



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

Town of Brookline

Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000013
58 BROOK STREET, BROOKLINE
Robert Brauns and Valerie Ball

TOWN CLERK'S OFFICE
APR 27 '22 PM 3:04

Petitioners, Robert Brauns and Valerie Ball (“Petitioner” and/or “Applicant”), applied to the Building Commissioner for permission to convert the structure from a One-Family Dwelling to a Two-Family Dwelling. 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 March 24, 2022 at 7:00 p.m. in the Selectmen'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 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 10, 2022 and March 17, 2022 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:



TOWN OF BROOKLINE BOARD OF APPEALS

Notice of Hearing

Notice of Hearing

Pursuant to M.G.L., c.40A, the Board of Appeals will conduct a public hearing on the following petition:

Address: 58 Brook Street
Petitioner: Robert Brauns and Valerie Ball
Zoning District: T-5 (Two-Family & Attached Single-Family)
Precinct: 4
Description: Convert existing one-family detached dwelling to a two-family dwelling

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

Date: 03/24/2022
Time: 7:00 pm
Location: Virtual Meeting (see below)

Register for this virtual hearing:
<https://bit.ly/3hBIH6L>

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

§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 **Polly Selkoe** (pselkoe@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: 03/10/2022 & 03/17/2022

On March 24, 2022, a virtual hearing of the Zoning Board of Appeals was conducted and the case was presented by Attorney for the Petitioners, Cameron S. Merrill, Merrill & McGeary, 100 State Street, Suite 200, Boston, MA 02109. Attorney Merrill waived a reading of the public notice. Present on behalf of the Zoning Board of Appeals was Chairperson Jesse Geller, Member Mark Zuroff and Associate Member Neil Wishinsky.

Attorney Merrill explained to the Board that the existing home is in a T-5 district where both One and Two Family Dwellings are legal uses; however, the lot size is non-conforming whether the home is either use. The existing lot size is 3,998 square feet where under the Zoning By-Law: as a single family dwelling, a minimum 4,000 square foot lot is required, and as a two family dwelling, a minimum 5,000 square foot lot is required. Therefore, he continued, regardless whether the home is a single family or a two family dwelling, there is insufficient lot size rendering the home a pre-existing non-conforming structure within the Zoning District. Mr. Merrill stated that the home was used as a single family from

1900 to 1942, as a Two Family from 1942 to 2011, and as a single family from 2011 through present. In conjunction with the conversion, he stated, the Petitioners have modified the egress, added windows and stairs, and ultimately intend to install a full kitchen in the basement dwelling unit. Attorney Merrill explained that the Petitioners have invested approximately \$400,000 in repairs and upgrades to the property since purchasing it, and intend to continue to improve it in conjunction with this application. Attorney Merrill submitted two memoranda of fact and law to the Board dated November 23, 2021 and March 18, 2022 as well as letters of support from the respective owners of 52 Brook Street, 54 Brook Street and 64 Brook Street, which were included in the public record.

Attorney Merrill introduced the Petitioner's architect, Michael Kim, who presented the project design aspects via slide show presentation. Mr. Kim described the house as an early 1900's Craftsman-style house and that the current condition of the home and structure is exemplary in the Brookline Village Neighborhood.

Attorney Merrill explained that the relief required was under Zoning By-Law **§5.05** – CONVERSIONS (referencing Zoning By-Law **§5.01**, Minimum Lot Size and Zoning By-Law **§8.02** - ALTERATION OR EXTENSION for the Alteration and Extension of a non-conforming structure. Mr. Merrill argued, however, that pursuant to MGL Chapter 40A, Section 6 as interpreted by the holding in Deadrick v. Board of Appeals of Chatham, 85 Mass App Ct. 539 (2014), the extension is permitted and, if the Board finds the proposed structure will not be more substantially detrimental to the neighborhood than the existing structure, the Board may grant a special permit to allow for that extension.

Attorney Merrill explained that the "Section 6 Finding" requires a two-step analysis. First, the Board must determine if the proposed alteration of or addition to a nonconforming structure would increase the nonconforming nature of the structure. Bjorklund v. Zoning Bd. of Appeals of Norwell, 450 Mass. 357, 358 (2008). This, he noted, was conceded by the applicant by extending the nonconformity

by 1,002 square feet in insufficient lot size due to the conversion of the use to a two-family. Next, he continued, the Board must make a finding as to whether the extension of the nonconformity is ‘substantially more detrimental than the existing nonconforming use’ pursuant to the sentence that follows the second except clause [of Section 6].” Bellalta v. Brookline Zoning Board of Appeals, 481 Mass. 372, 380 (2019) at 381, citing Bransford v. Zoning Board of Appeals of Edgartown, 444 Mass. 852, 857 at 857-858 (2005), (Greaney, J. concurring).

In addressing whether or not there is “substantial detriment” Attorney Merrill argued the proposal meets the requirements for a special permit under Section 9.05 of the Zoning By-Law, which is often used in Brookline as a method of guiding this analysis. Attorney Merrill argued the following:

- (1) the specific site is an appropriate location for such use;
- (2) the use will not adversely affect the neighborhood;
- (3) there will be no nuisance or serious hazard to vehicles or pedestrians
- (4) adequate and appropriate facilities will be provided for the proper operation and proposed use as described in the plans; and
- (5) there will be no significant adverse effect on supply of available low-income housing.

Attorney Merrill explained that: the property had been used as a two family dwelling for a majority of its existence and the district is a one or two family residential district where the use is allowed, the home does not exceed the allowable F.A.R., the Property has existed in its existing massing since approximately 1900, albeit with minor alterations, it has been used as both a single- and two-family dwelling in a zoning district, which allows each use, many of the homes in the general vicinity have similar sized lots and density and are also two-family dwellings, and the conversion triggers no new violations of the By-Law and there is sufficient parking.

He continued that allowing the conversion back to a two-family dwelling will have minimal impact, if any, on the neighborhood and, in fact, will be a benefit to the neighborhood to provide additional housing in close proximity to the business district and rapid transit. Finally, he noted there is adequate parking and the life safety systems and egress in the structure will be improved by the proposal.

Chair Geller asked for comments in favor of the proposal. No one wished to speak in favor of the relief; however, Attorney Merrill referenced the three letters of support from direct abutters.

Chair Geller asked for comments in opposition of the proposal. No one spoke in opposition and the Applicants indicated they were aware of no opposition.

Chair Geller called upon Victor Panak, Zoning Coordinator/Planner, to deliver the Planning Board report.

Victor Panak stated that the Planning Department staff is supportive of this proposal and made the below findings part of the record.

FINDINGS

ZONING: T-5	Requirements		Existing Conditions	Proposed Conditions	Relief Required
	Existing	New			
Use	1-family detached dwelling	2-family dwelling	1-family detached dwelling	2-family dwelling	
Lot Size	4,000sf	5,000sf	3,998sf	3,998sf	<u>Variance</u> ¹

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. *Because the lot size of this property does not conform to the requirements for a two-family dwelling, a Variance is required. Variances can be granted only in situations where, owing to circumstances relating to soil conditions, shape of the lot, or topography affecting the*

subject property but not generally affecting the zoning district, a literal enforcement of the zoning by-law would cause substantial hardship to the applicant.

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 provided that the Zoning Board of Appeals find that a Variance can be granted. Being located close to both a walkable commercial area and public transportation, this site is appropriate for an additional dwelling unit. The applicant is proposing a successful conversion of the existing building that does not significantly alter the appearance of the building.

PLANNING BOARD RECOMMENDATION

The Planning Board is supportive of this proposal. The Board feels that the proposed 2-family use is appropriate for the neighborhood and appropriate for the site. However, the Board recognizes that the necessary zoning relief may not be grantable. Nonetheless, the Board encourages the ZBA to explore what zoning relief options are available to permit this project to proceed, including the possibility of a use Variance relating to the preservation of a historic structure.

Provided that the Zoning Board of Appeals find that the criteria for a Variance are met or that some alternative form of relief can be granted due to the history of the property, the Planning Board recommends approval of the site plan by Continental Land Survey, dated 4/9/21, and architectural plans by Michael Kim Associates, dated 4/16/21, 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. 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 Geller called upon Deputy Building Commissioner Paul Campbell to deliver the comments of the Building Department. Deputy Building Commissioner Paul Campbell stated that the Building Department has no objection to this request.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application.

Associate Member Neil Wishinsky commented that he is in favor of using Section 6 to grant the intended relief. He explained there was no detriment, no exterior modifications needed and it had been used as a two family for many years prior.

Member Mark Zuroff questioned whether Section 6 could be used to allow for a the conversion from a two family from a single family dwelling. Attorney Merrill confirmed two family dwellings are already an allowed use in the T-5 District. Upon this confirmation, Member Zuroff was satisfied and voted in favor of the relief.

Chair Geller commented that he did not believe the elements were met for the issuance of a variance; however, a vote was not needed on that criteria since he did believe the elements were met for a finding under M.G.L. Chapter 40A, Section 6 as interpreted by existing case law and as “substantial detriment” is determined utilizing the criteria under the By-Law for special permit relief.

The Board then determined, by unanimous vote that the requirements for a special permit from **Section 8.02** pursuant to **Section 9.05** of the Zoning By-Law. 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.

As a result of application of the foregoing criteria, the Board made further specific findings pursuant to **M.G.L. Chapter 40A, Section 6** that the proposal would not be substantially more detrimental to the neighborhood than the existing structure.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

The Zoning Board of Appeals approves the site plan by Continental Land Survey, dated 4/9/21, and architectural plans by Michael Kim Associates, dated 4/16/21, 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. 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




Jesse Geller, Chair

APR 27 2022

Filing Date: APR 27 2022

A True Copy
ATTEST:



Clerk, Board of Appeals