



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0044
Owner: Alan Berfield, Trustee

Petitioner, Alan Berfield, Trustee, applied to the Building Commissioner for permission to construct 4 attached single-family dwellings. The use as four single family attached dwellings was approved by the Board of Appeals on April 18, 2013, case # 2013-0022. The petitioner then applied to the Building Commissioner for placement of the structure within the required setbacks. The application was denied and an appeal was taken to this Board.

On May 16, 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 June 27, 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 its 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 June 6 and June 13, 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: Alan Berfield, Trustee
Owner: Alan Berfield, Trustee
Location of Premises: 82 Green Street
Date of Hearing: **June 27, 2013**
Time of Hearing: **07:15 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. **5.43; Exceptions for Yard and Setback Requirements**
2. **5.50; Front Yard Requirements**
3. **5.51; Projections into Front Yards (Green St.)**
4. **5.60; Side Yard Requirements**
5. **5.70; Rear Yard Requirements**
6. **6.04.4.b; Design of All Off-Street Parking Facilities**
7. **6.04.5.c.2; Design of All Off-Street Parking Facilities**
8. **6.04.5.c.3; Design of All Off-Street Parking Facilities**

Of the Zoning By-Law to construct four single family attached homes
At 82 Green Street
Said Premise located in a F-1.0 (Three 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 Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA ~02445. ~Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail atrsneirson@brooklinema.gov

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members, Christopher Hussey and Johanna Schneider. Attorney Jeffrey Allen of Lawson and Weitzen, LLP, 88 Black Falcon Avenue, Boston presented the case for the petitioner.

Mr. Allen said his client, Alan Berfield, was granted a special permit to construct four attached single family homes. He said the petitioner agreed to return to the Planning Board for design review and re-apply to the Board of Appeals for any relief required as a result of the design review process and neighborhood comments.

Mr. Allen said his client is proposing to push the structure back four feet away from Dwight Street to accommodate the Planning Board's request and neighborhood comments. The result of this modification is required relief for the driveway width and setback relief on Green Street. He said, as a result of the design review, the entrance was reduced two feet to look more residential. Stucco cladding material has been added. He went on to say the stone retaining walls have been reduced so as not to have too much of a barrier. Mr. Allen said the relief is minimal and that the petitioner comes to the Board with full Planning Board support.

The Chairman asked if anyone in attendance wanted to speak in favor of the petition. No one spoke in favor.

The Chairman asked if anyone in attendance wanted to speak in opposition to the proposal. Jennifer Barnett of 74-76 Green Street said she is opposed to the size of the project and moving the improvements closer to the abutting condominium building on the Green Street side. Ms. Barnett also objected to the location of a single driveway serving the project. She suggested that efforts to mitigate the impacts of the project should be more evenly distributed between the Green Street and Dwight Street sides..

Susan Roberts of 69 Green Street said that the project will take away from the residential feel of the neighborhood. She also objects to the location of access from Green Street and suggested that the front of the building should be pushed closer to Green Street.

David Greenberg of 74 Green Street expressed concerns that the side yard buffer has been reduced and expressed concerns about traffic. Dwight Shultiest of 74 Green Street objected to the location and size of the driveway. He noted that it runs along the driveway of his own building and will create a wide paved area.

Jeffrey Allen, in rebuttal, noted that the project driveway is seven and one half feet below grade of the neighboring driveway and that the neighboring driveway itself is twenty feet wide. He also noted that the existing trees are unstable and that the petitioner proposes to install instead a five foot hedge as a buffer. He further stated that access to Green Street is safer since Dwight Street has two-way traffic and is narrower than Green Street. Mr. Allen said that the amended design was the best for the neighborhood. He offered that the petitioner would retain the buffer trees if they are healthy and the neighbors want them but that the new hedge would be a better buffer.

The Chairman called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the comments of the Planning Board.

FINDINGS

Section 4.07 – Table of Use Regulations, Use #6: Multiple or attached dwelling of four or more units. *Special permit required and granted by the Board of Appeals, 4/18/2013, BOA case #2013-0022.*

Sections 5.09.2.b, d & m – Design Review: Any substantially complete demolition of a principal structure in the Coolidge Corner Design Overlay District, with the exception of those located in Local Historic Districts, requires a special permit subject to the design review standards listed under *Section 5.09.4(a-p)*. Additionally, this proposal falls under *Sections 5.09.2.b & d* regarding the construction of or modification to attached dwellings in groups of three or more and multiple dwellings with four or more units. The applicant has submitted a statement reviewing the Community and Environmental Impact and Design Standards under this section, and the most relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape – This proposal would remove a significant portion of landscaped front yard along Green and Dwight Streets, and install parking at the basement level of the building, likely requiring some excavation. The applicant is proposing to relocate an existing flowering tree and plant another tree on the Green Street frontage, and plant a new street tree along Dwight Street. The landscape plan also indicates a new hedge along the driveway and shrubs in front of the two bays.

b. Relation of Buildings to Environment – The site has an existing slope of approximately two feet, although the installation of basement-level parking will require some excavation. The new structure will be taller than the existing building, likely increasing the shadow on Dwight Street, though it is not clear if the new shadows will impact neighboring residences.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed building is similar in scale to its immediate neighbors, which are primarily multi-family buildings. Neighboring structures are either masonry multi-families or wood-frame single- and two-families. The proposed design appears to match the scale of the multi-families while trying to incorporate bay and window details similar to the single- and two-family dwellings.

- d. Open Space – The proposal meets usable and landscaped open space requirements, with most landscaped and usable open space located in the front yards of each dwelling. Some usable open space will be provided on roof patios.
- e. Circulation – The site’s two curb cuts on Dwight Street will be removed, and a new curb cut on Green Street will be installed to provide vehicular access. The width of the curb cut has been reduced since the initial proposal. Each dwelling will have a two-car garage at the basement level, and one exterior parking space will be located at the end of the new driveway.
- f. Stormwater Drainage – The applicant has indicated that all stormwater drainage will comply with the Town’s standards and regulations.
- g. Utility Service – All wiring will be underground, and each unit will have individual trash storage in their enclosed garage.
- i. Special Features – The applicant has indicated that all air conditioning compressors will be fully screened from the public and abutters, and there will be no accessory structures, utility or storage buildings.
- k. Heritage –The existing house, which has been designated significant by the Brookline Preservation Commission, would be removed with this proposal.
- l. Microclimate – This proposal would create a new larger structure, as well as a new paved driveway and parking area extending the length of the property. The applicant has indicated that landscape plantings will be native species and will be designed to provide adequate shade cover and reduce the heat island effect; however, the landscape plan does not indicate plant types, and landscaping along the Dwight Street façade is noticeably absent.

m. Energy Efficiency – The new building is required to meet the Stretch Building Code, and all heating and air conditioning equipment will be high-efficiency devices.

Previously, the proposal did not need dimensional relief, but the revised plans indicate setback relief will be needed. A revised denial letter has been obtained, and the required relief is as follows:

Section 5.43 – Exceptions for Yard and Setback Requirements

Section 5.50 – Front Yard Requirements

Section 5.51 – Projections into Front Yards (Green Street)

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 6.04.4.b – Design of All Off-Street Parking Facilities: Driveway width for two-way use

Section 6.04.5.c.2 – Design of All Off-Street Parking Facilities: Side yard setback for driveways

Section 6.04.5.c.3 – Design of All Off-Street Parking Facilities: Side and rear yard setback for driveways

Floor Area	Allowed	Proposed	Finding
Floor Area Ratio (% of allowed)	1.0 (100%)	.96 (96%)	Complies
Floor Area (s.f.)	9,337 s.f.	8,946 s.f.	

Dimensional Requirements	Required	Proposed	Finding
Front Yard Setback, Green Street	15'	13.7'	Special Permit/ Variance*
Front Yard Setback, Dwight Street	15'	19'	Complies

Dimensional Requirements	Required	Proposed	Finding
Side Yard Setback	10+L/10 (13'11")	13'8"	Special Permit/ Variance*
Rear Yard Setback	30'	26'	Special Permit/ Variance*
Landscaped Open Space	10% (895 s.f.) +2% (179 s.f.) for usable open space located above ground level	1,783 s.f.	Complies
Usable Open Space	30% (2,683 s.f.)	2,187 s.f. (ground level) 1,098 s.f. (roof patios)	Complies
Parking Spaces	9	9	Complies
Driveway Width	20'	16'	Special Permit/
Side Yard Setback: Driveway	5'	1'	Special Permit/

* Under Section 5.43, the Board of Appeals may waive yard and setback requirements by special permit if counterbalancing amenities are provided.

Mrs. Selkoe said the Planning Board is pleased with the design changes made to the footprint and massing of the proposed residential building, which contains four attached single family dwelling units. In response to comments from the Planning Board and abutters, the building was moved four feet back from Dwight Street, made three feet narrower facing Green Street, and lowered two and one half feet at the main entry to the Green Street unit. This allows more usable open space to be provided along the Dwight Street frontage and more landscaping along the Green Street and west facing facades

The Planning Board has recommended some further changes to the landscaping, particularly to the retaining walls at the perimeter of the property, and suggested that the stone retaining walls be eliminated, and perhaps replaced with a cove. The lawn could then gradually slope up to the house and would relate better to the streetscape.

Therefore, the Planning Board recommends approval of the proposal and plans, including the site plan prepared by Peter J. Nolan and dated 5/14/2013, and the plans and elevations prepared by TBA Architects and dated 5/9/2013, with the above suggested changes and subject to the following conditions:

1. Prior to issuance of a building permit, plans and elevations, indicating the final design of facades, colors, materials, windows and rooftop details, and the placement of utilities for HVAC and transformers, shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, a final site and landscaping plan, indicating utility locations, plant types and sizes, hardscape materials, walls, and new and removed curb cuts, shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Building Department, with a copy of the approved plan submitted to the Planning Department.
4. 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.

The Chairman called upon Mark Robidoux, Building Inspector, to deliver the comments of the Building Department. Mr. Robidoux said the Building Department has no objection to the requested relief. He said all the relief can be granted by special permit. He said the relief is a result of the developer trying to accommodate the Planning Board's recommendations, as well as concerns of the abutters. Mr. Robidoux said, if the Board finds the petition suitable for relief, the Building Department will work with the petitioner to ensure compliance.

Board Member Hussey said the relief required is due to the petitioner's efforts to address the concerns of the Planning Board and the neighbors. Mr. Hussey said he believes the proposal meets the requirements for issuance of a special permit.

Board Member Schneider said she agrees and also thinks there should be a condition clarifying the eight foot buffer on the Green Street side.

Chairman Geller noted that the question of three units versus four units was not pertinent to this hearing since it had previously been decided. Mr. Geller said that the project as proposed better accommodates the concerns of the neighbors and of the Planning Board than the as of right project. He said that the testimony indicated that the structures and uses are consistent with the surrounding neighborhood and that the project would not adversely affect the neighborhood or present a nuisance or be a serious hazard to vehicles or pedestrians.

The Board deliberated on the merits of special permit relief requested. The Board voted unanimously that for the foregoing reasons the requirements for the grant of special permits under Sections 5.43, 5.09 and 9.05 of the Zoning By-Law 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 issuance of a building permit, plans and elevations, indicating the final design of facades, colors, materials, windows and rooftop details, and the placement of utilities for HVAC and transformers, shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, a final site and landscaping plan, indicating utility locations, plant types and sizes, hardscape materials, the eight foot buffer from the abutter on the Green Street side of the property, walls, and new and removed curb cuts, shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Building Department, with a copy of the approved plan submitted to the Planning Department.
4. 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.

Unanimous Decision of
The Board of Appeals



Jesse Gelle, Chairman

Filing Date: September 16, 2013

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TOWN OF BECKETT
TOWN CLERK
2013 SEP 16 9:02
A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals