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Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2020-0002
50 STEARNS ROAD, BROOKLINE, MA

Petitioner, Apiary, LLC, applied to the Building Commissioner for permission to construct a new 4-unit building at 50 Stearns Road. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 6, 2020 at 7:00 p.m., virtually as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 23, 2020 & July 30, 2020 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 **virtual** public hearing on **August 6, 2020 at 7:00PM** via ZOOM:

[https://brooklinema.zoomgov.com/s/1609908460?
pwd=ZIZ3S0FtZIZlc3dsVW11ajVPTUFCZz09](https://brooklinema.zoomgov.com/s/1609908460?pwd=ZIZ3S0FtZIZlc3dsVW11ajVPTUFCZz09)

Password: 0CV!2W7X

Join by Phone

US: +1 669 254 5252 or +1 646 828 7666

Webinar ID: 160 990 8460

Password: 71609097

International numbers available: <https://brooklinema.zoomgov.com/u/acii1TXEBi>

Our Virtual Meeting Guide for Applicants and the Public can be found here: [https://
www.brooklinema.gov/DocumentCenter/View/22145/Virtual-Meeting-Guide-for-Applicants-
and-the-Public?bidId=](https://www.brooklinema.gov/DocumentCenter/View/22145/Virtual-Meeting-Guide-for-Applicants-and-the-Public?bidId=)

50 STEARNS ROAD, BROOKLINE, MA 02446 – Proposed demolition of existing structures and construct four unit building in an M-1.5 APARTMENT HOUSE ZONE to be heard virtually on 8/6/2020 at 7pm (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 3

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

§5.50 - FRONT YARD REQUIREMENTS

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

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

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

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

PUBLIC COMMENT FILES, PDFS OR PRESENTATIONS:

Advance submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations be sent before the hearing to Monique Baldwin (mbaldwin@brooklinema.gov) and Joe Braga (jbraga@brooklinema.gov). Public testimony will be taken during the hearing as normal.

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 mbaldwin@brooklinema.gov, 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: 7/23/2020 & 7/30/2020

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. Also present at the hearing were Deputy Building Commissioner, Joe Braga, and Planner and Zoning Coordinator, Monique Baldwin.

Chairman Geller reviewed the standard virtual hearing protocol with Board Members and all those in attendance. Chairman Geller called the hearing to order at approximately 8:00 pm for 50 Stearns Road, an application to demolish an existing two-unit apartment building and construct a new four-unit apartment building.

The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Travis Blake, 81 Boylston Street, 2nd Floor, Brookline, MA 02445. Attorney Allen waived the reading of the public hearing notice.

Mr. Allen stated that the application went to the planning board twice and noted that at the first meeting the Planning Board provided helpful feedback that the Applicant was able to incorporate into a revised design. Mr. Allen stated that as a result, the Planning Board was swift to vote to unanimously recommend approval during the second meeting. Mr. Allen noted that the Petitioner has met with the abutters and no one has come forward in opposition. Mr. Allen then requested that Mr. Blake review the architectural plans.

Relying on a PowerPoint presentation, Mr. Blake presented the proposal. He noted that the changes during the Planning Board design review related to the materials on the façade of the building. He stated that the existing building at 50 Stearns Road was built in 1900 and is currently a three-story residential apartment building with two residential units. He noted that the underlying zoning is the M1.5 and is in the Coolidge Corner overlay. Mr. Blake then described the increased open space as a result of the new building and noted that the driveway serving the building is 12 feet at the property line and then widens to 20 feet; to allow cars to pass by as needed. Additionally, Mr. Blake noted that the new driveway seeks to utilize the existing curb cut

and argued it would limit the number of cars cutting across the pedestrian path at a given time. Mr. Blake further noted that the side yard setback will be increased to 8 feet and provide a nice buffer between the neighboring property. He stated that the front yard setback is intended to create continuity with the street wall by aligning with existing buildings. Mr. Blake concluded noting that the proposal features an audio and visual sign for the for the driveway entrance and seeks to preserve the existing trees.

The Board then discussed the proposed grade of the driveway. Mr. Blake described the driveway as meeting the required code and transitioning from 10% grade for the first 10 feet, then 20% for approximately five feet, then back to a 10% grade for the remaining length of the driveway. He also noted that the entire driveway will be heated to allow melting of snow and ice. Upon inquiry from Chairman Geller, Mr. Allen added that there are only eight parking spaces serving the proposed building and that since Stearns Road is a one-way road, all traffic will be turning right in and out of the driveway. Further, Mr., Allen argued that while the driveway could meet the 20-foot requirement for the full length of the driveway, that would create a less desirable outcome both in terms of safety as well as aesthetically. Mr. Allen cited the purpose of **Section 6** of the Zoning By-law and argued that **Section 5.43** could be utilized to waive the 20-foot dimensional requirement for the driveway.

Mr. Allen stated that all relief required for the proposal is available by special permit pursuant to **Section 5.43**. Mr. Allen noted that the Petitioner is proposing a heated driveway and landscaping as counter balancing amenities as required under **Section 5.43**.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating: (1) Specific site is an appropriate location for such use: The site in the M-1.5 District is appropriate

for the multi-family building. This proposal will create two new units near the MBTA and commercial districts; (2) Use will not adversely affect the neighborhood: The use will not adversely affect the neighborhood, as the proposal will improve the open space and the streetscape; (3) There will be no nuisance or serious hazard to vehicles or pedestrians: The proposal was designed to utilize the existing curb cut, maintain the pedestrian sidewalk, and increase landscaping while maintaining visibility. Additionally, there will be a signal for exiting vehicles (which is now shown on the plan); (4) Adequate and appropriate facilities will be provided for the proper operation and proposed use; (5) There will be no significant effect on the supply on housing available for low- and moderate-income people. Mr. Allen concluded stating that the requested relief is minimal for a new building and felt the proposal adds to the view corridor and streetscape and can all be granted by special permit.

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

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal.

Linda Olsen Pehlke, raised a question about the street trees; she stated that relative to the open space, it is not an improvement to the pedestrians and stated that it seems narrow. Ms. Pehlke added that the Board may want to consider more room to accommodate more foliage to help with the heat island effect and stormwater. She added that the proposal seems a bit tall compared to the adjoining structure.

Chairman Geller then called upon Monique Baldwin, Planner & Zoning Coordinator, to deliver the findings of the Planning Board:

FINDINGS

ZONING: M-1.5	Required/ Allowed		Existing	Proposed	Relief
	Use	2F	MF	Two-family	Multi-family
Lot Size	5,000 sf	None	6,000 sf	6,000 sf	None
Floor Area Ratio	1.5	1.5 / 100% 9,000 sf	0.36 / 24% 3,211 sf	1.48 / 98% 8,883 sf	None
Lot Width	45'	None	60'	60'	None
Height		45'	unknown	44'-10"	None
Setbacks: F/S/R (in feet)	15/10/3 0	15+(H/10): 19.5' / (H+L)/6: 18.23' / 30'	24.8/1.8/23 .3	2' / Left: 14' Right: 8' / 23'-3"	Special Permit, Section 5.43 ¹
Parking Spaces	4	8	At least 2	8	None
Usable Open Space		None	N/A	0%	None
Landscape Space		20%	N/A	21%	None

¹**Section 5.43 – Exceptions to Yard and Setback Regulations:** None of the proposed setbacks conform to the requirements of the Dimensional Requirements Table. Relief from these setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

Other Zoning Requirements

Section 5.09.2.D – Design Review: Because the project proposes 4 or more dwelling units, it is subject to Design Review. The applicant has submitted an Impact Statement and staff believe that the project satisfies the criteria of Design Review.

Section 6.04.4.B – Design of All Off-Street Parking Facilities: This provision requires that all entrance and exit drives for two-way use be a minimum width of 20 feet. The applicant is proposing an entrance/exit drive with a width of 12 feet. Relief from this section requires a Variance.

Section 6.04.5.B – Design of All Off-Street Parking Facilities: This provision requires that all parking areas (including access drives) be setback from property lines a minimum of 5 feet and from street lot lines a minimum of 10 feet. The proposed access drives has no setback from the left-side property line. Relief from this section can be granted through Section 5.43.

PLANNING DEPARTMENT COMMENTS

Ms. Baldwin stated that while the Planning Department would prefer to see a redevelopment of this property that involves the creation of more than the 4 (luxury) housing units proposed, the Department is otherwise supportive of the project. She noted that the project would create two new housing units near public transit and in a commercial district. Ms. Baldwin stated that the scale of the proposed building is consistent with its surroundings and appropriate for the area and the building is well-designed. Unfortunately, Ms. Baldwin stated, a Variance is required for the width of the driveway and nothing the applicant has submitted shows that the statutory criteria have been met. She noted that if the applicant can provide such supporting documentation and the ZBA can find that the projects meets the statutory criteria, the Planning Department recommends approval.

PLANNING BOARD RECOMMENDATION

Ms. Baldwin then provided the Planning Board's recommendation stating as follows: The Planning Board is supportive of this proposal. The Board first reviewed the project at their meeting on February 6, 2020 and raised some concerns with the design of the first-floor bay

window along the street and the design of the stair and balconies on the rear elevation. The Board felt that the bay window was too large and, due to its south-facing nature, would cause the need for additional cooling resources in the building. The Board felt that the stair on the rear elevation was not up to the same standard of design as the rest of the building. The applicant submitted revised plans that adequately addressed the Board's concerns. The Board also wishes to explicitly support the narrower curb-cut and drive (despite the need for a Variance) as these features will improve the pedestrian experience along Stearns Road.

Therefore, Ms. Baldwin stated, the Planning Board recommends approval of the site plan by O'Connell & Associates, Inc., dated 1/30/20, and the architectural plans by Sousa Design Architects, dated 1/30/20, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit the applicant shall electronically submit the site plan to be reviewed and approved by the Department of Traffic and Engineering.
4. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval 1) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and 2) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Chairman Geller then called upon Deputy Building Commissioner, Joe Braga, to deliver the Building Department comments. Mr. Braga stated that the Building Department had no objection to the requested relief. Upon inquiry from Chairman Geller, he noted that the driveway safety would be reviewed by the Engineering Department at the building permit stage of the process.

The Board discussed the safety of the proposed driveway. Mr. Braga recommended that the Board add a condition to have Engineering and Transportation review the driveway for conformance to safety standards prior to the issuance of a building permit, as would normally be the practice. Chairman Geller agreed that a condition should be included to allow the Board to adequately find that the application meets the criteria for the grant of a special permit pursuant to **Section 9.05** in its entirety, and particularly as it relates to **Section 9.05.c**.

In deliberation, Chairman Zuroff stated that the requested relief is minimal and could appreciate the increased safety by the narrowing of the driveway, in this particular circumstance. He noted that overall, the project is attractive and voted in favor of the relief requested. Board Member Schneider concurred and noted that no abutters came out in opposition. She voted in support, with the conditions as modified during their discussion. Chairman Geller stated that the proposal is consistent with the prevailing conditions and appreciated that the proposed building will match the street line of the neighboring building. Chairman Geller stated that all relief, including the driveway width, may be granted pursuant to **Section 5.43**, as the Petitioner is proposing counter balancing amenities that adequately ameliorate the relief sought. Chairman Geller noted that **Section 9.05** of the Zoning By-law was satisfied with the added condition that the Town Engineer and Transportation Department review and approve the proposed driveway and voted to grant the requested relief.

The Board then determined, by unanimous vote that the requirements for a special permit for **Sections 5.09.2.D, 6.04.4.B, and Section 6.04.5B** of the Zoning By-Law pursuant to **Sections 5.43 and 9.05** of the Zoning By-Law were met.

The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any 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 revised conditions:

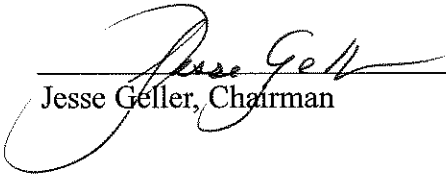
1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Division of Transportation and Engineering for review and approval of the proposed driveway to verify compliance with all safety standards.
3. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning and which counterbalancing amenities shall be installed as a condition of the permits hereunder.

4. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval 1) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and 2) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Unanimous grant of special permit relief.

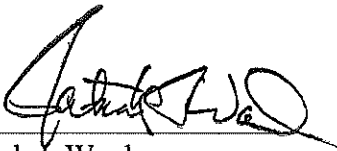
Unanimous Decision of
The Board of Appeals

Filing Date: 10/6/20



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

