



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

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TOWN OF BROOKLINE
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Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0056

Petitioner, Michael Bukhin, applied to the Building Commissioner for permission to construct dormers on the dwelling and to create a new garage door opening and entryway at 46 White Place. The application was denied and an appeal was taken to this Board.

On September 20, 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 1, 2012 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 October 11, 2012 and October 18, 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: **Michael Buhkin**
Owner: **Michael Bukhin and Anna Wallach**
Location of Premises: **46 WHITE PLACE**
Date of Hearing: **November 1, 2011**
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. **5.09.2.j; Design Review**
2. **5.20; Floor Area Ratio**
3. **5.43; Exceptions to Yard and Setback Regulations.**
4. **5.50; Front Yard Requirements.**
5. **5.60; Side Yard Requirements.**
6. **5.70; Rear Yard Requirements**
7. **5.90; Minimum Landscaped Open Space**
8. **5.91; Minimum Usable Open Space**
9. **6.04.14; Design of All Off-Street Parking Facilities**
10. **8.02.2; Alteration or Extension**

of the Zoning By-Law to construct a parking area to **construct dormers on the dwelling and to create a new garage door opening and entryway at 46 White Place.**

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 Jonathon Book. 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 were the owners of 46 White Place, Michael Bukhin and Anna Wallach.

Chairman Starr commenced the hearing and asked the nature of the request. Attorney Allen stated the petitioner is requesting to construct dormers on the dwelling and to create a new garage door opening and entryway at 46 White Place. Attorney Allen then described the property located at 46 White Place as a single family dwelling in a T-5 Zoning District, a community that is primarily comprised of single and multi-family dwellings. Mr. Allen stated that White Place is a narrow, one-way road, and that the MBTA green line is directly behind 46 White Place. The structure on 46 White Place, Mr. Allen stated, was built between 1884 and 1888, and originally used as a barn or wagon shed. The dwelling on the property is similar to other dwellings in the area and helps to create a distinct neighborhood appearance. The dwelling on the property is built directly abutting the front and side yard setbacks which is unique to White Place and the zoning district.

Mr. Allen informed the Board that the proposal would increase total floor area on the property to an FAR of 2.33, which is significantly higher than the allowed FAR. Mr. Allen clarified that the FAR analysis is relative as the lot at issue is 1,534 square feet on what is essentially a zero lot line. The petitioner is also proposing to alter the front façade of the dwelling by installing a new garage door, which will allow for a two car garage, where now there is a one car garage. As a result of the new garage, the front entryway will have to be relocated to the right of its existing location. Mr. Allen stated that the petitioner had created a small, private art studio on the ground floor behind the garage, which is

certainly in keeping with the history of the street. He stated that the purpose of the proposal was to create more space for family, the petitioner's children and some room for visitors.

Mr. Allen detailed modifications made to the proposal after the petitioner had met with the Planning Board and staff. The petitioner lowered the dormers so that they do not go all the way to the ridge line of the roof and the dormers were set back from the front on both sides by 3'6". In addition, they were able to create a small open space by building a deck on the 2nd floor of the dwelling. Mr. Allen stated that the proposal has the unanimous support of Preservation Commission, Planning Board, and neighbors. Several letters of support were provided to the Board and entered as Exhibit 1.

Mr. Allen then reviewed the zoning violations regarding the proposal. A variance is required for the garage proposal under Zoning By-Law, Section 6.04.14 (Design of All Off-Street Parking Facilities). The existing garage will be converted from a one to a two car garage. The conversion will require a change to the front façade of the structure. Mr. Allen stated that the proposed alteration has been reviewed by the Preservation Commission staff and the recommended changes were included as a part of the current proposal. The garage door will be a single door made to look like two individual doors, which will help to retain the existing character of the structure. Due to the narrowness of White Place and the allowance of daytime parking on the North side of the street, this two car garage is necessary to both swing the turn into the garage and prevent vehicles from being stored on the street. Further, other facades in the area including two houses across the street have double garage doors; therefore, this proposal will not change the character of the neighborhood. Mr. Allen also stated that under Section 6.04.14, the Board may waive requirements if another design at the rear or side of the dwelling is not feasible. Here, there is no other option due to the narrowness of the lot.

Mr. Allen then described the variance required under Zoning By-Law, Section 5.20 (Floor Area Ratio), stating that the property's FAR requirement is 1 and currently has an FAR of 2.2, which is over

double the allowance for the property. The dwelling was originally constructed within the setback area, because there were no setback regulations at the time; as a result, the existing FAR requirement for the neighborhood is not met by numerous dwellings in the area. Due to the current regulation and location of the dwelling, any increase in floor area would require a variance. Mr. Allen stated that the petitioner meets the requirement under MGL c. 40A section 10, and therefore should be granted a variance.

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.”

Mr. Allen described the uniqueness of the lot and structure, stating that 46 White Place is a small and narrow shaped lot, uniquely shaped compared to most of the lots in the zoning district, which have larger lots and dwellings that have some kind of setback. The structure was built with some setbacks, but over time the property on the west side was allowed to butt up against 46 White Place and the east side has less than two feet of setback, which is extremely unique in the zoning district. Essentially the property is on a zero lot line, making construction of any type of addition impossible. The petitioner’s proposal is the only possible way to make this property conform to today’s codes and standards for use as a single family house. The irregularity of the preexisting structure prevents expansion in any way, as all the dimensional requirements are pre-existing non-conforming. Mr. Allen stated that this creates an undue hardship on the reasonable use of the property.

Regarding Zoning By-Law, Section 8.02.2 (Alteration or Extension), a special permit is required to alter a pre-existing non-conforming structure or use. Mr. Allen stated that the elements for special

permit were met in this instance. First, the specific site is an appropriate location for such use, structure, or condition as there is little change to the streetscape. The proposal restores a historic building and the dormer is set back from the street. Second, the use as developed will not adversely affect the neighborhood. There are numerous letters of support from neighbors and abutters. Third, there will be no nuisance or serious hazard to vehicles or pedestrians. Fourth, adequate and appropriate facilities will be provided for the proper operation of the proposed use. Finally, fifth, the development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people. The proposal allows a dwelling to be converted for a use by a family.

Chairman Starr inquired whether any Board members had questions for the petitioner. Board Member Book asked whether there were any letters of support from the immediate abutters. Petitioner Michael Bukhin, stated that there were several individuals at 44 White Place and 45 White Place who expressed support and had no issues with the proposal, but had not provided letters. Board Member Book asked about FAR; whether the expansion related only to the dormers. Mr. Allen stated that much of the increase relates to the ground floor due to having to include certain FAR in the garage area, which normally would be excluded, but was previously determined livable space. Board Member Zuroff inquired whether the picture provided by the petitioner was the current state of the building. Mr. Allen stated yes and current pictures were introduced as Exhibit 2 and Exhibit 3. Board Member Zuroff asked if there were any change to the floor space on the third floor. Mr. Allen explained that there would be more usable space due to the dormers, but that there would be no technical expansion of floor space on the third floor.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. Katherine Kirshner of 49 White Place spoke in favor of the proposal, stating that the building had been uninhabited for a long time, complimented the petitioner's family, and said the proposal would

be a positive improvement to the neighborhood. Sandra Levine of 15 White Place spoke in favor of the proposal, stating that she felt the same sentiments as Ms. Kirshner. Seth Kaplan of 14 White Place spoke in favor of the proposal, stating he was sympathetic to the difficulty of putting together a project on such a narrow street. No one rose to speak against the proposal.

Tim Richard, Planner, delivered the findings of the Planning Board.

Section 5.09.2.j – Design Review: The structure on the property is listed on the National Register of Historic Districts, and is subject to the design review standards listed under Section 5.09.4(a-l). All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – The proposal will not result in the loss of any trees on the property because the site for the development is paved. No additional trees or landscaped area will be created as a result of this proposal.
- b. Relation of Buildings to Environment – The dormer addition is not expected to affect the landscape and natural environment of the area. The addition will create more bulk, which will cast a shadow, but it is not anticipated to have a negative or altering effect on the neighborhood.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The dormer addition will change the roofline of the dwelling. Currently, the dwelling is similar in shape and the pitch to the roofline of other properties in the vicinity. The dormer addition will create a structure that looks slightly different than the other dwellings along White Place. The dormers will be set back on the dwelling to minimize the appearance of the addition. The dormer on the west side will have one window that is similar in appearance to other windows on the structure, and there will be a second window that is a different style window, but will not be visible from the road. This window will allow more light to enter the residence. The dormer on the east side of the property will not include windows. The absence of windows on this side is to ease concerns of the neighbors to the west about privacy issues because they have a roof deck on that side.
- d. Open Space – Currently, there is not any existing usable open space or landscaped open space on the property. The dwelling was originally constructed with a very small setback area. Due to the configuration of the property, the creation of open space is not possible. However, in addition to the dormer addition, there will be a small roof deck that will provide some additional useable open space.

Section 5.20 – Floor Area Ratio: The property has an FAR requirement of 1, and currently has an FAR of 2.2, which is over double the allowance for the property. The dwelling was originally constructed within the setback area, because there weren't setback regulations at the time; as a result, the existing FAR requirement for the neighborhood is not met by numerous dwellings in the area. Due to the current

regulation and location of the dwelling, any increase in floor area would require a variance. 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: The dormer addition and change to the garage doors to the front of dwelling will not increase the footprint or expand further towards the setbacks. The structure is currently in violation of the setback requirements on all sides.

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space: The property does not currently have any usable open space or landscaped open space on the property. The creation of usable or landscaped open space is not a possibility. The petitioner is proposing a small amount of open space in the form of a roof deck on the east side of the dwelling. The deck will be constructed as a part of the dormer addition and will not count towards the usable open space requirement in 5.91.2.a, but it will be open space nonetheless.

Section 6.04.14 – Design of All Off-Street Parking Facilities: The existing garage will be converted from a one to a two car garage. The conversion will require a change to the front façade of the structure. The proposed alteration has been reviewed by the Preservation Commission staff and the recommended changes were included as a part of the current proposal. The garage door will be a single door made to look like two individual doors, which will help to retain the existing character of the structure.

Section 8.02.2 – Alteration or Extension - A special permit is required to alter a pre-existing non-conforming structure or use.

Ms. Richard reported that the Planning Board was supportive of this proposal. The Planning Board does not object to the project as proposed, provided the Board of Appeals finds that the proposal meets the statutory requirements for a variance. There was initial concern that the dormers would negatively impact the streetscape, but the petitioner worked to minimize the visual impact on the street by pushing the dormers away from the front of the structure. The revisions ensure that the roofline will remain a prominent feature that is similar to existing rooflines on other dwellings in the area. The proposal includes additional open space on a new small deck, which may serve as a counterbalancing amenity. Additionally, the petitioner has worked with the Preservation Commission to create a façade that does not detract from the existing character and historic nature of the original structure. There are

other facades in the area that have double garage doors; therefore, this proposal is not viewed as something that will change the character of the neighborhood. Therefore, if the Board of Appeals finds that the criteria for a variance are met, the Planning Board recommends approval of the proposal and plans by Chongzi Chen, dated 10/24 and 10/25/2012, subject to the following conditions:

1. Prior to the issuance of a building permit, the petitioner shall submit final plans and elevations, indicating the final window selection and dormer roof pitch alteration, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the petitioner shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the petitioner 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 then called upon Michael Yanovich, Chief Building Inspector for the Building Department, to deliver the comments of the Building Department. Mr. Yanovich indicated that he was not opposed to the proposal, stating that there was no large net change to the FAR due to counting the ground floor, and it was a good change to the property and neighborhood. Mr. Yanovich stated that he would have to work with the petitioner relative to the lot lines, but would ensure that it would be taken care of.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Zuroff stated that the proposal met the variance, as there was a hardship and this was a rare circumstance where relief is needed. Regarding special permit, Zuroff stated that the elements were met and there was a benefit to the neighborhood because of the restoration of a historic building. Further,

Zuroff concurred that there was no extreme changes to the FAR and relief was justified. Board Member Book echoed the opinions of Zuroff and noted the uniqueness of the structure and that there would be no beneficial use of the property without relief. Book emphasized that the uniqueness was in the structure, not the lot. Chairman Starr stated that the variances were supported and that she was very comfortable in granting relief. Further, Starr stated that the special permit elements were met and there were adequate counterbalancing amenities in the ironwork, preservation of the door, and creation of useable deck area.

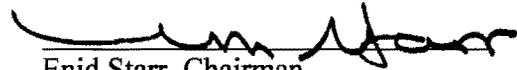
The Board then determined, by unanimous vote that the requirements of Sections 5.09; 5.20; 5.43; 5.50; 5.60; 5.70; 5.90; 5.91; 6.04.14; and Section 8.02.2 were met. The Board made the following specific findings pursuant to said Section 9.05:

- 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 petitioner shall submit final plans and elevations, indicating the final window selection and dormer roof pitch alteration, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the petitioner shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 3. Prior to the issuance of a building permit, the petitioner 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.**

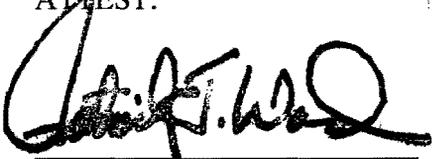
Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Filing Date: November 30, 2012

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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