



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0003

Petitioner, First Run LLC, applied to the Building Commissioner for permission to add a study and bathroom to the fourth floor of the existing residential structure at 134 Davis Avenue. The application was denied and an appeal was taken to this Board.

On January 13, 2010, 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 February 24, 2011, at 7:15p.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 his 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 January 27, and February 3, 2011, 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: **First Run LLC**
Owner: **First Run LLC**
Location of Premises: **134 Davis Avenue**
Date of Hearing: **February 24, 2011**
Time of Hearing: **7:15PM**
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

1. **5.20; Floor Area Ratio, variance required.**
2. **5.22.3.b.2); Exceptions to Maximum Floor Area Ratio Regulations for Residential Units, special permit required.**
3. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
4. **5.90; Minimum Landscaped Open Space, variance required.**
5. **8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to add a study and bathroom to the fourth floor of the existing structure at 134 Davis Avenue.

Said premise located in a T-5 (two-family and attached single-family) residence 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.

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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, Jesse Geller and Mark Zuroff. The

Petitioner, was represented by Attorney Robert L. Allen Jr., 300 Washington Street #2 Brookline, MA 02445-6865.

Mr. Allen described 134 Davis Avenue as a 3½ story three-family dwelling located at the intersection of Davis Avenue and Elm Street. The property was constructed in 1900, and has a small parking area at the rear of the structure which is accessed by Elm Street. The attic of the building has two existing dormers, however it currently does not contain any finished area. The building is currently being renovated.

Mr. Allen said that his client, First Run LLC, is proposing to construct a second living room and bathroom in the attic for the use of the third floor unit. The new living room and bathroom will create an additional 239 s.f. of gross floor area and will be accessed by an existing stair in the rear of the structure. The new floor area will not require any exterior alterations to the structure as it makes use of the existing dormers for the stairs and a window for the living area.

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

Courtney Synowiec, planner, delivered the findings of the Planning Board.

Section 5.20 – Floor Area Ratio

Section 5.90 – Minimum Landscaped Open Space

Dimensional Requirements	Allowed	Allowed by Special Permit	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.0 100%	1.2 120%	1.15 115%	1.2 120.2%	Variance*
Floor Area (s.f.)	4,020	4,824	4,622	4,833	
Landscaped Open Space	1,447 s.f. 30% of g.f.a.	--	1,455 s.f.	1,656 s.f.	Complies

* Under Section 5.22.3.b.2 the Board of Appeals may grant a special permit in T districts for an increase in floor area, so long as the addition does not exceed 20% of the permitted gross floor area. The applicant is proposing to construct 9 square feet of floor area in excess of 20% of the permitted gross floor area.

Section 8.02.2- Alteration or Extension

A special permit is required to alter a nonconforming structure or use. This structure is a non-conforming three-family dwelling in a T-5 zoning district.

Ms. Synowiec reported that the Planning Board was generally supportive of a proposal to construct a secondary living room in the attic of this three-family dwelling, but the proposal should be modified slightly to comply with the floor area ratio special permit provisions of the Zoning By-law. The proposal does not require any alterations to the building's exterior envelope, making use of its existing dormers; however as currently designed it exceeds the total square footage allowed by special permit by a minimal amount. This area should be reduced so that it complies with the special permit limits, and the applicant has indicated willingness to do so. Additionally, the proposed site plan indicates an increase in landscaped open space, however the plan is not clear regarding what areas of the property are landscaped. The applicant has described the addition of a patio, vegetative ground cover, and new shrubbery around the side and front of the building, as well as around the parking area. The Board appreciates any increase in landscaping, and a landscape plan showing both existing and proposed landscaped areas should be submitted for staff review prior to the issuance of a building permit. Therefore, should the applicant revise the proposal so that relief for the dwelling's additional square footage can be given by special permit rather than by variance, the Planning Board recommends approval of the plans by Leonardi Aray Architects, dated 12/2/10, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and an FAR analysis certified by a registered architect, indicating the dwelling's final gross floor area will not exceed 4,824 s.f., 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 a landscape plan indicating all existing and proposed landscaped open space on the property, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to 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 floor plans, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard referring to the photographs in the Planning Board report, commented on the quality of the renovations undertaken by the contractor on the subject property. Mr. Shepard said that the contractor worked hard to reduce the potential living area on the fourth floor to be at the 20% allowed by special permit. He commented that FAR is one way to control the mass of a structure and that the requested extra space will have no impact on the external appearance of the property. Mr. Shepard said that the Building Department was supportive of the proposal as well as the conditions recommended by the Planning Board.

During deliberations, Board Members agreed that the proposal including the counterbalancing amenities would be an improvement to the property.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that all the requested relief could be granted by special permit. The Board found that that the petitioner has satisfied the requirements necessary for relief under **Sections 5.22.3.b.2, 8.02.2, and 9.05** of the Zoning By-Law and made 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.

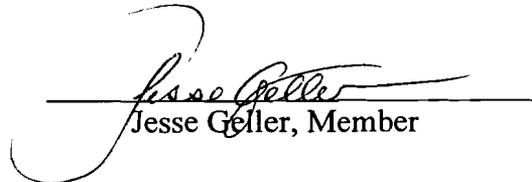
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. **Prior to the issuance of a building permit, the applicant shall submit final floor plans and an FAR analysis certified by a registered architect, indicating the dwelling's final gross floor area will not exceed 4,824 s.f., subject to the review and approval of the Assistant Director of Regulatory Planning.**
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RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

MAR 2 2011

Unanimous Decision of
The Board of Appeals


Jesse Geller, Member

Filing Date: _____

A True Copy
ATTEST:

Patrick J. Ward Clerk, Board of Appeals