



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

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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. 2011-0045

Petitioner, NRT New England, LLC, applied to the Building Commissioner for permission to convert 950 sf of basement space to general office at 1375 Beacon Street. The application was denied and an appeal was taken to this Board.

On July 22, 2011, 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 September 8, 2011, 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 August 18 and 25, 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: **NRT New England, LLC**
Owner: **B-PRIME REALTY LLC**

Location of Premises: **1375 Beacon St**
Date of Hearing: **September 8, 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. 6.02.1.b; Off-Street Parking Space Regulations, special permit required.**
- 2. 6.03.2.b; Location of Required Off-Street Parking Facilities, special permit required.**
- 3. 8.02.2; Alteration or Extension, special permit required.**
- 4. Modification of Board of Appeals case #2964, dated 11 August 1989.**

of the Zoning By-Law to **convert 950 sf of basement space to general office at 1375 BEACON ST.**

Said premise located in a **G-1.75 (CC)** general 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**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Mark G. Zuroff and Board Members Jonathan Book and Christina Wolfe. The case was presented by the Attorney for the petitioner, Michael Merrill of Merrill & McGeary, 100 State Street, Suite 200 Boston, MA 02109.

The Planning Board Report dated August 11, 2011 provided the zoning related history of the site:

August 11, 1989, Case #2964 (second amended decision) – Board of Appeals granted permission to convert 1,462 sq. ft. of basement floor area into office space on two conditions: That two off-premise parking spaces be provided, and that the special permit would expire if not extended after six years.

December 21, 1993, Case #3201 and November 26, 1996, Case #3201A – Board of Appeals granted permission to convert 950 sq. ft. of basement floor area into office space subject to several conditions including: That one off-premise parking spaces be provided within 400 feet of the office, and that the special permit would expire if not extended after five years.

May 1, 2003, Case #030021 – Board of Appeals modified Case #3021A and granted a five year time extension to continue to use the 950 sq. ft. area in the basement for an additional five years subject to the same conditions as the 1993/1996 cases.

Mr. Merrill said that his client, NRT New England, LLC is seeking to continue to use 950 square feet of floor area in the basement. The applicant has submitted a rental agreement for the leased premises dating from 1996 for the use of the office space including the basement space and for use of three parking spaces (two in excess of what has been required by their previous special permits). Mr. Merrill also submitted on behalf of the applicant a letter from the Landlord dated June 22,2011 confirming the rental of the three parking spaces directly behind the leased premises at 1375 Beacon Street. The previous special permit was last extended in 2003 and lapsed on October 30, 2008. The storefront is currently occupied by Coldwell Banker and has been occupied by Coldwell Banker and their predecessor (Coldwell Banker Hunneman née Hunneman Realty) since the special permit to use the basement space was initially granted in 1989. Mr. Merrill also asked the Board to consider not requiring his client to return to the Board should they grant the requested relief. He reported that the site has been used in this manner for quite some time as evidenced by the previous extensions and no complaint, related to parking or otherwise, has ever been made against his client.

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

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

Section 6.02.1.b – Off-Street Parking Regulations

The Board of Appeals may waive up to ten spaces or half the required number parking spaces (whichever is greater) when a change or expansion of a non-residential use in a business district occurs. *The required number of parking spaces for 950 square feet of floor area in the basement is two parking spaces. Special Permit Required.*

Section 6.03.1.b – Location of Required Off-Street Parking Facilities

The Board of Appeals may allow for parking to be provided on any lot in the same ownership within 400 ft. of the principal use or structure served by special permit. *The applicant was previously required to provide one off-street parking space and has submitted evidence of a rental agreement for three off-site parking spaces.*

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure.

Ms. Synowiec reported that the Planning Board was supportive of this proposal. The applicant has used 950 square feet in the basement of this building for twenty-two years with few, if any, complaints registered to the Building and Planning Departments (as cited in previous reports and decisions). The Planning Board believed that in spite of the lapsed permit, the applicant has acted in good faith to comply with their conditions and has continued to maintain rental parking in excess of what they were required. At this point in time, the Planning Board believed a sunset date for this special permit is no longer necessary as the property has been used in this manner for a substantial number of years without any major issues or complaints. Therefore, the Planning Board recommended approval of the proposal by Michael Merrill, dated July 14, 2011, subject to the following conditions:

1. The petitioner shall continue to provide one parking space within 400 feet of the applicant's office, by lease or written agreement.
2. The applicant shall submit evidence that the Board of Appeals decision has been recorded at the Registry of Deeds within 60 days of the filing date of this decision to the Building Commissioner.

The Chairman then called upon Michael Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard reported that the use has existed for quite some time. He said that he had reviewed the

record of the case and several people had concerns relative to parking. Mr. Shepard reported that the Building Department file contained no complaints in this regard. He said that the very fact that no one came to the hearing speaks to whether the Board should consider eliminating the sunset clause from the initial relief granted.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant special permits under Section 6.02.1.b, 6.03.1.b and Section 8.02.2 since the structure is pre-existing, non-conforming. The Board also voted to modify Board of Appeals **Case #2964** accordingly. Also, the Board 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:

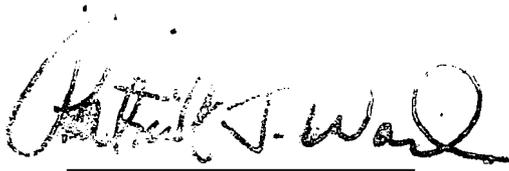
1. **The petitioner shall continue to provide one parking space within 400 feet of the applicant's office, by lease or written agreement.**
2. **The applicant shall submit evidence that the Board of Appeals decision has been recorded at the Registry of Deeds within 60 days of the filing date of this decision to the Building Commissioner.**

Unanimous Decision of
The Board of Appeals

Filing Date: November 04, 2011


Mark G. Zuroff, Chairman

A True Copy
ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large, prominent "P" and "W".

Patrick J. Ward
Clerk, Board of Appeals