



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

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

RECORDED
TOWN OF BROOKLINE
2019 JUN 25 AM 10:51

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0026
98 CHESTNUT STREET, BROOKLINE, MA

Petitioner, Kronick Fatigue LLC, applied to the Building Commissioner for permission to convert the existing two-family dwelling to a three-family dwelling through additions to the existing structure. 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 June 13, 2019 at 7:00 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 May 30, 2019 and June 6, 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:

98 CHESTNUT STREET, BROOKLINE, MA 02445 - Construct additions and convert from two-unit dwelling to three-unit dwelling in a(n) M-1.0 APARTMENT HOUSE on June 13, 2019 at

**7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.)
Precinct 5**

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.

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

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

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

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

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

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

Publish: 5/30 & 6/6

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 were Assistant Director of Regulatory Planning, Polly Selkoe, and Deputy Building Commissioner, Joseph Braga.

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 present at the hearing were Jacob Simmons, representative for the Petitioner, and Philip Kramer, architect for the proposal.

Chairperson Schneider 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 convert the existing two-family dwelling to a three-family dwelling through additions to the existing structure. He noted that the structure is located in the M-1.0 Zoning District. He further noted the proposal was determined to trigger partial demolition; the Preservation Commission upheld an initial determination of significance and placed a 12-month-stay of demolition on the property in April 2019. The stay will expire in April of 2020. Should this Board grant the requested zoning relief, the applicant intends to return to the Preservation Commission to request a lift of the stay. He stated that the proposal received the unanimous support of the Planning Board.

Attorney Allen then stated that the Petitioner needs relief for **Section 5.05** for conversion to a three unit building, from **Sections 5.60, 5.70, and 6.04.5.B** for pre-existing non-conforming side yard, rear yard, and parking setbacks, respectively, and from **Section 6.02, Paragraph 1** under **Section 6.01.2.a** for required parking, all pursuant to **Section 9.05**. He noted that setback relief was available under

Section 5.43 or as a part of 5.05. Attorney Allen then introduced Philip Kramer, the architect for the proposal to present the plans. Philip Kramer, Philip Kramer Design, presented the plans to the Board.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed use as a three-family dwelling, the lot is within an M-1.0 zoning district and the surrounding neighborhood consists of many other three-family dwellings and a condo complex at the rear; the use will not adversely affect the neighborhood because the proposed conversion will utilize existing space and include moderate additions which will not extend further into setbacks than the existing structure; there will be no nuisance or serious hazard to vehicles or pedestrians as current parking conditions will be improved and four parking spaces will be provided; adequate and appropriate facilities will be provided for the proper operation of a three-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen noted that landscaping would be provided and has been discussed with abutters.

Chairperson Schneider then asked whether anyone was present to speak in favor of the proposal. Herb Johnson, 100 Chestnut Street, Brookline, Massachusetts, spoke in favor of the proposal.

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 Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe noted the following:

FINDINGS

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 | 1.4 feet | 1.4 feet | Special Permit*/ Variance |
| Side Yard (left) | 10 + L/10 | 3.3 feet | 3.3 feet | Special Permit*/ Variance |
| Parking Area | 5 feet | 1 foot | 2.6 / 5 feet | Special Permit*/Variance |

**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.*

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

| | Required | Existing | Allowed | Relief |
|-----------------------|-----------------|-----------------|----------------|------------------------------|
| Parking Spaces | 5 | n/a | 4 | Special Permit*/ Variance |

** Under Section 6.01.2.a, when a structure is converted for one or more dwelling units and the conversion results in an increased parking requirement, the Board of Appeals may waive not more than one half the required parking spaces*

PLANNING BOARD RECOMMENDATION

The Planning Board acknowledged that there was no other location for the four parking spaces on this flag lot and with the existing location of the house at the very rear of the property. The Board found that the paving, walkway and landscaping were attractively designed and for this reason supported the front yard parking.

Therefore, the Planning staff recommends approval of the site plan Kevin Kiernan dated 10/4/2018 and the architectural plans by Philip Kramer Architect, LLC, dated 3/14/2019 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 Assistant Planning Director.
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 Planning Director.

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: 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.

Chairperson Schneider then called upon Joseph Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated that the Building Department had no objections to the relief requested.

During deliberation, Chairperson Schneider thanked the applicant for neighborhood outreach and listening to neighbors' concerns. She then stated that she believed the criteria for the requested relief were met. Board Members Meiklejohn and Palermo agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for relief from Section 5.05 for conversion to a three unit building, from Sections 5.60, 5.70, and 6.04.5.B for pre-existing non-conforming side yard, rear yard, and parking setbacks, respectively, and from Section 6.02, Paragraph 1 under Section 6.01.2.a for required parking, all pursuant to Section 9.05 of the Zoning By-Law were met, finding specifically under said Section 9.05:

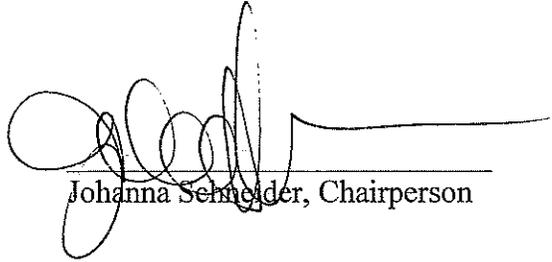
- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed use as a three-family dwelling is allowed in the M-1.0 district.
- b. The use as developed will not adversely affect the neighborhood because the proposed conversion will utilize existing space and include moderate additions, and the use is consistent with the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as current parking conditions will be improved and four parking spaces will be provided
- d. Adequate and appropriate facilities will be provided for the proper operation of a three-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 final stamped site plan, floor plans and elevations (with materials indicated), subject to the review and approval of the Assistant Planning Director.
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 Planning Director.
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: 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.

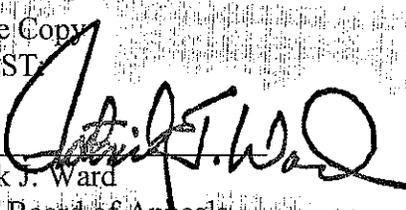
Unanimous Decision of
The Board of Appeals

Filing Date: 6/25/19



Johanna Schneider, Chairperson

A True Copy
ATTEST



Patrick J. Ward
Clerk, Board of Appeals