



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. ZB-2022-000020
40 STRATHMORE ROAD, BROOKLINE, MA

TOWN CLERK'S OFFICE
JUN 23 '22 4:19:19

Petitioners, Elliott and Maxine Freedman, applied to the Building Commissioner for permission to convert this property from three units to four units by converting the basement into a dwelling unit. 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 28, 2022 at 7:00 PM, virtually, as the 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 April 14, 2022 and April 21, 2022 in the Brookline Tab, a newspaper circulated in Brookline. A copy of said notice is as follows:

Notice of Hearing

The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on

Thursday, April 28, 2022 at 7:00pm

Registration Link: <https://bit.ly/3NCWAQQ>

The ZBA will consider the following pursuant to M.G.L. 40A & the Brookline Zoning-Bylaw:

Petitioner: Elliott and Maxine Freedman **Address:** 40 Strathmore Road

Zoning: M-1.5 **Precinct:** 13

Description: Convert three-family dwelling to four-family dwelling.

The Board will consider variances and/or special permits from the following sections of the By-law (and any additional zoning relief the Board deems necessary):

§4.08 - AFFORDABLE HOUSING REQUIREMENTS

§5.05 - CONVERSIONS

§5.20 - FLOOR AREA RATIO

§5.50 - FRONT YARD REQUIREMENTS

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

§5.90 - MINIMUM LANDSCAPED OPEN SPACE

§6.02.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES

§6.02.2.H – OFF-STREET PARKING SPACE REGULATIONS

§6.03.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES

§6.04 - DESIGN OF ALL OFF-STREET PARKING FACILITIES

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://brooklinema.gov/DocumentCenter/Index/2352>.

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.

Assistive Listening Devices are available upon request: <https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

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Publish: 4/14/2022 & 4/21/2022

At the time and place specified in the notice, this Board held a public hearing and continued the hearing to May 12, 2022, at 7:00p.m. without testimony. Present at the continued hearing were Chair Lark Palermo and Board members Mark Zuroff and Paul Bell. Also present at the hearing were Senior Planner, Maria Morelli, and Deputy Building Commissioner, Paul Campbell.

Chair Palermo called the hearing to order at 7:00 p.m.

The case was presented by the architect for the project, Bennie Ber of architecture firm Neh-Koo-Dah, 2001 Beacon St, Boston, MA 02135. Also present at the hearing was Petitioner Maxine Freedman. Mr. Ber waived a reading of the public notice.

Mr. Ber stated he was also an abutter. He resides at 23 Strathmore Road, Brookline, MA 02445.

Mr. Ber presented a summary of the proposal to the Board, stating the Petitioners are seeking to covert a three-family residence to a four-family residence by creating a dwelling unit in the basement. He explained that the property abuts the MBTA Green Line maintenance yard to the left and part of the property has an easement for access to the alley located on the side. The denial letter from Deputy Building Commissioner, Paul Campbell cited §4.08, §5.05, §5.20, §5.50, §5.60, §5.70, §5.90, §6.02.1.B, §6.02.2.H, §6.03.1.B, and §6.04 as needing relief.

Mr. Ber presented the site plan. He described the basement as relatively shallow and noted that the windows might have to be lowered for the project to comply with building code requirements, depending on the exact elevation of the basement unit.

Mr. Ber explained that the Petitioners have resided in the property for twenty-five years and currently occupy the first floor. They have raised their family in the property and this proposed project is an attempt to create space for their children and their families to stay when they visit. The design of the proposed basement floor plan will allow for the basement to be either independent or connected to the first-floor unit.

Mr. Ber showed a portion of the site plan demonstrating how the building sits on the lot, including where the easement for the alley is located. Mr. Ber indicated where the owners currently park on the property, noting there is what is considered one conforming parking space, but the owners are able to park two cars there if necessary. There is no room to provide additional parking.

Mr. Ber informed the Board of nearby locations of public transportation, including the MBTA Green line at Reservoir Station, the MBTA Green line at Englewood Station, and two stops for the MBTA Green line B along Commonwealth Avenue. In addition, there are several bus routes located within a five-minute walk from the property. Mr. Ber concluded that the property is well served by public transportation.

Mr. Ber concluded his presentation by informing the Board that the building's size and location show a lack of sufficient area on the lot for the building to comply with the requirements listed in the Deputy Building Commissioner's letter denial letter and he noted the proposed project does not involve constructing an addition or altering the building's footprint.

Chair Palermo asked members of the Board if they have any comments or questions. All present Board members stated they had no comments or questions.

Chair Palermo asked if anyone present wished to speak in support or opposition to the proposal. No one was present to speak in support or opposition.

Chair Palermo then called upon Maria Morelli, Senior Planner for the Town of Brookline, to deliver the findings of the Planning Board. Ms. Morelli reported the following:

FINDINGS

§4.08 - AFFORDABLE HOUSING REQUIREMENTS

§5.05 - CONVERSIONS

§5.20 - FLOOR AREA RATIO

§5.50 - FRONT YARD REQUIREMENTS

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

§5.90 - MINIMUM LANDSCAPED OPEN SPACE

§6.02.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES

§6.02.2.H – OFF-STREET PARKING SPACE REGULATIONS

§6.03.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES

§6.04 - DESIGN OF ALL OFF-STREET PARKING FACILITIES

	<u>Required/ Allowed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Height Greater than 40 feet	45-50 feet	40.4 feet	40.4 feet	Complies
Floor Area Ratio	1.5	1.54 5915/3848	1.93 7421/3848	Complies
Front Yard Setbk	19.48 feet	9.6 feet	9.6 feet	SP*
Side Yard Setbk	16.27	5.3 feet	5.3 feet	SP *
Rear Yd. Setbk	30 feet	7.5 feet	7.5 feet	SP *
Landscaped Open Space	10% of GFA	0	0	SP*
Usable Open Space	15% of GFA	0	0	SP*
Parking Spaces Transit Parking Overlay District	4	0	0	SP**

*Under Section 5.05 – the Board of Appeals may waive by special permit any dimensional requirement, except minimum lot size, provided no existing nonconformity is increased.

**Under 6.01 2.a - In SC, T, F, M, L, or G Districts, when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in §6.02 and §6.05. However, the Board of Appeals by special permit under Article IX may reduce or eliminate the minimum number of parking spaces required under §6.02 and §6.05.

PLANNING STAFF COMMENTS

The Planning Staff does not object to the creation of a new basement dwelling unit in this multi-family building. Basement conversions have been allowed in many of the row houses on both sides of Strathmore Road by the Board of Appeals. The lack of parking should not be a problem since rapid transit is close by.

PLANNING BOARD COMMENTS

The Planning Board supports creating a basement apartment in this residential building. There are many basement apartments that have already been permitted on Strathmore Road. By adding a fourth unit, the applicant is required to make a cash payment toward the Brookline Housing Trust and thus will contribute to providing more affordable housing in the Town.

Therefore, the Planning Board voted to recommend approval of the plans for 40 Strathmore Road, Brookline Massachusetts” prepared by Benyamin Ber of Neh-Koo-Dah and dated 2/18/2022, 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 a final landscaping plan to the Assistant Director for Regulatory Planning for review and approval.**
- 3. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding “Cash Payments in Lieu of Affordable Units”, and with the choice of the applicant to make a cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation before the Town’s issuance of a Certificate of Occupancy for the project:**

A sum equal to .5% of the Market Value of the property (as determined by the Assessor’s Department of the Town per the Town’s guidelines for “Cash Payment in lieu of Affordable Units”) provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client’s Fund Account, payable to the Brookline Housing Trust.

The check should be mailed by first class mail or hand delivery to:

**Director of Planning & Community Development
333 Washington Street – 2nd floor
Brookline, MA 02445**

Should the property be subsequently converted and sold as condominiums, the developer or subsequent owner shall make an additional trust payment as a condition of a transfer of each condominium, calculated per the Town’s guidelines for “Cash Payment in lieu of Affordable units”

Prior to the issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

- 4. 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 Palermo then called upon Paul Campbell, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department had no objections to the relief sought under the zoning bylaws for the project.

In deliberation, the Board made the following specific findings under Section 9.05 based on the evidence submitted at the hearing and the Board’s deliberation:

- 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 then voted to unanimously approve the requested 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. Prior to the issuance of a building permit, the applicant shall electronically submit a final landscaping plan to the Assistant Director for Regulatory Planning for review and approval.
3. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding “Cash Payments in Lieu of Affordable Units”, and with the choice of the applicant to make a cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation before the Town’s issuance of a Certificate of Occupancy for the project:

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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

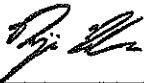

Lark Jurev Palermo, Chair

A True Copy

ATTEST:

JUN 23 2022

Filing Date _____



Ben Kaufman
Clerk, Board of Appeals