 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, Chairperson Schneider stated that she believed the criteria for the requested relief was met. She noted that the conversion was permissible as it was an allowed use in the district and echoed Attorney Allen's statement that the garden level unit would be more affordable than others in Brookline. Board Members Meiklejohn and Palermo agreed.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for a special permit under **Section 5.05** for the conversion of a single family to a two-family, an allowed use in this T district, a special permit for relief from **Sections 5.50, 5.60, 5.70, and 5.71**, under **Section 5.43**, for pre-existing non-conforming front, side, and rear yard setbacks and the setback of an existing deck, and from **8.02.2** for alteration and extension, all pursuant to **Section 9.05** of the Zoning By-Law were met, finding specifically under said **Section 9.05**:

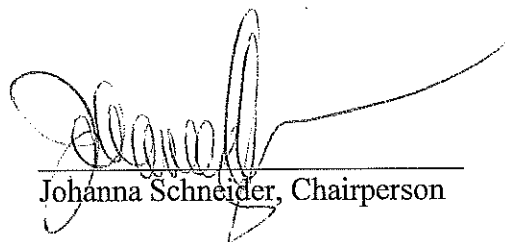
- a. The specific site is an appropriate location for such a use; structure, or condition because the proposed conversion to a two-family is allowed in the T-5 District and will be consistent with other homes in the neighborhood.
- b. The use as developed will not adversely affect the neighborhood because the home will remain in the existing footprint and the new height will be compliant with the Zoning By-Law.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians and the property will comply with required parking.
- d. Adequate and appropriate facilities will be provided for the proper operation of a two-family 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 relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a site plan, floor plans and elevations, subject to review and approval by 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 review and approval by the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit for each house, the applicant shall submit to the Building Commissioner, for review and approval for conformance to the Board of Appeals Decision: a) final floor plans and elevations stamped and signed by a registered architect; b) a final site plan, stamped and signed by a registered engineer or land surveyor; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

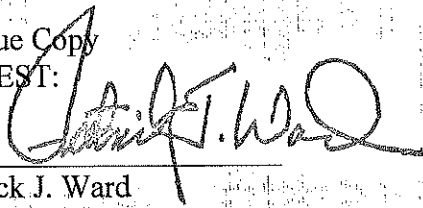
Unanimous Decision of
The Board of Appeals

Filing Date: 3/25/19



Johanna Schneider, Chairperson

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals