



BOARD OF APPEALS
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Town of Brookline

Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000075
769 WASHINGTON STREET

Petitioner 769 Washington Condo Trust applied to the Building Commissioner for permission to demolish the existing garage, to alter an interior portion of first floor and entire finished basement, and make exterior site improvements to both the side yard and front yard at 769 Washington Street. The application was denied and an appeal was taken to this Board.

The Board of Appeals 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 5, 2023, 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 January 5, 2023, and January 12, 2023, in the Boston Globe, a newspaper of general circulation in Brookline. A copy of said notice is as follows:

TOWN OF BROOKLINE - Zoning Board of Appeals
NOTICE OF HEARING

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

Date/Time: Thursday, January 19, 2023

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3VWzVSF>

Petitioner: 769 Washington Condo TR

Address: 769 Washington Street

Subject: Alter interior portion of first floor, entire finished basement and exterior site improvements to both the side yard and front yard

Nature of Action/Relief:

§5.09.2.A - DESIGN REVIEW; §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS; §5.51 - PROJECTIONS INTO FRONT YARDS;

§6.04.5.C.1 - DESIGN OF ALL OFF-STREET PARKING FACILITIES; §8.02 - ALTERATION OR EXTENSION

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/3526>

Interested persons may provide comments at the public hearing or by submitting written comments by email to

manthony@brooklinema.gov.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

Publish: 1/5/2023 & 1/12/2023

On March 2, 2023, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing was Chair Jesse Geller and Board Members Paul Bell and Saul Feldman. The case was presented by the project's architect, Michael Wang, Form + Place, Inc. Also in attendance were David Wazanski and Ted Cassley from Specialized Housing, Inc. (2000 Commonwealth Ave. Suite 200, Auburndale, MA 02466).

Zoning Board of Appeals Chair Geller called the hearing to order at 7:00 pm. Chair Geller reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing. Mr. Wang waived a reading of the published notice.

Mr. Wang presented the case for the Petitioners. Mr. Wang began by presenting a digital presentation summarizing the project. He explained that the property offers supportive housing for

developmentally disabled adults, stating that there are twelve residents in the house, and they have lived there since 1983. He continued that the operator, Specialized Housing, provides and manages the daily clinical services and live in and day staff to support the residents.

Mr. Wang stated that the site is unique in that it has three front yards and one side yard. He noted that the lot currently has a parking garage and parking access located at a four-way intersection, which is part of the reasoning behind relocating the parking.

Mr. Wang explained the major goals of the project: First, interior renovations will be made which will improve accessibility for the residents by moving some of the public functions to the ground floor from the basement level; Second, to accommodate some additional staff needs to better serve aging residents, staff apartments will be added to the basement floor; and third, exterior changes will be made. He continued by explaining that these exterior changes include rebuilding an exterior stair at the back of a house, demolishing the one-car garage, relocating the parking spaces with the removal of the garage to provide for safer vehicle and pedestrian movements, and lastly, a general improvement of the outdoor space and landscaping.

Mr. Wang stated that the Petitioner has received a certificate of non-significance for the demolition of the garage and the Town's Engineering Department reviewed the new parking location and access points and found no issues. He added that the Petitioner received a recommendation for approval from the Planning Board, who were supportive of the proposal. Mr. Wang, in reliance on the digital presentation, then compared images of the existing conditions to the proposal.

In response to a question from Chair Geller concerning the ownership structure of the property, Mr. Wang responded that the property is a condominium with family members of residents serving as condominium trustees.

Chair Geller asked if the individual units have kitchens and, in response, Mr. Wang explained that the individual units consist just of the bedrooms. He added that there is a shared common kitchen, dining area, and living room. He continued that the property is considered by the fair housing act as a single-family unit.

Mr. Cassely confirmed for Chair Geller that the alterations were just to condominium common area and that required consent of the condominium Trustees had been obtained.

Chair Geller asked whether there is a sidewalk on the Bartlett Terrace extension where the parking is to be located. Mr. Wang responded that there is not currently a sidewalk beyond the corner of Bartlett Street (from Washington).

Board Member Bell asked the applicant team to explain what is there now and what they are replacing it with. Mr. Wang explained that the existing fire escape will be replaced in the same location with a covered stair.

Board Member Feldman suggested that the condominium documents be edited to more accurately describe what is being proposed. Chair Geller asked Mr. Campbell if the Building Department considers the subject property a single-family property or a multi-family property. Mr. Campbell responded it is congregate and, under current code, is considered a single-family dwelling.

Mr. Wang stated that the Petitioner is seeking relief for **§5.09.2.A: Design Review**, **§5.43: Exceptions to Yard and Setback Regulations**, **§5.51: Projections Into Front Yards**, **§6.04.5.C.1: Design of All Off-Street Parking Facilities**, and **§8.02: Alteration or Extension**. Mr. Wang stated the Petitioner went to the Planning Board for Design review and received a positive recommendation and the rest of the relief could be given through **M.G.L. Chapter 40A Section 6**, since the remaining relief involves pre-existing non-conformities for a single-family dwelling.

Board Member Bell asked generally about the possibility of vehicles queuing on this section of Bartlett Street due to Driscoll School. Mr. Wang responded that he does not have knowledge of the plans for the school, but the Town's Engineering Department reviewed the plans with the plans for the new Driscoll School and did not take issue. Mr. Campbell added that Bartlett Street currently provides access to parking in front of the existing Driscoll School.

Mr. Cassley pointed out that the proposal is unlikely to impact pedestrian safety, in as much as there is no sidewalk near the area in question.

Chair Geller asked if anyone was present to speak in support of or in opposition to the proposal. Ms. Anthony responded that no one wished to speak.

Chair Geller then called upon Planner and Zoning Coordinator, Madison Anthony, to present the Planning Board Report.

FINDINGS

§5.09.2.A - DESIGN REVIEW³

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS²

§5.51 - PROJECTIONS INTO FRONT YARDS

§6.04.5.C.1 - DESIGN OF ALL OFF-STREET PARKING FACILITIES⁴

§8.02 - ALTERATION OR EXTENSION

ZBL §8.02 - Alteration or Extension - Pre-Existing Non-Conformities: Lot Width Minimum, Front Yard Setback and Height Maximum

ZONING: T - 5	Required or Allowed	Existing Conditions	Proposed Conditions	Relief Required
Minimum Lot Width	40'	38'	38'	<u>Preexisting Non-Conformity</u> ¹
Height Maximum	35'	50.13'	50.13'	<u>Preexisting Non-Conformity</u> ¹
Front Yard Setback (parking spaces)	15'	7.7'	7.7'	<u>Special Permit</u> ²

¹ Under MGL Chapter 40A, Section 6, a pre-existing nonconforming structure can extend or intensify the nonconformity by special permit provided the Board of Appeals finds that the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

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.

³ For structure or outdoor use on a lot any part of which is located in the G-1.75(CC) or L-0.5 (CL) Districts or which fronts on or is within 100 feet of: Beacon Street, Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street, all new structures and outdoor uses, exterior alterations, exterior additions, and exterior modifications or changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and standards hereinafter specified.

⁴ In S, SC, T, F, and M-0.5 Districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back in accordance with the following requirements, and such setback area shall be landscaped and continuously maintained substantially in accordance with the original approved plan: 1) from the front lot line, except where an access driveway crosses the street lot line, either the distance specified for building setback under Table 5.01, or the average of the setbacks of the buildings on the adjacent lots on either side, as calculated in §5.54, whichever is greater

PLANNING DEPARTMENT STAFF COMMENTS

Most of the interior changes proposed are to provide accommodate more staff in the building as the current residents age and need more assistance with tasks such as cooking and medication management. The proposed exterior changes are being proposed to provide more accessible space for the residents and provide additional parking for the staff. The exterior appear not to increase the pre-existing non-conformities. Furthermore, this is a unique lot with three front yards and one side yard, which could be contributing to some of the difficulties with conformity.

PLANNING BOARD COMMENTS

The Planning Board is supportive of the proposal and considers it a fine improvement to the property that would benefit residents. The Board understands the lot has an unusual condition with three front yards and believes the requested relief is not significantly more detrimental to the neighborhood.

The Planning Board recommends approval of the architectural plans by Form + Place, dated August 31, 2022, and the site plan plans prepared Spruhan Engineering, P.C., PLS, dated August 31, 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 landscape plan that shows proposed counterbalancing amenities subject to approval**

by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.

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.

Ms. Anthony noted that the proposed counter-balancing amenity was landscaping, as indicated by condition #2.

Chair Geller then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department had no objection to the requested relief and added that should the Board grant the requested relief, the Building Department would work with the Petitioner to ensure conformance with the Board's decision and all applicable building codes.

Board Member Feldman stated he was in favor of the proposal.

Board Member Bell stated he was in favor as well. He stated that the property is considered a single-family dwelling by the Town and therefore is appropriate for the site. He added that there's no extension of the preexisting nonconformities and most of the changes are in the rear, not on Washington Street, where the highest visibility is and that the changes make the property more attractive.

Chair Geller stated he assumed the condominium ownership structure has been vetted and it is appropriately zoned as a single-family home. He added, that they are not increasing any pre-existing non-conformities and it meets the conditions set forth by § 9.05 of the Zoning By-Law and a counter-balancing amenity is being provided. He concluded that, accordingly, relief should be granted.

Board Member Bell added that, under the criteria of § 9.05, he was zeroing in on the potential harm to vehicles and pedestrians when he asked about entry to the school. He, however, believes that the changes will substantially decrease adverse impacts on safety.

The Board then determined, by unanimous vote, to grant the requested Special Permits and that the Petitioner has satisfied the requirements necessary for relief under §5.09.2.A, §5.43, §5.51, §6.04.5.C.1, and §8.02 of the Zoning By-Law. In addition, the Board made the following specific findings under said Section 9.05 based on the evidence submitted at the hearing and the Board's deliberation:

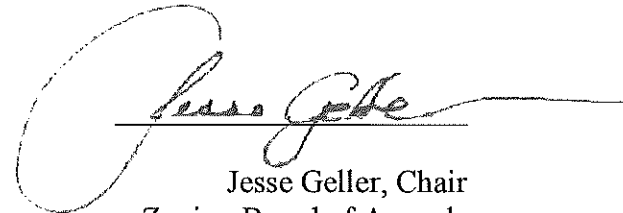
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 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 landscape plan that shows proposed counterbalancing amenities subject to review and approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
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



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 4/4/23

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals