



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0078
DDG WINTHROP LLC

Petitioner, DDG Winthrop LLC, applied to the Building Commissioner for permission to convert the basement into additional living space. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed October 31, 2013 at 7:15 p.m., in the Selectmen's Hearing Room 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 October 17, 2013 and October 24, 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: DDG Winthrop LLC c/o Panos Demeter



Owner: **DDG Winthrop LLC**
Location of Premises: **203-205 Winthrop Road**
Date of Hearing: **October 31, 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. Section 5.20; Floor Area Ratio**
- 2. Section 5.91; Minimum Usable Open Space**
- 3. Section 8.02.2; Extension and Alteration**

of the Zoning By-Law to extend two residential units into the basement.

Said premise located in a **M 1.5 (Apartment House) Residence 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.

**Jesse Geller
Jonathan Book
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Zoning Board of Appeals Chairman, Jesse Geller, and Zoning Board of Appeals Board Members Christopher Hussey and Mark Zuroff. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Blair Hines the Petitioner's landscape architect.

Zoning Board of Appeals Chairman Geller called the hearing to order at 7:15 p.m. Attorney Allen stated that the Petitioner proposes to expand the living space into the basement area of the structure.

Attorney Allen presented to the Board a background of the property, stating that the Petitioner purchased the three and one half-story, six-unit residential building around February, 2013. Attorney Allen stated that the property sits on an odd-shaped, three sided lot, located directly behind a row of commercial buildings in Washington Square. Attorney Allen stated that the property shares a walkway located behind the row of commercial units on Beacon Street, which includes Brookline Bank, Emack & Bolio's, and The Abbey. Attorney Allen stated the purchase price of the property was approximately Two Million (\$2,000,000.00) Dollars and will require Three Hundred Eighty-Seven Thousand (\$387,000.00) Dollars worth of renovations due to significant water issues, masonry work, window installation, and interior updates. Attorney Allen stated that the average rent when the Petitioner purchased the property was Fifteen Hundred (\$1,500.00) Dollars, significantly lower than the value of similar properties in Washington Square.

Attorney Allen stated that the proposal comes before the Zoning Board of Appeals with the unanimous support of the Planning Board. Attorney Allen stated that the Petitioner requests special permit relief pursuant to **Section 8.02.2** of the Zoning By-Law to alter a pre-existing non-conforming structure as well as variance relief from the provisions of **Section 5.20** and **Section 5.91** of the Zoning By-Law to waive floor area ratio and the minimum usable open space requirement.

Attorney Allen first discussed relief under **Section 8.02.2** of the Zoning By-Law, whereby a special permit is required under **Section 9.05** of the Zoning By-Law. As for **Section 9.05**, Attorney Allen noted: (1) the specific site is in an appropriate location in the M-1.5 zoning district and there will not be a negative visual impact on the streetscape; (2) there will be no adverse affect on the



neighborhood where the Petitioner seeks to maintain and upkeep an otherwise neglected and outdated property; (3) no nuisance or serious hazard to vehicles or pedestrians exists since no exterior changes to the structure are being made; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will not have a significant adverse effect on the supply of housing available for low and moderate income people, where it will provide additional housing in Washington Square.

Attorney Allen next discussed relief under M.G.L. Chapter 40A, Section 10 (Variance) from application of the provisions of **Section 5.20** and **Section 5.91** of the Zoning By-Law to waive the applicable floor area ratio and minimum usable open space requirements. Attorney Allen stated that the Petitioner meets the requirements for a variance under to M.G.L. c. 40A, §10, and should therefore be granted a variance. Attorney Allen stated that M.G.L. c. 40A, Section 10 states, in relevant part:

“The permit granting authority shall have the power . . . to grant upon appeal ... a variance . . . where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

Attorney Allen stated that the petitioner was cited under **Section 5.91** of the Zoning By-Laws. The existing and proposed usable open space for the property is 629 square feet and 1,089 square feet of usable open space is required. Attorney Allen stated that the property has very little usable open space to the rear of the property due in part to the presence of easements benefitting other parcels. Attorney Allen stated that these easements include a 6-7 foot easement serving the abutting property housing The Abbey restaurant kitchen, a storage shed, and a walkway located behind and serving the commercial properties on Beacon Street. Attorney Allen stated that the Petitioner hired Blair Hines of Blair Hines



Design Associates to develop a detailed landscape plan to address both the landscaped and usable open space available in the rear yard. Attorney Allen stated that the minimum usable open space can be met by including the additional space added to the proposal. Attorney Allen stated that the proposed usable open space is 629 square feet and the Petitioner would only need about 229 square feet to meet the requirement. Attorney Allen stated that due to dimensional requirements (15' by 15' minimum dimensional requirement to be included in the calculation) called for by the usable open space requirements, much of the usable open space cannot be counted toward the calculation for usable open space under the Zoning By-Law.

Attorney Allen next discussed relief pursuant to Section 5.20 of the Zoning By-Laws. Attorney Allen stated that although the deed for the property was unclear, the Planning Board report indicates the Petitioner's property was built in 1915 and subdivided in 1929. Attorney Allen stated that a 1910 survey of the property illustrates the property with a total floor area of 10,666 square feet. Attorney Allen stated that it is not unreasonable to look at the property prior to the subdivision, which created the most uniquely shaped lot in the district. Attorney Allen stated that the 1929 subdivision should not punish a previously existing structure and the total floor area of 10,666 square feet provides an excess of 2,295.25 square feet, where the Petitioner's proposal requests only 7,262 square feet of floor area. Furthermore, Attorney Allen emphasized the historical significance of the building and its location relative to Washington Square. Attorney Allen stated that the income from this proposal will provide the Petitioner a means to maintain the building. Attorney Allen stated that there will be no exterior renovation, but the work list includes bathroom and kitchen renovations, window painting, masonry work, exterior paint, landscaping, oil/gas conversion, and significant electrical, plumbing, and heating updates.

Blair Hines discussed plans for the landscaping of the side and rear yards, including the retaining walls and deck.

Zoning Board of Appeals Chairman Geller asked whether the deck’s access was only from the inside of the units. Attorney Allen stated that the deck would be accessed by a common hallway at the basement level. Mr. Geller asked whether the Petitioner could legally create separate apartments within the renovated space. Attorney Allen stated that there is no sufficient egress to create separate units.

Zoning Board of Appeals Member Christopher Hussey asked about the stairway leading to the trash collection. Attorney Allen stated that the rear access is pre-existing. Zoning Board of Appeals

Chairman Geller inquired about the requirements for off-street parking under the Zoning By-Law. Attorney Allen stated that there is no off-street parking for this lot.

Zoning Board of Appeals Chairman Jesse Geller asked if there was anyone present who wished to speak in favor to this application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Jesse Geller asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition.

Timothy Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.5 (100%)	1.8 (120%)	2.1 (140%)	Variance
Floor Area (s.f.)	4,986	5,991 s.f.	7,262 s.f.	

Section 5.91 – Minimum Usable Open Space

Proposed Open Space	Required/Allowed	Existing	Proposed	Relief
Usable Open Space	1089 s.f.	629 s.f.	629 s.f.	Variance

Section 8.02.2 – Alteration or Extension

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

Mr. Richard stated that the Planning Board does not object to the expansion into the basement to add living space to the two first floor residential units, provided the applicant demonstrates that the requirements for a variance are met for exceeding the allowed FAR and being deficient in the amount of provided usable open space. Mr. Richard stated that the Planning Board acknowledges the unique shape of the lot. Mr. Richard stated that the Planning Board does not anticipate a negative impact on neighboring properties or to the neighborhood at large. Mr. Richard stated that the relief pursuant to **Section 5.91** of the Zoning By-Law for usable open space should be considered in light of the amount of landscaped open space. Mr. Richard stated that there is significant landscaped open space that cannot be counted as usable open space due to the fifteen foot by fifteen foot dimensional requirements for usable open space. Therefore should the Board of Appeals find that the proposal meets the statutory requirements for a variance, the Planning Board recommends approval of the plans by Jonathan Raisz, dated 8/20/2013, and the site plan by Design Consultants, Inc., dated 4/10/13, subject to the following conditions:

1. Prior to issuance of a building permit, final floor plans, and a final site plan shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to 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 elevations stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Richard recommended that the Petitioner need not submit final elevations of a retaining wall.

Zoning Board of Appeals Chairman Geller then called upon Timothy Richard to deliver the comments of the Building Department. Mr. Richard stated that the Building Department has no objections to the relief sought under this application where the proposal stayed within the existing footprint of the building.



In deliberation, Zoning Board of Appeals Member Christopher Hussey stated support for the relief requested where the lot is unique compared to other lots in the M-1.5 district.

Zoning Board of Appeals Member Mark Zuroff concurred with the uniqueness of the lot. Zoning Mr. Zuroff further stated that while he had no issue with the request for relief for minimum usable open space, he had concern about whether a hardship as contemplated by M.G.L. Chapter 40A, Section 10 is created by the condition of the property. Board Member Zuroff stated that he was unconvinced that negligence by the previous owners created a hardship, but was in favor of seeing improvements made to this property

Mr. Geller stated that he believes an adequate argument for hardship has been made where the angulation of the lot was resulted in its being highly inefficient and therefore created a burden for the economical use of the property. After further discussion, Board of Appeals Member Zuroff stated support for the requested variance relief from the FAR requirements where, given the specific unique facts and circumstances of this case, the easements and slope for the property factored into the financial hardship created by the lot.

The Board then determined, by unanimous vote that the requirements for a variance under M.G.L. Chapter 40A, Section 10 from the requirements of **Sections 5.20; and 5.91** of the Zoning By-Law; and special permit relief under **Sections 8.02.2** 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, final floor plans, and a final site plan shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **Prior to 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

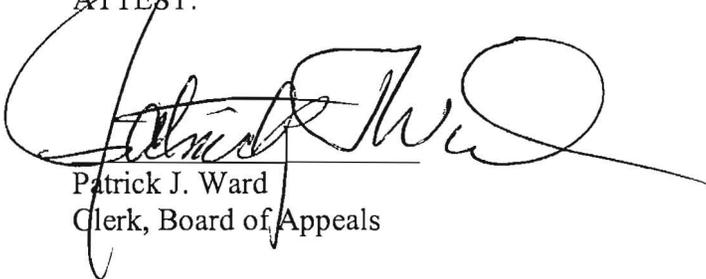
Unanimous Decision of
The Board of Appeals



Jesse Geller, Chairman

Filing Date: December 4, 2013

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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