



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

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

Patrick J. Ward, Clerk

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2020 JAN 14 A 11:50

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0058
161-163 THORNDIKE ST, BROOKLINE, MA

Petitioner, 161-163 Thorndike Street LLC c/o DND Homes LLC, applied to the Building Commissioner for permission to renovate the existing two family home, including construction of a new driveway, patio, covered stairway, and roof deck. 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 October 10, 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 September 26, 2019 and October 4, 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 on **10/10/2019** at **7:00PM** in the **6th Floor Select Board's Hearing Room, Town Hall, 333 Washington Street, Brookline**, on the following: **161 THORNDIKE STREET, BROOKLINE, MA 02446.**

Petitioner/Owner - John Degnan Total renovation including new driveway, patio, covered stairway, and roof deck.. T-5 TWO-FAMILY & ATTACHED SINGLEFAMILY Zone. Precinct 9. The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

§5.09.2.J – DESIGN REVIEW

§5.10 - MINIMUM LOT SIZE

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.70 - REAR YARD REQUIREMENTS

§6.04.5.C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

§8.02 - ALTERATION OR 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

Johanna Schneider

Publish: 09/26/2019 & 10/03/2019

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested to continue the hearing to return to the Planning Board. The hearing was continued to November 14, 2019 at 7:00 p.m. in the Select Board Hearing Room. At the hearing, the Petitioner requested to continue the hearing to return for the second Planning Board Meeting, which had not yet happened. The hearing was continued to December 12, 2019 at 7:00 p.m. in the 6th Floor Conference

Planning Board at their second meeting and very strong support of the neighborhood, some of whom attended the first meeting in opposition and then the second in support.

Attorney Allen then stated that the Petitioner seeks relief from Section 5.20 of the by-law for FAR, which is available under M.G.L. ch. 40A, Section 6, the Deadrick line of cases. The applicant also seeks to obtain approval to add a roof over the rear exterior egress stairs, a setback which is pre-existing nonconforming, in order to protect the stairway from the elements of nature; this relief is available under Section 5.43. He noted that all relief is available by special permit and pursuant to Section 9.05. Attorney Allen added that the usable open space and the two parking spaces were pre-existing non-conformities. With respect to Section 6, Mr. Allen noted that the existing FAR is 1.03, which is already over the allowed of 1.00. The proposed FAR is 1.45, but Mr. Allen emphasized that of the additional square footage, only 215 s.f. were outside of the existing structure and even that was within the footprint as an existing porch. He then stated that he, Trina Murphy, and Ralph Kilfoyle were available to answer any questions.

Chair Schneider asked whether there was any neighborhood support to enter into the record. Trina Murphy noted that Archer O'Reilly of 160 Thorndike Street, spoke in support at the Planning Board Meeting.

Board Member Meiklejohn asked about the parking. Attorney Allen noted that the existing curb cut will be used, there will be no second curb cut, and the two parking spaces are a pre-existing non-conformity.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed use, which will continue to be a two-family, as is allowed in the T-5 zoning district; the use will not adversely affect the neighborhood because the proposed construction will be consistent with the surrounding structures, provide landscaping and maintain the existing stucco

material as counterbalancing amenities for the rear setback over the existing stairs; furthermore, the Petitioner worked with the neighbors themselves to develop this revised proposal; there will be no nuisance or serious hazard to vehicles or pedestrians as current parking conditions will be remain and the structure will be improved; 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.

Chair Schneider then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

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

Chair Schneider then called upon Charlotte Leis, Zoning Coordinator & Planner, to deliver the findings of the Planning Board. Ms. Leis noted the following:

PLANNING BOARD RECOMMENDATION

The Planning Board initially expressed significant concerns with the proposed design, especially as it related to the changes to the front entrance, the new curb cut, and the roof deck. The applicant made revisions that adequately addressed those concerns and the Planning Board is no supportive of the proposal. Some members of the Board felt that the existing floor area calculations should be confirmed by an impartial and independent review, but it was ultimately decided that it was not worth it in this case.

The Planning Board therefore recommends approval of the site plan by Keenan Survey, dated 6/24/19, and architectural plans by RDK Architects, dated 10/3/19, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan with one curb cut and parking area, floor plans, and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan showing proposed counterbalancing amenities subject to the review and approval of the Assistant Director of 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, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chair 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, Board Member Poverman stated that she had no issues with the proposal, she believed that the requested special permit relief was reasonable, and she was supportive of granting the relief requested. Board Member Meikelohn noted his support as well and commended the applicant on working with the neighbors. Chair Schneider agreed and stated that although there is an increase in the FAR, the increase is mostly interior and entirely within the existing footprint; she concluded that there were no new non-conformities created and that the increased FAR was not substantially more detrimental to the neighborhood; counterbalancing amenities proposed by the applicant were appropriate; and the standards of 9.05 were met.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for relief from Section 5.20 for FAR under M.G.L, 40A, section 6, for the pre-existing non-conforming rear setback under Section 5.43, 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 is appropriate for the T-5 district. The proposed structure will comply largely with the by-law and the special permits requested are reasonable.
- b. The use as developed will not adversely affect the neighborhood because the proposal was revised based on discussions with neighbors, remains consistent with the surrounding structures, and the Petitioner will complete a landscape plan to and maintain the stucco material to counterbalance setback relief.

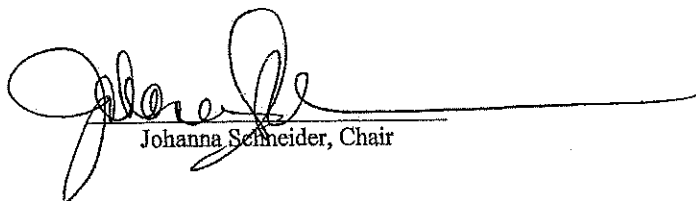
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as the existing paved area will remain and two spaces will be provided as is consistent with the current and proposed use as a two-family dwelling.
- d. Adequate and appropriate facilities will be provided for the proper operation of two-family dwelling.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

The ZBA members voted unanimously to approve the special permit relief per the site plan by site plan by Keenan Survey, dated 6/24/19, and architectural plans by RDK Architects, dated 10/3/19, subject to the following conditions:

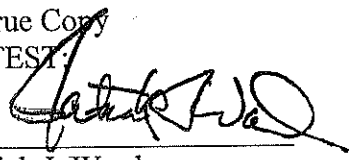
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan with one curb cut and parking area, floor plans, and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan showing proposed counterbalancing amenities subject to the review and approval of the Assistant Director of 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, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 01/14/2020



Johanna Schneider, Chair

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals