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Town of Brookline Massachusetts

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

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. 2012-0055

Petitioner, Scott Schuster, applied to the Building Commissioner for permission to construct dormer additions to the existing two-family dwelling at 71-73 Stearns Road. The application was denied and an appeal was taken to this Board.

On August 1, 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 November 15, 2012 at 7:30 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 November 8, 2012 and November 15, 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: Scott Schuster

Owner: Louise Brightman
Location of Premises: 71-73 Stearns Road
Date of Hearing: November 15, 2011
Time of Hearing: 7:30 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. 5.09.2.j; Design Review
2. 5.20; Floor Area Ratio
3. 5.30.1.a; Exceptions to Maximum Height Regulations
4. 5.43; Exceptions to Yard and Setback Regulations
5. 5.60; Side Yard Requirements
6. 5.61; Projections Into Side Yard
7. 5.70; Rear Yard Requirements
8. 5.90; Minimum Landscaped Open Space
9. 5.91; Minimum Useable Open Space
10. 6.02, Paragraph 1; Table Off Street Parking requirements
11. 6.04.5.c.1; Design of All Off Street Parking Facilities
12. 6.04.5.c.2; Design of All Off Street Parking Facilities
13. 6.04.5.c.3; Design of All Off Street Parking Facilities
14. 6.04.12; Design of All Off Street Parking Facilities
15. 8.02.2; Alteration or Extension

of the Zoning By-Law to construct a parking area to construct dormer additions to the existing two-family dwelling at 71-73 Stearns Road.

Said premise located in a T-5 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, Enid Starr and Board Members Mark Zuroff and Christopher Hussey. The case was presented by the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the petitioner, Scott Shuster.

Chairman Starr commenced the hearing and Attorney Allen described the property at 71 Stearns Road as a two-family house built in 1910 located in a T-5 zoning district. The surrounding neighborhood consists of two-family and multiple family dwellings. 71 Stearns Road is similar in architectural style and scale, in size and height, to the neighboring dwellings to the east and west. The petitioner's proposal is to construct dormer additions to the existing two-family dwelling, which will include new bays on the structure, along with the infill of five windows, and subsequent changes to two existing bays. The petitioner is proposing the conversion of the basement to living space, which will increase the Floor Area Ratio, but will remain below the allowed 150% under the zoning bylaws. The staircase on the exterior of the west side of the dwelling will be demolished in order to add one additional parking space and to remove the existing parking from the front yard setback. The front façade will be altered so there will be two doors on the front of the dwelling that will individually access the two units. There will be a spiral staircase constructed toward the rear of the structure, which will serve as a secondary means of egress for the upstairs unit. The proposal went before the Planning Board for Design Review and received unanimous support from both the Board and from several of the neighbors.

Addressing the zoning relief, Attorney Allen explained that a number of the violations listed on the denial are no longer applicable including FAR, Open space, and Parking with the exception of Section 6.04.12, and, with the exception of height, all dimensional requirements are pre-existing non-conforming. As for the dimensional relief, Mr. Allen stated that under Section 5.43 the Board of

Appeals may by special permit waive yard and setback requirements if the applicant provides counterbalancing amenities which included landscaping throughout the property.

Board Member Hussey asked the petitioner about usable open space relative to the proposal and whether a special permit was required. Attorney Allen stated that the applicant was able to meet the useable open space requirement for the additional FAR.

Chairman Starr noted that the building is pre-existing nonconforming and asked whether the proposal will add an additional three (3) feet to the height of the building. Attorney Allen stated that the original plan allowed the renovations by right, but when brought to the Planning Department it was suggested that for aesthetic reasons, it would be best to raise the height of the dormers an additional three feet. Attorney Allen suggested that relief could be sought under a special permit pursuant to two provisions of the Code. First, Section 5.31.2 states, "in situations where there are certain characteristics of the building, the ZBA may establish maximum heights for a building or for different parts of a building which it deems will best approximate the allowed height requirement, and will assure the same standard of amenity to nearby properties as would have been provided by the application of said height requirements to the site in question in the absence of non-typical characteristics." Attorney Allen stated that the house at issue and the two homes surrounding it are all over the allowable height requirements and have existing dormers that are also over the allowed height. The current dormers are on both sides of the roof but are fairly small and more decorative than useable. Mr. Allen stated that while the petitioner could produce a plan that complied with thirty-five (35) feet requirement, the Planning Board, who have design review authority, as well as numerous neighbors felt that the existing characteristics of the building, dictated that the proposed dormers be built at 38 feet in height, thereby creating a more desired feature to the nearby properties than constructing a flat roof which would comply.

Attorney Allen stated that, in addition to Section 5.31.2, Section 8.02.2 can also apply as the proposal includes alterations to an existing structure and will neither increase the nonconformity (in fact it will reduce a non-conforming height from forty (40) feet to thirty-eight (38) feet), nor will the proposal extend the nonconformity by over 25%. Further, the specific site is an appropriate location for such use, structure, or condition. There are numerous other dormers on the street and the proposal will create minimal impact to streetscape. The use as developed will not adversely affect the neighborhood. The petitioner has worked closely with neighbors to develop this plan and neighbor concerns were considered by the Planning Board in their proposal. There will be no nuisance or serious hazard to vehicles or pedestrians. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. Finally, the development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Chairman Starr inquired whether any Board members had questions for the petitioner. No Board Members had any questions for the petitioner at that time.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. Attorney Allen directed the Board to review several letters in support from neighbors that were included as exhibits in the appeal package. Marcia Lapson, 78 Stearns Road, spoke in favor of the proposal, stating that the petitioner has been cooperative with neighbors and she is pleased with the new plans. Gene Simon, 83 St. Paul St, stated that he is the father of a neighbor who was unable to attend the hearing, and was concerned about the removal of trees. Attorney Allen stated that the Petitioner will avoid unnecessary removal of trees on the lot.

Laura Curtis Hayes, Planner, delivered the findings of the Planning Board. Ms. Hayes stated that the Planning Board is supportive of Option Two in the plans dated 10/23/2012. In this option, the pitch of the dormer is greater, which improves the appearance of the building. The Planning Board finds it

preferable to allow the height of 38"; which is still below the existing peak of 40'8" and believes this relief can be granted by Special Permit under Section 5.31. As a result of this proposal, the total FAR would increase to 145%, which is under the 150% allowed for attic and basement conversions. The dormers are expected to change the overall bulk of the structure. The Planning Board is pleased the applicant revised the plan to push the dormers back on the structure to minimize visibility from the street. The Planning Board supports the proposal for the dormers and conversion of the basement to living area.

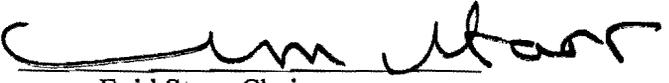
Therefore, the Planning Board recommends approval of the proposal and site plan by Boston Survey, Inc., dated 6/25/2012, and plans by Sutphin Architects, dated 10/23/2012, subject to the following conditions:

1. Prior to issuance of a building permit, a final site plan, indicating all parking, landscaping, wall, and trash storage locations and dimensions, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, a final landscaping plan, stamped and signed by a landscape architect, and indicating planting types, sizes, and locations; all hardscape materials; and all other counterbalancing amenities; shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor; 2) final 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 then called upon Michael Yanovich, Head of the Building Department, to deliver the comments of the Building Department. Mr. Yanovich indicated that he had no objections to the proposal and that if the Board decides that the requirement for relief is met, the Building Department will ensure that the building codes are met.

4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor; 2) final 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


Enid Starr, Chairman

Filing Date: December 14, 2012

A True Copy

Patrick J. Ward
Clerk, Board of Appeals

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