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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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0057
1618 BEACON STREET, BROOKLINE,
MA

Petitioner, 1618 Beacon LLC, applied to the Building Commissioner for permission to construct a three-story rear addition. 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 January 30, 2020 at 7:00 p.m., 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 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 January 16, 2020 & January 23, 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 public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

1618 BEACON STREET, BROOKLINE, MA 02446 - Construct 3-story rear addition to 4-unit structure; requires variance for FAR. in a(n) G-1.75(W.S) GENERAL BUSINESS on 01/30/2020 at 7:00PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) Precinct II

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:

- §5.07 - DWELLINGS IN BUSINESS AND INDUSTRIAL DISTRICTS**
- §5.09.2. A – DESIGN REVIEW**
- §5.20 - FLOOR AREA RATIO**
- §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**
- §5.60 - SIDE YARD REQUIREMENTS**
- §5.91 - MINIMUM USABLE OPEN SPACE**
- §6.02, Paragraph 1 - TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS**
- §6.02.2.F – OFF-STREET PARKING SPACE REGULATIONS**
- §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
Johanna Schneider
Mark Zuroff***

Publish: 01/16/20 & 01/23/20

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 Assistant Director of Regulatory Planning, Polly Selkoe.

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 were Igor Shyla and the project's architect, Gary Hendren, of Hendren & Associates, 119 Braintree Street, Suite 209, Boston, Ma. 02134.

Chairman Geller called the hearing to order at 7:00 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen described the background of the site. He stated that the proposal is in the G-1.75 Zoning District and it is located in an area on Beacon Street that consists primarily of commercial uses and multi-family dwellings. Mr. Allen noted that the property is part of a group

of three row houses that transition from the mostly residential portion of Beacon Street to the Washington Square Commercial District and that the proposed work included partial demolition. Mr. Allen stated that the Preservation Commission upheld an initial determination of significance and placed an 18-month stay of demolition on the property on February 19, 2019. The stay will expire on August 19, 2020. He noted that the Petitioner intends to request a lift of the stay if granted the relief requested.

Mr. Allen then stated that there is little if any opposition to this proposal and added that the one individual who purchased a penthouse unit that was similarly developed to the Petitioner's proposal, had some very reasonable concerns. Mr. Allen further stated that after meeting with this abutter, they were able to address the concerns and have provided support letters from two abutters: an immediate abutter (1616 Beacon St) and one from a neighbor (1614 Beacon Unit 1).

Mr. Allen noted that the proposal went to the Planning Board three times and ultimately obtained their support for a 6-unit proposal. He further noted that the proposal was initially four higher end units, but was modified at the urging of the Planning Board to increase the number of units to create a more economically diverse unit mix (which is currently: one two-bedroom unit, a studio unit, a one-bedroom unit, two three-bedroom units, and a four-bedroom unit).

Attorney Allen then described the zoning relief needed to convert the four-unit dwelling into a six-unit dwelling with a rear addition and the addition of a story along Beacon Street. He stated that the so-called "Little Swiss house" in the front along Beacon Street will be removed but the ground level use as a retail unit will still remain with accessory parking . Mr. Allen noted that zoning relief is required pursuant to **Section 5.60**, for pre-existing non-conforming side yard

setbacks. Attorney Allen argued that this relief is available by special permit under **Section 9.05** pursuant to **Section 5.43**. Additionally, Mr. Allen stated that special permit relief is available for usable open space under **Section 5.91** pursuant to **Section 5.07**. Further, Mr. Allen stated that a special permit is needed for the conversion to a 6-unit dwelling under **Section 5.05** and the additional required parking spaces may be waived by special permit under **Section 6.01.2.a**. Mr. Allen added that the Petitioner also requires zoning relief from **Section 5.09.2.a**, for Design Review due to frontage on Beacon Street. Finally, Mr. Allen stated, the proposal requires a variance from **Section 5.20** for the FAR.

Mr. Allen then went on to describe the FAR for the project, stating as follows: The floor area ratio is currently under the allowed of 1.75 (7,401 s.f.) at 1.20 (5,015 s.f.) and the proposal would increase the FAR to 126% of allowed with a proposed total of 9,291 s.f. of gross floor area. Mr. Allen argued that the extra 1,890 s.f. of FAR is justified by the demolition of the Swiss House and construction of a more sensitive connection thus improving the historic streetscape between 1620 and 1616 Beacon Street. Mr. Allen stated that the lot is unique in that it is one of the few in this zoning district that is mixed-use and serves as a transition into the Washington Square Commercial area with a unique structure; being the only property with a projecting one-story structure. Mr. Allen described the costs associated with removing the “Little Swiss House”, improving the historic streetscape and bringing the property up to the current life safety standards as creating a hardship that can only be offset by allowing the additional FAR.

Mr. Allen stated that the “Little Swiss House” was added in 1965, prior to the existence of the Brookline Preservation Commission. He noted that the Planning Board was not originally in support of the stand alone structure, but because the neighboring property at 1616 Beacon had

just constructed a retail store (a sportswear shop) that extended into the sidewalk, the Board felt that a “well-designed and properly constructed structure would be compatible with the immediate surrounding neighborhood”. Mr. Allen stated that now, 45 years later, with adoption of the Zoning Act, a Preservation ordinance and Beacon Street being a historic street, the single-story commercial space at this location is no longer compatible with the streetscape. Mr. Allen argued that the proposed addition is a well-designed and properly constructed structure that is compatible with the immediate surrounding neighborhood.

Attorney Allen then reviewed the Special Permit standards pursuant to **Section 9.05** of the Zoning By-law stating as follows: (1) The specific site is an appropriate location for such use: The site is appropriate for the proposed use as a five-unit dwelling with a retail unit, which is an allowed use in the G-1.75 district. The property currently has four dwelling units and one commercial unit and part of the existing structure will be maintained. The retail unit is also allowed and will be maintained; (2) The Use will not adversely affect the neighborhood: The renovation of the existing building and addition of two units, with related exterior improvements, will result in a building in a better condition and will not negatively affect the neighborhood. It is evident in the roof plan and in aerial views, that the proposal does not adversely impact the neighborhood, rather, the proposal is similar to the adjacent two buildings and fits in with both the Beacon Street streetscape; (3) There will be no nuisance or serious hazard to vehicles or pedestrians: Vehicular and pedestrian site access will remain generally the same, except for the garage parking spaces that will now be provided and housed out of view; (4) Adequate and appropriate facilities will be provided for the proper operation as a five-unit dwelling with one commercial unit; (5) There will be no effect on the supply on housing available for low and

moderate income people. The revised proposal will increase the number of units and create *more* affordable units, including a unit with two bedrooms that utilizes space on the first and second floor as well as a first-floor studio.

Mr. Hendren then reviewed the plans for the Board. The Board discussed various components of the proposal and discussed the merits of the relief requested against the plans provided. There was consensus among Board members that the request FAR of 2.2 did not warrant the variance requested. The Board agreed to continue the hearing to March 19, 2020.

Due to the pending declared COVID-19 emergency, ZBA hearings were postponed and the continued hearing on March 19, 2020 was cancelled.

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/join/1609908460?
pwd=ZIZ3S0FtZlZlc3dsVW11ajVPTUFCZz09](https://brooklinema.zoomgov.com/join/1609908460?pwd=ZIZ3S0FtZlZlc3dsVW11ajVPTUFCZz09)

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/join/1TXEBi>

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=>

1618 BEACON STREET, BROOKLINE, MA 02446 - Construct 3-story rear addition to 4-unit structure; requires variance for FAR. This property is located in a G-1.75 (WS) GENERAL BUSINESS on 8/6/2020 at 7:00PM virtually (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 11

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:

§5.07 - DWELLINGS IN BUSINESS AND INDUSTRIAL DISTRICTS

§5.09.2.A – DESIGN REVIEW

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§5.91 - MINIMUM USABLE OPEN SPACE

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

§6.02.2.F – OFF-STREET PARKING SPACE REGULATIONS

§8.02 - ALTERATION OR EXTENSION

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.

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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

Continued Hearing – August 6, 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.

At the continued hearing, Attorney Allen waived a reading of the published notice. Mr. Allen gave an overview summary of the previous hearing and noted the Board's expressed concerns about the size of the project and the increased FAR requested. Mr. Allen further summarized that the Board did not accept the Petitioner's variance argument nor did it believe the size of the FAR expansion was warranted.

Mr. Allen stated that the proposal was correspondingly reduced in size, including a reduction in the number of units by one unit (to 5 total units). He further stated that the project was decreased from a FAR of 2.2 to a FAR of 2.0 that based on feedback during the previous hearing, the request is now for an excess of 663 square feet over what is allowed, noting this to be a two-thirds reduction from the January proposal. Mr. Allen further noted that the unit mix

diversity of the units was retained. He noted that the garage was reduced from three parking spaces to two, the rear yard setback increased from 30 to 40 feet and the height reduced.

Gary Hendren then reviewed the new changes to the proposal.

Mr. Allen noted that the counterbalancing amenities were discussed at the previous hearing and would include repaving the lot and landscaping.

Mr. Allen stated that he reviewed the history of the one-story building and in 1965 the Planning Board initially rejected a one-story building because they thought a well-designed structure would be more compatible but ultimately it did receive that Board's support.

Mr. Allen reviewed the special permits requested and the criteria for the grant of relief as discussed at the prior hearing. After discussion among Board Members, there was a consensus that the criteria for the grant of the requested special permit relief had been satisfied.

Mr. Allen then argued that the criteria for the grant of variance relief pursuant to M.G.L. ch. 40A Section 10 were met, stating as follows: 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: The subject property is a unique structure, in that it is one of only a handful of mixed use buildings in the zoning district, being a part of a row of houses that transition into the Washington Square Commercial Area. He noted that the "Little Swiss House" is a unique feature in this zoning district and would be a challenge to remove since it currently does not comply with building code, life safety requirements or ADA. He argued that its removal without replacement would essentially create a wall as the entrance into Washington Square. Mr. Allen then argued that the lot is on historic Beacon Street, a National Register District, and is required under the Zoning

By-Law to go through design review for any development application. Mr. Allen further added that there is no other structure like the “Little Swiss House”. He argued that a structure like this would never be allowed under the current code. Therefore, Mr. Allen stated, these conditions create not only a uniqueness but a burden on the Petitioner.

Mr. Allen then argued that a literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the Petitioner: The grant of a variance from the application of **Section 5.20** of the Brookline Zoning By-Law would facilitate the creation of a more historically sensitive streetscape in this National Register District and significantly reduce current life safety issues. Mr. Allen argued that a substantial hardship, financial or otherwise, must be shown for the grant of a variance and noted that the Board should find that requiring retention of the existing structure creates a hardship for the Petitioner due to the required fire and safety upgrades associated with the project, which is ameliorated safety concerns because the proposal will include bringing the building up to meet the highest level of life safety requirements imposed by the Town and the State; and, because of the cost associated with removing an existing eyesore to the otherwise historic landscape and National Registered properties of Beacon Street, and replacing it with a more historically significant connection into Washington Square Commercial District. Attorney Allen argued that any owner of the lot would be in an economically unfeasible situation and the addition of the 663 SF would offset both the costs associated with removing the “Little Swiss House” from the storefront, a design approved by the Planning Board pursuant to Design Review, and further offset the cost necessary to bring the building up to full life safety code. He stated that the alternative options would not achieve

the same safety enhancements and would require further consideration of keeping the existing “Little Swiss House.”

Mr. Allen argued that where a proposal that otherwise is in violation of the Zoning By-Law diminishes the risk of an existing harm or where it prevents a greater risk of harm that would result from compliance with a zoning ordinance, such hardship may in such a case merit a variance. He argued that in Furlong v. Salem, the petitioner requested and was granted a variance by the Salem Board of Appeals for setback relief (Furlong vs. Salem Zoning Board of Appeals, 90 Mass. App. Ct. 737). He noted that in that case, the court reasoned that if the petitioner adjusted plans to meet the requirements of the zoning ordinance, a significant risk of harm for the people and the property would result, which merited a substantial hardship to the Petitioner. Therefore, Mr. Allen argued, by allowing the additional FAR, the Petitioner in the instant case will be required to and economically able to bring the entire building up to new code standards and improve safety for current and future occupants. He added that without the additional FAR, it would not be feasible due to the economic loss. Therefore, he argued, the grant of a variance would diminish the risk of an existing harm and prevents a greater risk of harm.

Mr. Allen stated that the additional FAR will offset the costs associated with the removal of the “Little Swiss House”, maintaining the historic building and allowing use of the commercial space on the first floor to continue. Mr. Allen cited cost estimates of construction and life safety upgrades from a memo from Jim Stukel of the Stukel Group (a construction management company). Mr. Allen stated that as provided in the memo, the costs associated with bringing the building up to code are significant, but the additional 663 square feet will

adequately offset those costs and create a safer building, a more historically significant streetscape and remove what many believe to be an eyesore from a National Historic District.

Mr. Allen then argued that 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. Mr. Allen noted that as there has been no opposition to this project, which supports the argument that relief can be granted without substantial detriment to the public good. He stated that the proposed additional FAR will be added primarily to the rear of the property and the additional story will remain under the allowed height.

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. No one spoke in opposition to the proposal.

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

FINDINGS

ZONING: G-1.75	Required/ Allowed	Existing	Proposed	Relief
Use		4- Unit	6-Unit	None
Lot Size	None	4,229 sf	4,229sf	None
Floor Area Ratio	1.75 / 100% 7,401sf	1.19 / 68% 5,015sf	2.20 / 126% 9,291sf	Variance

Lot Width	None	31'	31'	None
Height	45'	31'	43'	None
Setbacks: F/S/R	none/ "h+l/ 10"/ 30'	0/0/64. 3	0/0/30	Special Permit, §§ 5.07¹, 5.43²
OS: Landscaped/ Usable	none/ 10%	none/ 5%	none/2%	Special Permit, § 5.07¹
Parking Spaces	9	7	7	None

¹ **Section 5.07: Dwellings in Business and Industrial Districts** – This provision states that dwellings located in business or industrial districts shall conform to the open space and side and rear setback requirements of the M district with the same FAR requirement as the business or industrial district in which the property is located. It also allows the ZBA to waive, by Special Permit, any of those requirements if it finds that such a waiver would promote reasonable development of the site compatible with adjacent buildings and the surrounding area.

² **Section 5.43: Exceptions to Yard and Setback Regulations** – The Zoning Board of Appeals may waive any setback requirement in the Bylaw if appropriate counterbalancing amenities are provided.

Other Zoning Requirements 5.09.2.a: Design Review

The proposal involves a structure or outdoor use that is located within 100 feet of Beacon Street. It also involves multiple dwellings with four or more units on the premises. Both of these conditions require Design Review.

Below are staff’s comments on the relevant standards and criteria of design review. See also the applicant’s statement on the Community and Environmental Impact and Design Standards.

Preservation of Trees and Landscape: There is little to no vegetation on the existing site and the proposal would not affect the existing conditions.

Relation of Buildings to Environment/Streetscape/Neighborhood: The proposed additional massing is significant but the altered structure would remain reasonably consistent with the scale of structures in the surrounding neighborhood. The proposed building is also generally appropriate in size for the proposed use and location.

Open Space: Neither the existing nor the proposed conditions provide an adequate amount of open space, although the proposed conditions further reduce the amount of open space provided. That being said, the surrounding area does not feature much open space, and there are a number of parks and playgrounds in close proximity that the residents will be able to use.

Circulation: Safe circulation for all means of transportation is provided for, at least as adequately as the existing conditions.

Stormwater Drainage: The project will be subject to the provisions of the Stormwater Bylaw.

Heritage: The existing structure is historically significant and the proposed addition has been designed to be distinct from the original structure, thereby helping to distinguish and preserve the historical portion of the building. However, the architecturally distinct entrance is being demolished.

Section 6.02.2.f: Off-Street Parking Space Regulations

This section states that 10% of all required parking spaces must be designed and marked for use by visitors and tradespeople. A Variance is required to waive this requirement.

Section 8.02: Alteration or Extension

A Special Permit is required to alter and/or extend this non-conforming structure.

PLANNING DEPARTMENT COMMENTS

Ms. Baldwin stated that the Planning Department was initially not supportive of this proposal, however, the applicant has made a significant number of revisions to the project to both reduce the scale of the addition in the rear and to increase the number of units proposed. She noted that while it remains unclear to staff how the statutory requirements of a Variance are met, if the applicant can make a case to the Zoning Board of Appeals that satisfies those criteria, the Planning Department is supportive.

PLANNING BOARD RECOMMENDATION

On behalf of the Planning Board, Ms. Baldwin stated that the Board is supportive of the proposal and were glad to see an increase in the number of housing units as well as a greater variation in their size and bedroom count. She noted that the Board found that the improvements to the façade are well-designed and consistent with the surrounding streetscape.

Therefore, Ms. Baldwin stated, the Planning Board recommends approval of the architectural plans by Hendren Associates, dated December 5, 2019, 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 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 Planning Board.
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.

Chairman Geller called upon Deputy Building Commissioner, Joe Braga, to review the findings of the Building Department. Mr. Braga stated that the Building Department had no issues with the relief sought under the Brookline Zoning By-Law. Mr. Braga further noted that should the Board find that the requirements for the grant of relief are satisfied, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

Deliberation.

The Board then deliberated on the merits of the request for special permit and variance relief. Board Member Zuroff stated that he appreciated that the Petitioner has reduced the size of the project and that it ultimately minimizes the variance relief requested. Board Member Schneider concurred with Board Member Zuroff and stated that she was initially opposed to the variance argument with the larger project, but given the reduction and the costs associated with the life safety upgrades, the grant of the variance request is justified. Ms. Schneider additionally stated

that the removal of the “Little Swiss House” and new addition will create a more historically appropriate streetscape.

The Board discussed the uniqueness and hardship criteria. Chairman Geller stated that he was not convinced that a successful argument was made under M.G.L. Chapter 40A, Section 10. The Board discussed the levels of construction and to what extent various life safety building code updates were mandated. Board Member Schneider stated that the required [life safety] upgrades are expensive and are triggered at a relatively low level of renovation. She stated therefore, that the added expense is not the result of a developer’s choice to create a “deluxe” development, but as a result of state building codes. Ms. Schneider added that given that this structure has a unique noncompliant single-story commercial unit attached to it and is wedged between two other buildings, it drives the scope of the renovation and therefore the project. Board Member Schneider stated that these conditions are driving the need for the additional square footage to offset the costs associated with the project which are of no fault of the developer and therefore is not a self-imposed hardship.

Board Member Zuroff stated that the building is a transitional building from the residential neighborhood into an entirely commercial block. He stated that 1618 Beacon Street marks the end of the residential portion.

Chairman Geller posited that the crux of the uniqueness argument hinges on the structure being at a transition point on Beacon Street, combined with the unique nature of the structure, including notably the bump out wall. Chairman Geller stated that with regards to the hardship standard of the variance, Ms. Schneider’s position describes the very specific circumstance related to the cost of upgrading the building as so inherently great that it is driving the life safety

requirements to a high level, and one is required to conform to these standards entirely due to the necessity to remove the nonconforming “hut”. Chairman Geller stated that within the narrow parameters of the combined uniqueness and the notion of having to remove the “Little Swiss House” structure as driving the hardship, he is willing to accept that the criteria for the variance have been satisfied.

In deliberation, Chairman Geller was satisfied that the proposal to construct a three-story rear addition at 1618 Beacon Street was worthy of the special permit relief as **Section 5.43** was met based upon inclusion of the proposed counterbalancing amenities and **Section 9.05** of the Zoning By-Law.

The Board then determined, by unanimous vote that the requirements have been met for the issuance of a special permit from the provisions of **Section 5.60**, pursuant to **Sections 5.07 5.43**; from the provisions of **Section 5.91** pursuant to **Section 5.07**; and special permits under **Sections 5.05, 6.01.2.a, 5.09.2.a and 9.05**.

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.

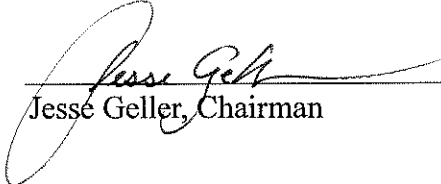
The Board also voted unanimously that the statutory requirements have been met for the issuance of a variance under M.G.L., c.40 Section 10, granting relief from the provisions of **Section 5.20** of the Zoning By-Law.

Accordingly based upon the revised plans by Hendren Associates dated March 9, 2020, 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 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 Planning Board and shall in connection with the project install all such proposed counterbalancing amenities as shown and approved.
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.

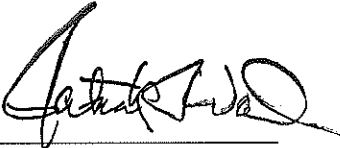
Unanimous Decision of
The Board of Appeals

Filing Date: 10/6/20



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

