



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

TOWN OF BOSTON FOUNDED 1630  
**Town of Brookline**  
INCORPORATED 1798  
TOWN OF BOSTON FOUNDED 1630  
**Massachusetts**

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0065

Petitioner, 50-54 Kent Street LLC, applied to the Building Commissioner for permission to add three additional units at the building's basement level; one in the basement level of 52 Kent Street and two in the basement of 54 Kent Street. The application was denied and an appeal was taken to this Board.

On November 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 December 13, 2012 at 7:00 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 22, 2012 and November 29, 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: **50-54 Kent Street LLC**

Owner: **50-54 Kent Street LLC**

Location of Premises: **50-54 Kent Street**

Date of Hearing: **December 13, 2012**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

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

1. **5.07; Dwellings In Business and Industrial Districts, special permit required.**
2. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
3. **5.44; Accessory Underground Structures, variance required.**
4. **5.60; Side Yard Requirements, variance required.**
5. **5.70; Rear Yard Requirements, variance required.**
6. **5.91; Minimum Useable Open Space, variance required.**
7. **6.01.2a; General Regulations Applying to Off-Street Parking Facilities, special permit required.**
8. **6.02, Paragraph 1; Table of Off-Street Parking Space Requirements, variance required.**
9. **8.02.2; Alteration or Extension (Structure), special permit required.**
10. **Modification, as necessary, of BOA case # 3369 December 12, 1996.**

of the Zoning By-Law to construct a parking area to add three additional units at the building's basement level; one in the basement level of 52 Kent Street and two in the basement of 54 Kent Street.

Said premise located in a **G-2.0 Business 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, Mark Zuroff and Board Members, Enid Starr 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 David Lapidus, owner of 50-54 Kent Street LLC and Andrea Willet, the architect of the proposal.

Chairman Zuroff called the hearing to order at 7:00pm. Attorney Allen stated that the property is by 50-54 Kent Street LLC. There was a prior case dated January 10, 1997 affecting the property (Case #3369), where the Board of Appeals approved a proposal to construct a three story rear addition (50 Kent Street) to the existing apartment buildings, and add six (6) units, bring the total number of units to fifteen (15). The property is located in a G-2.0 zoning district, however most of the neighborhood is comprised of residential buildings, including a multi-family building and two-family building as the immediate abutters. Abutting the applicant's lot to the rear is a T-5 (two family) district and the Brookline Village commercial district is nearby.

Attorney Allen explained that the petitioner purchased the property in May 2012 and is beginning a major rehabilitation of 50-54 Kent Street and seeking to add three (3) units at the building's basement level; one (1) in the basement of 52 Kent Street and two (2) in the basement of 54 Kent Street. While the unit count will rise from fifteen (15) to eighteen (18) units, the bedroom count will decrease from forty-eight (48) to thirty-nine (39), resulting in a nine (9) bedroom deduction. The proposal includes three (3) window wells in the front of the property, three (3) window wells on the west side of the property along the driveway, and one (1) window well on the east side of the property. A sunken terrace will be used for egress on the property. Landscaping and low lighting are planned along the edge of the property along the edge of the building near the driveway. The buildings' windows are all levels would be replaced and some windows on the east side will be filled with brick. There will be a

collection of segmented roof decks constructed on both 52 Kent Street and 54 Kent Street to be used as additional usable open space. A patio at the rear of 50 Kent Street will be constructed using previous pavers which will also be used as usable open space.

Mr. Allen reiterated that the petitioner's proposal has the unanimous support of the Planning Board and unanimous support from the abutters who were in attendance at the Planning Board hearing on the matter.

Board member Starr inquired as to what counterbalancing amenities would be provided pursuant to the zoning relief requested under Section 5.43. Attorney Allen explained that the petitioner would be providing a combination of counterbalancing amenities, including: landscaping and fencing around the window walls, new landscaping plan, and lighting around the premises.

Continuing the discussion of zoning issues relevant to the proposal, Attorney Allen stated that there were no variances being requested by the petitioner. Mr. Allen then discussed Section 5.07, regarding Dwelling in Business and Industrial Districts, stating that dwellings in G-2.0 districts shall conform to the minimum usable open space and side and rear yard requirements of the M-2.0 zoning district; however the Board of Appeals may waive such requirements by special permit if it would promote reasonable development of the site compatible with adjacent buildings and the surrounding area. Mr. Allen stressed the importance of this provision, noting the implication that this district is an appropriate district for additional development and that the proposal meets the requirements for a special permit.

Moving to the Dimensional Requirements cited under Section 5.91, Attorney Allen explained that the proposal would comply with the required 2,360 s.f. after the additions of a deck on the roof and a patio in the rear of the property and, as a result, no relief would be required from the Board. As for the Side Yard Set Back requirements under Section 5.60, Attorney Allen explained that 22.9 feet is required

and there currently exists 18.5 feet, which is pre-existing nonconforming. Under the proposal the set back will be 4.9 feet for the sunken patio, and will be accompanied by a fence and landscaping as a counterbalancing amenity, noting that the Board may grant relief relative to this section under Section 5.43 or Section 5.07 and that the relief is warranted here. The relief requested under Section 5.70 regarding Rear Yard Setback can be given relief under the same requirements as Section 5.60 and Mr. Allen reiterated the counterbalancing amenities and reasonable development in the district which would support such relief from the Board.

In regards to parking requirements under the zoning code, Attorney Allen discussed the Section 6.01.2.a: General Regulations Applying to Offstreet Parking Facilities. When structures are converted for additional units in a G district parking requirements for the entire building shall be provided, however this Board may, by way of a special permit, reduce the number of parking spaces required for up to half the parking spaced required. Under the code, there are thirty-seven (37) spaces required. Cutting that figure in half would require nineteen (19) spaces if a special permit was allowed. There are currently twenty-five (25) spaces on premises and twenty-five (25) spaces under the proposal. Mr. Allen cited the close proximity to the Brookline T-Station and bus stations at Kent Street and Harvard Street in support of the petitioner's request for special permit.

Finally, Attorney Allen brought to the Board's attention Section 8.02.2, regarding Alteration or Extension, stating that a special permit is required to alter a pre-existing non-conforming structure or use. First, the specific site is an appropriate location for such use, structure, or condition. Numerous other basement apartments on the street in this district and the property is located in business district that promotes additional development. Second, the use as developed will not adversely affect the neighborhood. The petitioner worked closely with immediate abutters to develop this plan and there will be minimal change to the streetscape. Amenities will be put into place to address aesthetics and

safety. Third, there will be no nuisance or serious hazard to vehicles or pedestrians. Again, safety measures will be put into place to address safety concerns of both pedestrians and vehicles. Fourth, 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. In fact this entire property is going to remain rental housing so it remains an affordable option, particularly the basement units.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. No one spoke in favor or in opposition to the proposal.

Tim Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board, stating that the Planning Board has no objection to the proposed basement conversion for three additional units, bringing the total to 18 units on the property. The applicant has modified the proposal in response to comments from Planning Staff, including pulling window wells further back from the front property line, adding landscaping and low-lighting along the driveway, and changing what were overly large expansive roof decks to more segmented roof decks with opportunities for rooftop gardening. The Planning Board has some concern about the window wells on the side of the building facing the driveway, as these are extremely close to where vehicles will be passing. Either railings, as shown in the plans, or bollards should be installed along this edge to ensure safety. Otherwise, the proposal does not involve changing the building's footprint, and the Board supports granting the needed setback and parking relief. The Planning Board supports the relief for parking because there is a small grassy area in the rear yard that is proposed to be a patio for usable open space. In order to ensure that it remains used as such, and does not become space for parking, temporary or otherwise, bollards, a fence or other such barrier should be installed to prevent cars from driving on the lawn. Such a barrier might also improve the usability of the patio.

Therefore, the Planning Board recommends approval of the proposal and plans by Andrea M. Willett, last dated 11/14/2012, subject to the following conditions:

1. Prior to issuance of a building permit, a final site plan, indicating all lighting, window well locations and usable open space, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan, indicating all planting types, materials and locations, fencing and/or bollards, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, final building elevations, indicating all materials and finishes, including railing and window details, shall be submitted to the Assistant Director of 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 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, Head of the Building Department, to deliver the comments of the Building Department. Mr. Yanovich stated that he had no objections to the proposal and that the petitioner had been cooperative during the process. There were some feasibility issues at the beginning, but they were able to figure out a plan that worked with the building department. The plan will create a safer building and increase life safety. Mr. Yanovich 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 Book stated he was in favor of granting relief, noting the dimensional requirement and usable open space. Book stated that relief for a special permit would be warranted under either Section 5.07 or Section 5.43, noting the development and proposed counterbalancing amenities. Board member Starr stated that the requirements for relief under Section 5.07 and Section 5.43 and that parking relief are

warranted under the circumstances. Starr also stated that relief was met under Section 8.02.2. Chairman Zuroff stated that he echoed the statements of the other Board members and that the petitioner met the requirements under Section 5.07 and Section 5.43, along with Section 9.05.

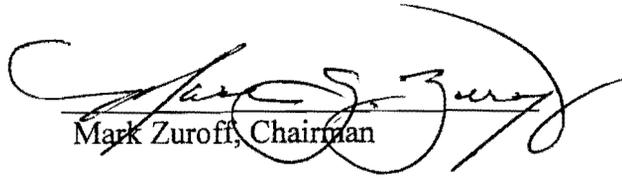
The Board then determined, by unanimous vote that the requirements for a variance and for **Sections 5.07 5.43; 5.44; 5.60; 5.70; 5.91; 6.01.2a;** and **Section 8.02.2** were met. The Board made the following specific findings pursuant to said **Section 9.05**:

- 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 issuance of a building permit, a final site plan, indicating all lighting, window well locations and usable open space, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 2. Prior to issuance of a building permit, a final landscaping plan, indicating all planting types, materials and locations, fencing and/or bollards, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to issuance of a building permit, final building elevations, indicating all materials and finishes, including railing and window details, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
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Unanimous Decision of  
The Board of Appeals



Mark Zuroff, Chairman

Filing Date: January 11, 2013

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

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TOWN CLERK

2013 JAN 11 A 8:30