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# Town of Brookline Massachusetts

BOARD OF APPEALS  
Enid Starr, Co-Chair  
Co-Chair Jesse Geller  
Christopher Hussey

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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2013-0008

Petitioner, Yachiel Naor, applied to the Building Commissioner for permission to legalize habitable space in the basement at 171-173 Thorndike Street. The application was denied and an appeal was taken to this Board.

On January 31, 2013 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed March 7, 2013 at 7:00 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 February 7 and 14, 2013 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Naor Yechiel  
Owner: Naor Yechiel

Location of Premises: 171-173 THORNDIKE STREET  
Date of Hearing: March 07, 2013  
Time of Hearing: 7:00 p.m.  
Place of Hearing: Selectmen's Hearing Room, 6<sup>th</sup> Floor

A public hearing will be held for a variance and/or special permit from:

1. 5.09.2.j; Design Review
2. 5.22.3.b.1.b; Exceptions to Maximum Floor Area Ration(FAR) for Residential Units
3. 5.43; Exceptions to Yard and Setback Regulations
4. 5.54.2; Exceptions to Existing Alignment
5. 8.02.2; Alterations and Extension

of the Zoning By-Law to **Renovate the interior and add bedrooms in basement**  
at 171-173 THORNDIKE ST

Said premise located in a T-5 (Two-Family and Attached Single Family) Residential district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Enid Starr  
Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Mark Zuroff, and Board Members Jonathan Book, and Chris Hussey. Attorney Allen Goodman, whose business address is 60 Walnut Street, Wellesley, presented the case for the petitioner.

Chairman Zuroff said a memorandum of law had been submitted just prior to the start of the hearing. Member Book said the Board is under no obligation to accept the submitted document and the Board would not have time to review it. Chairman Zuroff informed Attorney Goodman that he may read from the memorandum but the Board would not review it or enter it as an exhibit. Member Hussey explained to Mr. Goodman that in order to accept the memorandum, the document should have been submitted forty eight hours in advance.

Attorney Goodman described the property as being is a three story two-family dwelling that was built in 1885. The two units have separate access, with one unit occupying the first floor, and the second unit occupying the second and third floor. There are currently four parking spaces on the property. The dwellings along Thorndike Street are primarily two and three-family dwellings that were developed from the late 19<sup>th</sup> century to the early 20<sup>th</sup> century.

Mr. Goodman said his client, Yechiel Naor, is proposing to legalize habitable space in the basement at 173 Thorndike Street. He states that the space was converted in 1985 to habitable space by a previous owner. The space includes two bedrooms and a bathroom. Part of the basement space will still be used for mechanicals and common storage. The applicant states that the basement is not a separate unit but is joined to the unit on the first floor. Two window wells will be added for emergency egress from the bedrooms.

Attorney Goodman addressed the parking variance by saying the topography of the lot is affected because additional paving cannot be added due to the fact it is a condominium and a large tree at the end of the existing driveway prohibits the extension for an additional parking space. He said the house is

unique because most of the house lots in the zoning district have 2 family houses on them with significantly different configurations including large driveways and larger lots. He said the inability to utilize the structure the way it has been used for 28 years would be a substantial hardship. Attorney Goodman went on to say that the proposal would not derogate from the intent of the By-Law and it would not be a substantial detriment to the public good.

Board Member Book questioned whether or not we needed to look at the entire structure for parking, or just the unit that is being expanded. Chairman Zuroff said he is looking at the entire structure. Michael Yanovitch, Chief Building Inspector, said when a proposal comes in for expansion of units or intensity of use, the entire structure is reviewed for parking requirements.

The Chairman asked if anyone in attendance wished to speak in favor of the proposal. No one rose to speak. He then asked if anyone in attendance wished to speak in opposition to the proposal. No one rose to speak.

The Chairman called on Timothy Richard, Planner, to deliver the comments of the Planning Board.

## **FINDINGS**

### **Section 5.43 – Exceptions to Yard and Setback Regulations**

### **Section 5.44 – Accessory Underground Structures**

### **Section 5.50 – Front Yard Requirements**

### **Section 5.60 – Side Yard Requirements**

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<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard Setback</b> (window wells)	15 feet	10.3 feet	8.5 feet	Special Permit*/ Variance
<b>Side Yard Setback</b>	10 feet	4.5 feet	2 feet	Special Permit*/ Variance

5.43, the Board of Appeals may waive yard and setback requirements by Special Permit if a counterbalancing amenity is provided.

**Section 6.02 Paragraph 1 – Table of Off-Street Parking Space Requirements**

There are currently four parking spaces on the property. Because 173 Thorndike has four bedrooms (when the two basement bedrooms are included in the total), and 171 Thorndike has five bedrooms, the parking requirement is for 5 parking spaces, or 2.3 per unit.

<b>Design of Parking Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Total Parking Spaces</b>	5	4	4	Variance

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a pre-existing non-conforming structure or use.

**PLANNING BOARD COMMENTS**

Mr. Richard said the Planning Board does not object to this proposal to legalize the existing bedrooms in the basement. The dwelling will be brought up to current building code with the addition of

two new window wells to provide emergency egress. The front yard setback relief is triggered by the window wells, but they will not be highly visible and therefore should not negatively impact the neighborhood. The Planning Board recommends, however, that the applicant install additional landscaping to serve as a counterbalancing amenity, which should include a rebuilt fence along the affected side yard. The Board also recommends that the applicant screen the unapproved parking space in front of "Parking D" on the site plan.

The Board does not object to the waiving of one parking space, if the applicant can demonstrate that the requirements for a variance have been met. The applicant maintains that 173 Thorndike has had two basement bedrooms for over 27 years and that parking hasn't been an issue. However, staff noted on a recent site visit that it appeared an unpaved area was being used for a fifth parking space.

**Therefore, if the Board of Appeals finds that the statutory requirements for a variance are met, the Planning Board recommends approval of the site and floor plans by Kevin Wong & Associates Inc., dated November 2012, subject to the following conditions.**

1. Prior to the issuance of a building permit, the applicant shall submit a final site and parking layout plan and floor plans, 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 landscape plan indicating all counterbalancing amenities, including screening for the unapproved parking space, subject to the review and approval of the Assistant Director of Regulatory Planning.

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; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Yanovitch, Chief Building Inspector, delivered the comments for the Building Department. Mr. Yanovitch said the Building Department applauds the petitioner for coming forward to legalize the basement space. He said the requested special permit relief is minimal and if the Board finds that the statutory requirements are met to satisfy the grant of a variance, the Building Department will work with the petitioner to ensure compliance with the State Building Code as well as any conditions that may come with the grant of relief.

The Board deliberated on the merits of the variance request and special permit relief. The Board then determined, by unanimous vote that the statutory requirement for a variance have been met and a variance is granted from section 6.02. The Board also voted unanimously the requirements for a special permit for 5.43, 5.50, 5.44 and 8.02.2, were met. 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.

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 submit final 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 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; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

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Unanimous Decision of  
 The Board of Appeals

Filing Date: April 17, 2013

  
 Mark Zuroff, Chairman

A True Copy  
 ATTEST:



Patrick J. Ward  
 Clerk, Board of Appeals