



BOARD OF APPEALS
Enid Starr, Co-Chair
Co-Chair Jesse Geller
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. 2012-0059

Petitioner, 1471 Beacon LLC, applied to the Building Commissioner for permission to convert 10-unit multi-family building to 11 units by converting basement space into additional floor area, construct decks at rear and make changes to building's exterior façade at 1471 Beacon Street, Brookline, Massachusetts. The application was denied and an appeal was taken to this Board.

On September 27, 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 7:15 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 25, 2012 and November 1, 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: 1471 Beacon LLC

Owner: Empire Realty Trust

Location of Premises: 1471 Beacon Street

Date of Hearing: November 15, 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. 5.01; Footnote 1; Table of Dimensional Requirements.
2. 5.09; a and d; Design Review.
3. 5.20; Floor Area Ratio.
4. 5.43; Exceptions to Yard and Setback Regulations.
5. 5.60; Side Yard Requirements.
6. 5.63; Accessory Buildings in Side Yards.
7. 5.90; Minimum Landscaped Open Space.
8. 5.91; Minimum Usable Open Space.
9. 6.02, Paragraph 1; Table of Off-Street Parking Space Requirements.
10. 6.04.2f; Design of All Off-Street Parking Facilities.
11. 6.04.5b; Design of All Off-Street Parking Facilities.
12. 6.04.12; Design of All Off-Street Parking Facilities.
13. 8.02.2; Alteration or Extension.

of the Zoning By-Law to construct a parking area to convert 10-unit multi-family building to 11 units by converting basement space into additional floor area, construct decks at rear and make changes to building's exterior façade at 1471 Beacon Street, Brookline, Massachusetts.

Said premise located in a M-2.5 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 were David O'Sullivan and Jeffrey Feuerman of Brookline Development Corporation.

Chairman Starr called the hearing to order at 7:15pm. Attorney Allen stated that the petitioner recently purchased this property which was severely damaged by fire in February, 2012. A permit was issued February 13, 2012, to install plywood over all windows and doors and make the needed repairs to secure the building and it has been unoccupied since the fire. 1471 Beacon Street is located on the south side of Beacon Street between Coolidge Corner and Washington Square and is the end building in a series of five attached multi-family buildings which includes 1471, 1469, 1463, 1459, 1455 - all identical in style with curved bay window and a large cornice running the entire length of the five structures. The structures are all four-stories with front façades finished with pre-cast concrete. All front façades have large center entrances with large bay windows on both sides. 1471 Beacon Street has two smaller entrance ways at the basement level on either side of the center entrance. The immediate abutter to the west is a small one-story commercial building, currently used as a daycare center.

Attorney Allen stated that despite appearing to have four levels when viewed from Beacon Street, the property also has a basement, referred to as the garden level, and a sub-basement, referred to as the terrace level in the attached plans. The lot has a dramatic grade difference, approximately 30 feet, between the Beacon Street front lot line and the rear lot line. The rear yard is sloped and vegetated, and pedestrian access is possible up an existing flight of stairs from a rear alleyway on the abutting property.

Surrounding properties at the rear are residential, including a garage used by a nearby condominium building on Griggs Road.

Mr. Allen stated that the petitioner would like to renovate the building bringing back much of its historic significance, and restoring the streetscape including the copper like trim, cornice and large decorative soffit and overhang. The proposal would also add additional living space in the terrace level, and would include constructing rear decks to serve units on all floors. When the applicant initially submitted the development proposal to the Building Department, the proposal entailed not only renovating the building, but adding a unit at the terrace level, and constructing a new garage at the rear for at least five vehicles, with a large useable open space above. Based on neighborhood concern and feedback from the Planning Board the proposal was revised to exclude a new garage, making some of the relief cited in the Building Department's denial letter unnecessary. These sections are noted below when applicable.

Turning to the zoning issues Attorney Allen stated that the petitioner's proposal had been cited for the following relief: Section 5.01 Footnote 1, Section 5.53 and Section 5.60. He stated that Section 5.63 was no longer applicable and that Section 6 parking is no longer applicable because no units are being added.

David O'Sullivan of Sullivan Architects, 580 Main Street, Reading, Massachusetts, discussed drawings relative to the proposal. O'Sullivan presented a new drawing which was marked by the Board as Exhibit 1. O'Sullivan stated that the windows would be replaced and many parts of the renovation would replicate the original historic aspects of the building, including a decorative cornice. The applicant would be restoring the interior of the building, bringing it up to code with new egress in the front, new elevator, and sprinklers, at a substantial cost to the owner. He added that the Planning Board had approved the exterior changes. Regarding the FAR relief, O'Sullivan stated that it related to

previously unused space within the building. He stated that there would be access and egress to the new duplex units in the premises through internal stairs. Further, O'Sullivan stated that with the addition of the new sprinkler system, there would be no window exit needed and there were egress means in two areas of each unit.

There was discussion by members of the Board about usable open space on the property and whether the landscaped open space was in compliance with regulations. Attorney Allen stated that, in regards to usable open space, it is only applicable to new additional square footage being added to the duplex units, and the thirty-percent of that space is required for new additional usable space. Mr. O'Sullivan explained that the proposal complied with both usable open space and landscaped space.

Attorney Allen then discussed zoning relief regarding design review, stating that any exterior alteration or addition to a building with frontage on Beacon Street, or to a multiple dwelling with four or more units, requires a special permit subject to the design review standards listed under Section 5.09.4(a-1). Mr. Allen then discussed the following Community and Environmental Impact and Design Standards. Regarding preservation of trees and landscape, Attorney Allen stated that most of the landscaping at the rear of the building will be removed during construction, and the landscaping at the front, which is currently overgrown and was damaged during the fire, will be replaced. The applicant has indicated new landscaping will be planted on the rear slope. Regarding relation of buildings to environment, Attorney Allen stated the proposed improvements to this building do not require a significant change in the site's grade or terrain, but it will require the replacement of several trees at the rear of the site. The petitioner will ensure no erosion will take place as part of the landscaping. The proposal does not expand beyond the building's footprint, except for the addition of new decks at the rear – which are as of right - so significant shadow impacts are not expected. Regarding the relation of buildings to the form of the streetscape and neighborhood, Attorney Allen stated that the proposal

retains the existing building's primary dimensions and fenestration, which is very similar to neighboring buildings on Beacon Street. The other neighboring buildings do not appear to have rear decks, but the proposed decks do not detract from the building's overall appearance and are not intrusive. Regarding open space, Attorney Allen stated that the proposal creates open space for the building's occupants through patios and new decks, which should improve the livability of the units. A landscaping plan will be provided as a counterbalancing amenity. Regarding circulation, Attorney Allen stated that change of plan allows for safe egress, and the petitioner will also add space for bicycle storage as a counterbalancing amenity. Regarding utility service, Mr. Allen stated that the applicant has noted that a dumpster will be located at the rear of the site. This dumpster is not marked on the submitted plan; details regarding trash storage and pick up will be submitted. Regarding safety and security, Attorney Allen stated that the petitioner has created interior trash storage with an elevator to remove. As far as heritage, the applicant is proposing several repairs to the building, including the front façade. While such repairs are necessary considering the building's current damaged state, care will be taken to ensure that if significant details cannot be repaired and must be replaced, then the replacements will be of the same material or a very close match. Regarding energy efficiency, Mr. Allen stated that the applicant has indicated the building will be upgraded with new insulation, energy efficient lighting and heating and cooling systems.

Chairman Starr asked the petitioner further about zoning relief, stating that – as parking relief is no longer required – the petitioner must discuss issues related to FAR. 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 . . . 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 explained that in this matter, due to the fire, and the property being in a National Register District it was strongly encouraged by Preservation and the Town to preserve the harmony and unique historic qualities of the structures facing on Beacon Street. One of the clear unique qualities of Beacon Street is the attached row houses, which in the block in question, is made up of five identical row houses. During the fire the entire interior of the structure suffered significant water and smoke damage. A significant portion and some key features of the front façade were destroyed, in particular, the copper like trim top cornice and large decorative soffit and overhang large cornice that goes the length of these five buildings was damaged. The proposal also includes one removal of two later added egresses in the front and to replace them with windows as originally designed. The cost of restoration of this is \$189,000.00 and \$42,000.00 respectively for a total of \$231,000.00, arguably none of which would be necessary to add in order to rent these units. Further, while the exterior of the building is not handicap accessible, the interior will now become handicap accessible at a cost of \$150,000. Additionally, due to the age of the building and the destruction caused by the fire, it will be necessary to bring the building up to code compliance, which has been factored in at \$200,000.00 and which includes sprinklers, bringing egress to code, removing and replacing the fire damaged roof, and bringing it up to green stretch code.

Mr. Allen stressed that this \$581,000.00 economic hardship does not include construction costs, landscaping, architectural fees or the like. In order to offset this cost, the petitioner is requesting that the first floor units be turned into duplexes in order to allow for larger rental units to offset the cost. Mr. Allen stated that the Town and the neighborhood are looking forward to

this significant building being restored, and this can be done without detriment to the public good and without nullifying or derogating from the intent or purpose of the by-law. Thus, Attorney Allen stated that the petitioner, supported by a unanimous vote from the planning board, has met the requirements of a variance.

Chairman Starr asked whether the FAR increase was caused by inclusion of the previously unused basement space, which Mr. Allen answered affirmatively. Mr. Allen then discussed the lot's topography regarding his variance request, stating the uniqueness in the shape of the lot, and the severe front to back slope.

Regarding the special permit required to alter a pre-existing non-conforming structure or use, Mr. Allen stated that the elements of bylaw section 8.02.2 were met. The specific site is an appropriate location for such use, structure, or condition. There will be no change to the streetscape, and the proposal is to restore a fire damaged historic building. The use as developed will not adversely affect the neighborhood. There will be no visible change, and there is some support from neighbors of the additional space. There will be no nuisance or serious hazard to vehicles or pedestrians and proposed parking was removed from the proposal. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people. In fact, the property is intended to be used as rental housing.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. Gail Robertson, 6 Griggs Terrace, spoke in regards to the proposal, stating that she was in favor of the project but had some concerns regarding the balconies and construction. Ms. Robertson was concerned with potential noise and movement on the balconies and whether it

would change the dynamic of the historic neighborhood. Roger Kramer, 63 Griigs Terrace, stated that he had been an abutter for 48 years and was not opposed to the project, but was concerned with the balconies. Stephan Gayta, 6 Griggs Terrace, spoke in favor of the overall project, but opposed the addition of balconies. In response to the neighbors' concerns Attorney Allen stated that the petitioner would be willing to accept as a condition of the Board's approval a balcony plan for review prior to issuance of a building permit. Allen further stated that the petitioner will save as many trees as possible but may have to remove some for safety and logistical purposes.

Board member Zuroff asked whether there would be any restrictions for occupants storing items on the balconies. Attorney Allen stated that the units would be rental properties and such restrictions would be included in the terms of the residential lease agreements.

Laura Curtis Hayes, Planner, delivered the findings of the Planning Board, stating that the Planning Board is pleased to see this proposal to repair and rehabilitate a building severely damaged by a fire last February. The renovations include bringing the building to meet current building codes, replacing the two front garden level entries with windows, adding rear balconies at each level for the enjoyment of future residents, replacing the windows and the front cornice damaged by fire. The applicant had also explored constructing a rear garage to provide ten parking spaces for the proposed 11 units; however, issues arose over access to the garage and potential negative impacts to rear abutters. The applicant withdrew this part of the proposal. Although the Planning Board is concerned with adding to the FAR, which is already considerably over what is allowed for this district, the Planning Board believes that due to the expense of the repairs the added FAR is warranted, if the applicant can satisfactorily demonstrate that the criteria for a variance are met. However, the Planning Board does not support providing

an additional unit, which would further exacerbate the parking demand for a building that has no off-street parking; rather, it would recommend that a duplex be created by adding the extra floor area to an existing unit. The Planning Board agrees that replicating the curved windows might be financially onerous and does not object to replacing the windows with flat ones. Additionally, the Planning Board supports replacing the cornice with a manmade material, such as molded fiberglass, as long as the appearance is replicated identically.

Therefore, if the Board of Appeals finds that the statutory requirements for a variance are met, the Planning Board recommends approval of a revised proposal, as follows: no rear garage; elimination of the proposed additional unit by adding the extra floor area to an existing unit, thereby creating a duplex; and an exact replication of the appearance of the cornice, subject to the following conditions.

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, indicating grades on the rear slope, trash locations, and drainage, 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 final floor plans showing only ten units, and elevations, indicating all materials and dimensions, including window and cornice details, balcony layout, and elevator penthouse, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to issuance of a building permit, an independent acoustical engineer shall certify, to the satisfaction of the Building Commissioner, that all air condensers will comply with the Town's Noise By-Law.
4. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan, stamped and signed by a registered landscape architect, indicating all planting types and locations, hardscape areas, fencing and wall details, and all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
5. Prior to the issuance of a building permit, the applicant shall submit a construction management plan for the approval of the building department, detailing their considerations of the privacy rights of the neighbors
6. Prior to the issuance of a building permit, the applicant shall submit plans showing the location

of a secure bicycle storage area within the building, subject to the review and approval of the Assistant Director of Regulatory Planning.

7. 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 and floor plans stamped and signed by a registered architect; and 3) evidence that all required easements, having been reviewed and approved by Town Counsel, are 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 approved of the proposal and the renovations make the building safer than before the fire. He stated that he would ensure compliance with code regulations and requested a construction plan prior to issuance of a permit.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Zuroff stated that the proposal met the requirements for a variance, as there was financial hardship shown and the structure was unique in the zoning district and historic. 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. Chairman Starr stated that design issues of the balconies could be worked out through Planning and were not the concern of the Board and that any design concerns should be made a condition of approval.

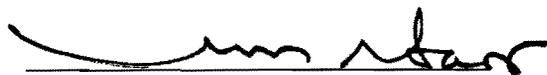
The Board then determined, by unanimous vote that the requirements for a variance and for **Sections 5.01 5.09; 5.20; 5.43; 5.90; 5.90** and **Section 8.02.2** were met. The Board made the following specific findings pursuant to said **Section 9.05**:

- 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 applicant shall submit a final site plan, indicating grades on the rear slope, trash locations, and drainage, 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 final floor plans showing only ten units, and elevations, indicating all materials and dimensions, including window and cornice details, balcony design layout, and elevator penthouse, subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to issuance of a building permit, an independent acoustical engineer shall certify, to the satisfaction of the Building Commissioner, that all air condensers will comply with the Town's Noise By-Law.**
4. **Prior to the issuance of a building permit, the applicant shall submit a final landscape plan, both front and rear, stamped and signed by a registered landscape architect, indicating all planting types and locations, hardscape areas, fencing and wall details, and all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.**
5. **Prior to the issuance of a building permit, the applicant shall submit a construction management plan including placement of construction vehicles and materials for the approval of the building department, detailing their considerations of the privacy rights of the neighbors**
6. **Prior to the issuance of a building permit, the applicant shall submit plans showing the location of a secure bicycle storage area within the building, subject to the review and approval of the Assistant Director of Regulatory Planning.**
7. **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 and floor plans stamped and signed by a registered architect; and 3) evidence that all required easements, having been reviewed and approved by Town Counsel, are recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals


Enid Starr, Chairman

Filing Date: December 14, 2012

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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