



Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johnna Schneider

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2021 APR 21 A 9:11

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0007
DND HOMES LLC
10-12-14 SHAILER STREET, BROOKLINE, MA

Petitioner, DND Homes LLC., applied to the Building Commissioner for permission to convert an existing two-family to a three-family dwelling. 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 April 1, 2021, 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 March 18, 2021 & March 25, 2021 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 the following petition:

Address: **10 Shailer Street**
Petitioner: **10 12 Shailer Street LLC**
Zoning District: **F-1.0 – Three Family**
Precinct: **9**
Description: **Convert existing two-family building to a three-family building**

Date, time, and location of the public hearing are as follows:

Date: **04/01/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<http://bit.ly/3vi4kyk>

After registering you will receive a confirmation email containing information about joining the hearing.

Our Virtual Meeting Guide for Applicants and the Public can be found here:

<https://bit.ly/30wRoY3>

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

§8.02 - ALTERATION OR EXTENSION

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

*Advanced 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 or questions be sent before the hearing to **Victor Panak** (vpanak@brooklinema.gov).*

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. 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 by mail or in the papers. Questions about hearing schedules may be directed to the Planning and Community Development Department at vpanak@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 **Assistive Listening Devices**, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.*

***Jesse Geller, Chair**
Mark Zuroff
Johanna Schneider*

Publish: 03/18/2021 & 03/25/2021

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Mark Zuroff and Kate Poverman. Also present at the hearing was Polly Selkoe, Assistant Director of Regulatory Planning, Karen Chavez, Zoning Coordinator and Planner. Joe Braga and Paul Campbell were present on behalf of the Building Department.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the architect for the project, Mike McKay, McKay Architecture, 35 Bryant Street, Dedham Square, Massachusetts, 02026.

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

Attorney Allen stated that the project site is located at 10-12 Shailer Street, off of Harvard Street near Coolidge Corner. He noted that the zoning district is an F-1.0 and stated that the proposal is to convert an existing two-family to a three-family dwelling, with minimal changes to the exterior. He noted that there will be no changes to the existing envelope of the building, however, an existing enclosed porch will be modified.

Attorney Allen stated that the Planning Board suggested that the window wells that are currently boarded up should be restored to provide light into the basement. He noted that the plans were revised subsequent to the Planning Board meeting to satisfy this request.

Concerning the parking area, Mr. Allen stated that there are six existing parking spaces and noted that there is no change to the existing parking lot layout as a result of this conversion.

Attorney Allen opined that all zoning relief required for the conversion is available under **Section 5.05**. He noted that this section does not require a counterbalancing amenity and does not rely upon **Section 5.43**. Attorney Allen did note, however, that refurbishing of additional window wells that are currently boarded up are a benefit that the Petitioner will comply with.

Attorney Allen stated that the proposal will meet all of the requirements for a special permit under **Section 9.05** stating as follows: (1) Specific site is an appropriate location for such use: The property is located in a residential neighborhood and the additional unit for a total of three units is an allowed use in the F1.0 Zoning District. (2) Use will not adversely affect the neighborhood: The proposal maintains the existing structure, so no new massing or shadow impacts will be created. (3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians. (4) Adequate and appropriate facilities will be provided for the proper operation and proposed use. (5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Attorney Allen stated that the plan set dated March 26, 2021 shows the new window wells in compliance with the Planning Board request.

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

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

one spoke in opposition to the proposal.

Chairman 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

| ZONING: F-1.0 | Requirements | | Existing Conditions | Proposed Conditions | Relief Required |
|---|----------------------------------|--------------------------------|--------------------------------|--------------------------------|--|
| | Existing | New | | | |
| Use | 2-family dwelling | 3-family dwelling | Two-family dwelling | Three-family dwelling | |
| Lot Size | 5,000sf | 5,000sf | 6,745sf | 6,745sf | |
| Floor Area Ratio | 1.0 (100%) 6,745sf | 1.0 (100%) 6,745sf | 1.22 (122%) 8,205sf | 1.21 (121%) 8,133sf | <u>Special Permit¹</u> |
| Height | 35' | 40' | 43.3' | 43.3' | <u>Special Permit¹</u> |
| Front Setback | 15' | 15' | 12.6' | 12.6' | <u>Special Permit^{1,2}</u> |
| Side Yard Setback (Left / Right) | 10'/10' | 10'/10' | 5.5'/11.1' | 5.5'/11.1' | <u>Special Permit^{1,2}</u> |
| Rear Yard Setback | 30' | 30' | 23.6' | 23.6' | <u>Special Permit^{1,2}</u> |
| Open Space (Landscaped / Usable) | 10%/30% 821sf/2,462sf | 10%/30% 813sf/2,440 | 320sf/320sf | 320sf/320sf | <u>Special Permit¹</u> |
| Parking Spaces | 4 | 6 | 6 | 6 | |

¹ **Section 5.05, Conversions:** This section requires that all conversions that create additional dwelling units must conform to the dimensional requirements of Table 5.01. However, the Zoning Board of Appeals may waive any of those requirements (except minimum lot size) by special permit provided that no such nonconformities are increased.

² **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from 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 Relief Needed

Section 8.02, Alteration or Extension: A special permit is required for the alteration of a non-conforming structure.

PLANNING DEPARTMENT COMMENTS

The Planning Department is supportive of this proposal. Being located close to both a walkable commercial area and public transportation, this site is appropriate for additional dwelling units. The applicant is proposing a fairly successful conversion of the existing building that does not significantly alter the appearance of the building. The applicant should clarify how the parking will operate on the site and provide dimensions confirming that circulation will be functional.

PLANNING BOARD RECOMMENDATION

Ms. Selkoe stated that the Planning Board is supportive of this proposal. She noted that the Board feels that the conversion of the existing building is an appropriate use and commends the applicant on their preservation and rehabilitation of the building. The Board encourages the applicant use the opportunity presented by this renovation to convert the building to being fossil-fuel-free. The Board also requests that the applicant use the window openings in the existing masonry at the basement level to provide additional natural light to the basement portion of the proposed units. The Board also requests that the applicant provide counterbalancing amenities and hopes that the ZBA will consider whether counterbalancing amenities can be required through Section 5.43 even though Section 5.05 could alternatively be used by the applicant to provide setback relief.

Ms. Selkoe stated that the Planning Board recommends approval of the site plan by Dellorco Associates, dated 7/8/2020, and architectural plans by McKay Architects, with revised date of 3/26/21, 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, and a final site plan, stamped

and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.

2. The architectural plans shall be revised to show utilization of the existing basement window openings.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) 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.

Chair Schneider then called upon Joe Braga, on behalf of the Building Department to deliver the comments of the Building Department. Mr. Braga stated that the Building Department was supportive of the request and had no objections.

The Board then deliberated on the merits of the application. Board Member Poverman was satisfied with the conditions recommended by the Planning Board and voted to support the project. Board Member Zuroff stated that **Section 5.05** is sufficient to provide the relief and noted that **Section 5.43** was not required. He stated the proposal meets the criteria and was supportive. Chair Schneider concurred.

In reliance on the above-referenced plans, the Board then determined, by unanimous vote that the requirements under **Section 5.05** had been met, thereby granting a special permit from the provisions of the following Sections: **5.20** for FAR requirements, **5.30** for building height requirements, **5.55** for the front yard requirements, **5.60** for the side yard requirements, **5.70** for rear yard requirements, **5.90** for minimum landscaped open space and **5.91** for minimum usable open space of the Zoning By-Law, respectively, finding specifically under said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition because the home will remain a single-family home.
- b. The use as developed will not adversely affect the neighborhood.

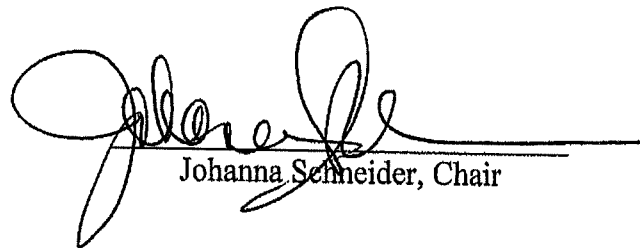
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because there will be no change to on site circulation.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested special permit relief 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, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. The architectural plans shall be revised to show utilization of the existing basement window openings.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) 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.

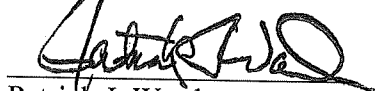
Unanimous Decision of
The Board of Appeals

Filing Date: 04/21/21



Johanna Schneider, Chair

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals