



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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0009

Petitioner, Matthew Haney, applied to the Building Commissioner for permission to legalize the structure as a three family at 172 Fuller Street. The application was denied and an appeal was taken to this Board.

On January 24, 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 7:15 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: **HANEY TRS MATTHEW C/O FHS REALTY TRUST**
Owner: **HANEY TRS MATTHEW C/O FHS REALTY TRUST**

Location of Premises: **172 FULLER ST**
Date of Hearing: **March 07, 2013**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

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

1. **4.07 Table of Use Regulations, Use #4A**
2. **5.10; Minimum Lot Size**
3. **5.22.3.b.2; Exception to Maximum Floor Area Ratio (FAR) Regulations for Residential Units**
4. **5.43; Exceptions to Yard and Setback Regulations**
5. **5.55; Front Yard Requirements**
6. **5.60; Side yard Requirements**
7. **5.70; Rear Yard Requirements**
8. **5.90; Minimum Landscaped Open Space**
9. **6.01, Paragraph 1; Table of Off-Street Parking Requirements**
10. **6.04.5.c1; Design of All Off-Street Parking Facilities**
11. **6.04.5.c2; Design of All Off-Street Parking Facilities**
12. **8.02.2; Alteration or Extension**

of the Zoning By-Law to **Legalize structure as a three family dwelling and extend living space into the basement.**

at **172 FULLER 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

Ken Hoffman, whose business address is 10 St. James Avenue, Boston, presented the case for the petitioner.

Attorney Hoffman described the property as a two-family dwelling that is attached to 165 Coolidge Street at the rear. The structure was built in 1910. The attached rear dwelling facing Coolidge Street, which is also in a two family district, was converted to a three-family dwelling in 1975. The neighborhood is comprised of multi-family units. The abutting properties directly to the south are zoned M-2.0, which allows for three or more units.

Mr. Hoffman said his client, Matthew Haney, is proposing to legalize the existing two-family, as a three-family dwelling, including the habitable space in the basement. With two bedrooms in the basement, the total number of bedrooms will be seven, with 3 bedrooms for the basement and 1st floor unit, two bedrooms for the second floor unit, and two for the third floor unit. The proposed site plan shows two tandem cars in a garage on one side of the house and four cars in a drive to the other side of the house. The applicant maintains that the habitable space in the basement and the parking of four cars in the side yard were a pre-existing condition.

Attorney Hoffman stated that the applicant wishes to restore the building to its historic characteristics as a three-family. Attorney Hoffman stated the variance statute talks not only about topography but also of structure. Citing a case in the City of Boston, Attorney Hoffman suggested that this property qualifies for an equitable variance, irrespective of the statutory requirements, because the building is unique. Attorney Hoffman stated that this is a through building, built as one structure, and an historic property

that has been recognized by the Preservation Commission. He added that the applicant wishes to take this building, which has been condemned, restore the outside and improve the landscaping. He noted that the Zoning By-Law allows historic significance as a use variance. Attorney Hoffman submitted a Building Permit application to the Board to show that the records of the Town are in conflict. He added that everyone, regardless of the records, accepts the idea that it has been occupied as a three-family. Zoning Board of Appeals Chairman Mark Zuroff accepted the application as Exhibit 3. Attorney Hoffman presented three letters of support from abutters.

Matthew Haney, petitioner, spoke to clarify the occupancy issue. He said he had found evidence, that during the condemnation of the property, the Board of Health cited the property as a three family. He said he is spending approximately ninety thousand dollars to rehabilitate the structure.

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. James Coffee of 165 Coolidge St. Brookline stated he was the previous owner of the subject property and currently lives in the attached structure to the rear. Mr. Coffee requested some clarification from the Board as to the requested relief.

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

FINDINGS

Section 4.07 – Table of Use Regulations, Use #4A

A three-family dwelling is not an allowed use in the T-5 zoning district. The structure was previously being used as a three-family dwelling. The applicant states that the attached dwelling to the rear, 165 Coolidge Street, was granted relief in 1975 to convert from a two to a three-family use. A **variance** is required.

Section 9.09- Conditions for Approval of Use Variance

Paragraph 1b, under Sec. 9.09 states that: “Existence prior to January 1, 1977, of uses of the same general classification as the use variance applied for, on lots adjoining the lot in question on both sides, or, if the lot in questions is a corner lot, on both the side and the rear”. **In this case, the lot to the rear according to the applicant was granted a variance for three family use in the two family zoning district. However, requirement is for two adjacent lots to have been granted a use variance.**

Paragraph 1d, under Sec. 9.09 states that: “Existence on the lot in question of a structure(s) of appearance compatible with its vicinity which is either of historical or architectural significance which shall be preserved or restored in a manner sufficient to justify the relief granted herein, and/or contains gross floor area excessive for the use permitted in the district wherein the structure is located, and which can reasonably be maintained as a visual and taxable asset only if a nonconformity of use is permitted. A special permit under §5.09 shall be required in conjunction with every variance request pursuant to this subparagraph. **In this case, if it is demonstrated that the building is architecturally or historically significant, it could be argued that the building is being saved from demolition-by-neglect through its rehabilitation and use as a three family.**

Section 5.09 – Design Review

If a use variance is granted under Section 9.09.1.d, then a special permit under design review would be required.

Section 5.10 – Minimum Lot Size

The required lot size for either a two family dwelling or any other structure or principle use in a T-5 zoning district is 5,000 square feet. The lot is only 2,100.3 square and would need a variance from minimum lot size.

Section 5.22.3.b.2 – Exception to Maximum Floor Area Ratio (FAR) Regulations for Residential Units

Floor Area	Required	Existing	Proposed	Finding
Floor Area Ratio	1.0	.81	1.11	Special Permit*/ Variance
(% of allowed)	100%	81%	111%	
Floor Area (s.f.)	2,899.7	2,350	3,210	

**In a T-5 Zoning District, a Special Permit may be granted under Section 5.22.3.b.2 for an increase of 20% of the permitted floor area. The proposed increase is 11% over the required floor area, and qualifies for a special permit since it is under 120%.*

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

	Required	Existing	Proposed	Finding
Front Yard Setback	25'	7.4'	7.4'	Special Permit/ Pre-existing non-conforming
Side Yard Setback (south)	20'	0'	0'	Special Permit/ Pre-existing non-conforming
Side Yard Setback (north)	20'	14'	14'	Special Permit/ Pre-existing non-conforming
Rear Yard Setback	40'	0'	0'	Special Permit/ Pre-existing non-conforming
Landscaped Open Space	321 s.f.	0 s.f.	0 s.f.	Special Permit/Variance** Pre-existing non-conforming
Usable Open Space	963 s.f.	0 s.f.	0 s.f.	Special Permit/Variance** Pre-existing non-conforming

**Under Section 5.43, the Board of Appeals by special permit may allow the substitution of other dimensions for yard and setback requirements if counterbalancing amenities are provided.*

***If the basement space is not pre-existing as habitable space, than an increase in the landscaped and usable open space would be required.*

Section 6.01 – Paragraph 1; Table of Off-Street Parking Requirements

Section 6.04.5.c1 – Design of All Off-Street Parking Facilities

Section 6.04.5.c2 – Design of All Off-Street Parking Facilities

Design of Parking Requirements	Required	Existing	Proposed	Relief
Total Parking Spaces	6	4-6	6	Complies/variance**
Parking within Front Yard	25'	1'	0'	Special Permit/ Pre-existing non-conforming
Parking within Side Yard	5'	1'	1'	Special Permit/ Pre-existing non-conforming

**Under Section 5.43, the Board of Appeals by special permit may allow the substitution of other dimensions for yard and setback requirements if counterbalancing amenities are provided.*

*** If the two parking spaces next to the side lot line are not permitted, a variance for the required parking would be needed.*

Section 8.02.2 – Alteration or Extension: A special permit is required to alter and/or extend this non-conforming structure.

Mr. Richard said the Planning Board is supportive of the proposed legalization from a two to a three-family dwelling. This lot is adjacent to the M-2.0 (multi-family) zoning, so that a multi-family use is consistent with the properties south of it. A support letter has been submitted by an abutter supporting the three-family use, because it allows renovation of this condemned building, which has been blight on the neighborhood for several years. Although the building is cited for yard setback relief, the footprint and massing of the building will remain the same. If the applicant plans to expand any existing window wells or create a deck above the garage, it is paramount that the Board of Appeals receives revised plans indicating such, so that the proper relief may be granted. The Planning Board recommends that the applicant install landscaping as a counterbalancing amenity to the relief granted

Therefore, should the Board of Appeals find that the proposal meets the statutory requirement for a variance and a use variance, the Planning Board recommends approval of the proposal and plans by Edward Pozio, Architect, dated 12/12/2012, and the site plan by Lawrence Hughes, dated 11/30/12, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan showing a parking lay-out plan, the location and dimension of window wells, a landscaping plan, floor plans, and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning, with the latter also subject to review and approval of the Preservation Commission staff.

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.

Michael Yanovitch, Chief Building Inspector, delivered the comments for the Building Department. Mr. Yanovitch said the Building Department in its investigation of the use determined that the structure was a legal two family. He went on to say the parking as a pre-existing non-conforming use could not be verified. Mr. Yanovitch said the Building Department does not object to the request for relief due to

the fact the building will be a much safer structure if the relief is granted. The conversion from a two family to a three family necessitates the need for fire sprinklers.

In deliberation Member Hussey stated he was in favor of the request noting the uniqueness of the site and the restoration of the historic structure. Member Book said he feels the relief could can be granted under 9.09.d . Chairman Zuroff said he concurs and the variance could be granted because it met the statutory requirements as well as the requirement of the Town of Brookline Zoning By-Law section 9.09.d. He also said the special permit relief could be granted under 5.43 and 8.02. The determination was made the parking of 4 vehicles in the right side driveway is pre-existing non-conforming. There are also 2 existing parking spaces in the garage on the left.

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 use variance is granted from section 4.07 use #4A .The Board also voted unanimously the requirements for a special permit for 5.43, 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 a final site plan showing a parking lay-out plan, the location and dimension of window wells, a landscaping plan, floor plans, and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning, with the latter also subject to review and approval of the Preservation Commission staff.

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RECEIVED
 OFFICE OF BROOKLYN
 TOWN CLERK
 APR 26 A 8:30

Unanimous Decision of
 The Board of Appeals


 Mark G. Zurhoff, Chairman

Filing Date: April 26, 2013

A True Copy
 ATTEST:



 Patrick J. Ward
 Clerk, Board of Appeals