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

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0045

Petitioner, Richard Getz, applied to the Building Commissioner for permission to convert existing mechanical space in the basement of his property at 178 Naples Road into finished floor area, including a hallway, laundry room and bathroom. The application was denied and an appeal was taken to this Board.

On July 12, 2012, 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 August 9, 2012, at 7:00 p.m. in the Selectmen's Hearing Room, 6th floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney of record (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 July 19, 2012 and July 26, 2012 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: **RICHARD E. GETZ**
Owner: **RICHARD E. GETZ**
Location of Premises: **178 NAPLES RD**
Date of Hearing: **August 9, 2012**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th flr.**

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

5.22; Exceptions to Maximum Floor Area Ration (FAR) for Residential Units, variance required.

8.02.2; Alteration or Extension, special permit required.

Of the Zoning By-Law to construct a hallway, laundry room and bathroom in the basement

at **178 NAPLES RD**

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, a public hearing was held by this Board. Present at the hearing were the Chairman, Jesse Geller, and Board Members, Christopher Hussey and Lisa Serafin. The Chairman outlined the order of procedure to be followed related to the presentation and

Board discussion of the application. Attorney Roger R. Lipson, of 27 Harvard Street, Brookline, MA 02445, representing the petitioners, agreed to waive a reading of the notice.

The petitioner's attorney addressed the Board on behalf of his client, Richard Getz, the owner of 178 Naples Road. Mr. Lipson described 178 Naples Road as a two-family property originally built in 1894 in the Flemish style by David McKay as a single-family house. The property was designed by Rand and Taylor, well-known architects of the period. It is believed that the property was converted into a two-family house around 1940 and is one of five attached row houses built by Mr. McKay and numbered 178-186 Naples Road. He stated that the petitioner is seeking to convert 266 square feet of unfinished space in the basement, which contains approximately 1,500 total square feet and has an existing bedroom which is part of the first floor unit. In June of this year, the Building Department granted a permit to remove an existing spiral staircase which led directly into the bedroom and allowed the owner to construct a new stairwell which leads directly from the interior of the first floor unit into the basement. The proposed plan would allow a hallway to lead directly into the bedroom and allow the installation of a laundry area, closet and bathroom.

Mr. Lipson pointed out that the subject premises was constructed on an extremely narrow lot of 3,125 square feet and sits on almost the entire footprint of the lot except for the front porch and small rear area. He stated that this unusually narrow construction on an extremely narrow lot had created a situation where the property already exceeded the allowable FAR for this T-5 zoning district and which now requires the owner to obtain a variance and special permit in order to develop a small area within a very large basement. Mr. Lipson asserted his belief that the lot and the structure qualify for a variance under M.G.L. c. 40A, Section 10, because of the very narrow shape of the lot, the fact that the property is situated on practically the entire lot and that this combination of a narrow property sitting on a narrow lot creates a substantial hardship preventing the petitioner from making any interior improvements in his

property. He further pointed out that the allowance of a variance for the petitioner's proposed plans would not generally affect the zoning district but only the other four adjoining properties in the same group which share a similar design, narrow lot size and construction. Mr. Lipson concluded his presentation and introduced the owner and petitioner, Richard Getz, and Tagore Hernandez, who drafted the plans for conversion of the basement space.

The Chairman asked the petitioner's attorney to address the hardship. Mr. Lipson said the hardship is that the petitioner is prevented from making modest interior improvements to his property such as improving better interior access to the existing bedroom.

Board member Christopher Hussey inquired as to what appears on the proposed plan as an existing stairway leading into the basement. Mr. Lipson replied that the owner originally had a spiral staircase leading directly into the bedroom but that the recent permit issued in June allowed the owner to close off that access and to construct a new stairway leading directly from the interior of the first floor into the basement. In response to a question from Mr. Hussey, Mr. Lipson replied that the new stairwell into the basement now provides the only access to the bedroom. Mr. Lipson, in reply to another question from Mr. Hussey, said that the door shown on the plan leads into the bedroom.

In answer to an inquiry from Board member Lisa Serafin, Mr. Lipson stated that the shaded area on the proposed plan corresponded to the additional 266 square feet requested by the petitioner.

The Chairman then asked if anyone else wished to speak in favor of the application.

The petitioner, Richard Getz, stated that he wished to speak in favor of his application. Mr. Getz told the Board that his plan was to finish off the space leading to the bedroom. At present, he said, one goes from finished space, down the stairwell into unfinished space, and back into finished space, the bedroom.

Mr. Hussey asked the applicant the origination of the now closed off spiral staircase which led into the bedroom in the basement. Mr. Getz replied that it originated in what was the kitchen area but which has now been converted into a bedroom.

Ms. Serafin wanted to know when the property was converted from a single family home into a two-family house. Mr. Lipson replied that in discussion with the staff of the Preservation Commission, he believes it became a two-family around 1940.

The Chairman asked whether anyone in attendance wished to speak in opposition to the proposal. No one rose to speak in opposition.

Lara Curtis Hayes, Senior Planner, delivered the findings of the Planning Department:

FINDINGS

Section 5.22 – Exceptions to Maximum Floor Area Ratio for Residential Units

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio	1.0	1.56	1.64	Variance*
(% of allowed)	100%	156%	164%	
Floor Area (s.f.)	3,125	4,873	5,139	

* Since this property already exceeds the 150% exception to FAR regulations available under Section 5.22, the proposal requires a 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

The Planning Board is not opposed to this proposal. The proposal is minor and does not involve exterior alterations, while it would provide better interior access to the existing bedroom in the basement. The requirement in the Zoning By-law that gross floor area be calculated by counting all area to the exterior face of the wall particularly affects this dwelling, which was built in the late 1800s and, in some areas, has very thick brick walls.

Therefore, should the Board of Appeals determine the proposal meets the requirements for a variance, the Planning Board recommends approval of the plans by Roome & Guarracino LLC, dated 3/19/2012, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final 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 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.

Dan Bennett, Building Commissioner, delivered the comments of the Building Department. He stated that the Building Department does not oppose the application. The Building Department believes that the proposed plan provides a safer and easier access to the bedroom area. He added that there is no exterior evidence of the renovation because it is entirely interior.

Mr. Hussey wanted to know if there is any access currently out of the basement. The Building Commissioner noted that there is a door to the outside that opens into an existing new stairway leading down from the exterior grade to the basement floor which is marked on the plan as "C11".

The Board next deliberated the merits of the proposed plan. Mr. Hussey pointed out that the unusual narrowness of the lot and the coverage on that lot by the structure is a condition that only exist for this property and the other four attached properties in the group and would not generally affect properties in the rest of the zoning district. He expressed his view that the existing bedroom was isolated and that it was a hardship not to have a bathroom that was accessible to the bedroom rather than having to go upstairs to the first floor. He also stated that the hardship goes to the pattern of living which the proposal addresses. Ms. Serafin agreed that the proposal met the requirements for the granting of a variance as it provided a safer and more useable access to and from the area leading to the bedroom. The Chairman agreed with much of what the other Members had expressed. He agreed that the unique conditions affecting the property, although similar to the conditions existing for the adjoining row houses, do not generally affect the zoning district. The Chairman stated that the hardship in this case was the inefficient use of existing space that resulted from the particular type of construction of the property in a

bygone era. He concluded that the application warrants a finding of hardship and the issuance of a variance.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant all the relief required by a variance and special permits as requested by the petitioner and that the petitioner has satisfied the requirements necessary for relief under Sections 5.22 and 8.02.2 of the Zoning By-Law. The Board finds that a special permit is warranted based upon the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

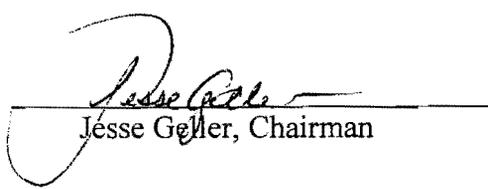
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse 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 submit final 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 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

Filing Date: August 28, 2012


Jesse Geller, Chairman

A True Copy

ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a distinct "Q" at the end. A horizontal line is drawn beneath the signature.

Patrick J. Ward
Clerk, Board of Appeals