



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. 2011-0051

Petitioners, Mara Littman and Matthew Revis, applied to the Building Commissioner for permission to convert their home at 44 Linden Street into a three-family and provide the related parking. The application was denied and an appeal was taken to this Board.

On September 29, 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 November 3, 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 October 20 and 27, 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: REVIS MATTHEW L & LITTMAN MARA E
Owner: REVIS MATTHEW L & LITTMAN MARA E

Location of Premises: **44 LINDEN ST**
Date of Hearing: **November 3, 2011**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Conference Room, 6th Floor**

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

1. **3.01.1.c; Classification of Districts, variance required.**
2. **4.07; Table of Use Regulations, Use #4a, variance required.**
3. **5.05; Conversion, special permit required.**
4. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
5. **6.02.1; Off Street Parking Space Regulations, variance required.**
6. **6.04.5.c; Design of All Off-Street Parking Facilities, variance required.**
7. **6.04.12; Design of All Off-Street Parking Facilities, special permit required.**
8. **8.02.2.1; Alteration or Extension, special permit required.**

of the Zoning By-Law to **Request to convert the property at the subject address into a three-family home and provide related parking at 44 LINDEN ST.**

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.

**Enid Starr
Jesse Geller
Robert De Vries**

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 Jonathan Book and Mark Zuroff. The case was presented by the attorney for the petitioner, Robert L. Allen, of 300 Washington Street Brookline, MA. Ms. Littman was present during the hearing.

BACKGROUND

May 1, 1992 – The former owners, Robert Felt and Martha Fielding, were granted a building permit to modernize a bathroom in the basement. The Felt-Feilding family submitted an affidavit to the Building Department stating that at no time would the basement be used as a rental unit and would merely be occupied for recreational purposes by their teenage children (see attached).

May 6, 2011 – The current owners, Mara Littman and Mathew Revis, received a letter from a neighbor notifying the applicant that two front yard parking spaces located outside of their driveway likely violated the Zoning By-Law. Upon receiving the letter, the applicant called the Department of Planning and Community Development for explanation. Through the course of conversation, it was discovered that the applicant did need relief for the parking but also for the current four-family use of the property (see attached).

SITE AND NEIGHBORHOOD

44-61 Linden Street was built in 1874 and is a National Register property. The home was converted to a two-family structure in 1923, and has had front and side entrances remodeled, a piazza converted to a sun porch and the interior space carved into four residential units. The property is located on the corner of Linden Street and Linden Place, with the entrance to 44 facing Linden Street and the entrance to 61 facing Linden Place. There are two dwelling units in 61 Linden Place (one per floor), one dwelling unit occupied by the applicant at 44 Linden Street (both floors), and a fourth dwelling unit in the basement underneath 44-61 Linden Street. Parking facilities are located to the side of the building facing Linden Place.

APPLICANT'S PROPOSAL

The applicants, Mara Littman and Mathew Revis, are seeking to convert their home from a four-family and legalize it as a three-family structure in addition to the two-front yard parking spaces. Attorney Robert L. Allen, Jr., whose professional address is 300 Washington Street, Brookline, Massachusetts, representing the applicants, waived the reading of the notice. Attorney Allen stated that the applicant is proposing to remove the second floor unit from 61 Linden Place and combine it with the second floor of the owner occupied unit in 44 Linden Street. The applicants also intend to retain the existing basement unit. The remaining first floor unit in 61 Linden Place will have one bedroom; the basement unit will have two bedrooms; and the owner occupied unit at 44 Linden Street will have four bedrooms. As there are egress issues with the basement level unit, the applicant is proposing to construct an entrance on the Linden Place façade beneath the entry stair to 61 Linden Place where it appears a

door or window once existed but was subsequently filled in. The new entrance will have a stair up to grade and a small walkway leading to the parking area.

The applicants are also proposing to beautify their front yard parking by installing concrete pavers at the head of the driveway with a 5' wide ceramic brick walkway. The applicant is proposing to create a landscaped bed between the entry stairs for 61 Linden Place and the proposed basement unit and the driveway. In addition, the applicant is proposing to install new plantings along the property line between the existing driveway and the fence.

ZB A Chair, Enid Starr, asked for how long a period of time has this dwelling been more than a two family and how many units has it been. Attorney Allen stated that based on information he has gathered from neighbors, it appears that it has been a four unit for more than forty years.

Landscape Architect Blair Hines, whose professional address is Blair Hines Design Associates, 318 Harvard Street, Suite # 25, Brookline, MA, described the new entrances and the parking design. Mr. Hines stated their proposal will organize the parking area better and create a little more landscaping. He noted that they will be reducing the amount of gravel pavement to one parking space, creating a landscaped area with a low retaining wall, extending the curb cut to 19 feet and extending and repairing the existing walkway to the first floor unit.

Attorney Allen presented to the Board a close-up photograph of the brick walkway and the stairway to the first floor unit, which was accepted this as Exhibit A. Attorney Allen noted that this application received unanimous support from the Planning Board as well as significant support from the neighborhood. He noted that one neighbor wanted a further reduction in the number of parking spaces but, he added, that the Planning Board felt that a further reduction would lead to an arduous situation of tandem parking. Attorney Allen then stated that what the petitioners are requesting is certainly not

unheard of in this neighborhood. He noted that one-third of the properties in this neighborhood are three-families.

Attorney Allen, in discussing the relief, stated that a special permit is being sought under Design Review - Section 5.09.2.k. He noted that the Planning Board commented in their report approval of the most relevant portions, namely the preservation of landscape; relation to the building and its environment; relation of the building to the streetscape and the neighborhood; open space; and circulation. Attorney Allen stated, in reference to the use variance, according to a review performed by the Town's Planning staff, there are 272 structures in this T-5 District. He noted that of those 272 structures, 93 of them or approximately one-third are three families. He added there are numerous units that are greater than three-family. He stated that he believes this figure to be significant since what we are asking for is not unheard of in this district.

Attorney Allen asked the Board to draw their attention to Section 9.09.1.d where the Board may grant a use variance only on a lot that conforms to existence of a historically significant structure that is being preserved and restored in a manner that justifies the relief sought and is an important part of maintaining the property. He noted that there is a letter on record from the Preservation staff that has opined that this is a significant structure used as a rental property since 1874. He noted that since the structure is considerable in size and constructed of slate and masonry it creates a considerable financial burden to maintain for the petitioners. He further noted that by allowing the petitioners to reduce the intensity of the use and allowing them to maintain it as a three-family will help to alleviate some of the financial constraints associated with the maintenance. He added that the inability of the petitioners to keep this as a three-family will create a substantial financial hardship. He added that since they have purchased the property the use as a four-family has allowed them to re-point the entire building; install new windows and take care of a water problem in the basement. Attorney Allen stated that the Board has on file

numerous letters from abutters and neighbors in support of this proposal and shows that this proposal is in harmony with the rest of the neighborhood.

Zoning Board of Appeals Member Jonathan Book stated that there is a letter on file that referenced the basement unit – indicating that it could not be used as a separate unit. He noted that it is now 19 years later and somewhere during that period someone decided to rent that unit out. Attorney Allen stated that he is aware of the 1992 letter but added that basement unit has always been rented. He noted that about that time that unit may have begun to be used as a commercial unit.

Chair Starr asks if the phrase” provided statutory requirements are met” in Section 9.09 takes the Board back to M.G.L., C.40A, section 10? Attorney Allen stated that you have to show uniqueness like the corner lot; you have to show the financial hardship; and that it is not a burden on the neighborhood. He stated that he believes the petitioners have met the statutory requirement. Chair Starr, citing the requirements for a variance, asked if this was a unique structure. Attorney Allen stated that this is a unique structure due to its history. It was constructed in the 1830’s and has no sidewalks. He noted that it may not only be unique to the district but also the whole town.

Chair Starr stated that as a prior existing non-conforming structure you are reducing the non-conformity – not increasing it. Attorney Allen stated that was correct. There was further discussion about the parking area on Linden Place. Attorney Allen noted that there are two front yards – making it physically possible to cut a parking space on Linden Street. He noted, however, that would not be ideal due to safety and the historic concerns for interrupting the majestic front yard.

Chairman Starr asked if there was anyone present who wished to speak in support of this application. Sarah Heywood, a resident of 45 Linden Place, Brookline, Massachusetts, stated that she has lived across from this property for approximately thirty-three years. Ms. Heywood noted that the property has had a real mixed-use history – being a boarding house at one time. Ms. Heywood stated that the

petitioners bought the house seven years ago and they have been very good neighbors and they are trying to make the property look nice. She added that most of the neighbors are in support of the application.

Chair Starr then asked if there was anyone present who was opposed to the petition. There were none.

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

Section 3.01.1.c – Classification of Districts

T-6 districts are intended to be used for two-family and attached single family structures.

Section 4.07 – Table of Uses

Under the Table of Uses, Use 4A only allows for a dwelling on a separate lot occupied by three families by-right in F, M, L and G districts. The subject property is located in a T-6 district.

Use variance required (see Section 9.09 of the Zoning By-Law for the conditions for approval of a use variance)

Section 5.05 – Conversions

This property is not eligible for dimensional relief under this section of the By-Law because it only applies to the conversion of a single family structure to a two-family structure in a T district.

Section 5.09.2.k – Design Review

A special permit is required for any structure for which a variance is requested pursuant to Section 9.09.1.d. All of the Community and Environmental Impact and Design Statement conditions have been met and comments on the most relevant follow:

- (a) Preservation of Landscape: The proposal will not disrupt any of the existing landscaping and the applicant is proposing to install new landscaping in a portion of the area currently used for front yard parking as well as along the existing driveway.
- (b) Relation of Buildings to Environment: The proposed alterations to the dwelling will be minor and will not be disharmonious with the existing landscape.
- (c) Relation of Buildings to the Form of the Streetscape and Neighborhood: The subject property is a National Register property and is unique to the neighborhood. The proposed conversion and associated alterations will remain consistent in terms of appearance with the historic character of the home and the neighborhood.
- (d) Open Space: The proposal will increase the amount of open space currently on the property by eliminating one front yard parking space.
- (e) Circulation: The proposal will improve circulation on the property as all parking areas will be paved with permeable pavers, have a curb cut and will and have adequate sight lines for safely entering and exiting the property as there is no sidewalk on this side of the street.

Section 6.02, Paragraph 1 – Table of Off-Street Parking Requirements

Section 6.04.5.c – Design of Off Street Parking Facilities

Parking Requirements	Required	Existing	Proposed	Relief
Number of Parking Spaces	6	3*	4	Variance
Front Yard Setback	25'	17'7"	0'	Special Permit**
Side Yard Setback	5'	0'	0'	

* Although the applicant currently has five parking spaces, only the three existing spaces in the driveway are considered legal parking spaces.

** Under Section 6.04.12 the Board of Appeals may waive dimensional requirements for parking spaces to serve existing structures.

Section 8.02.2 – Alteration or Extension

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

Section 9.09.1.d – Conditions for Approval of a Use Variance

Under this section, a use variance can be granted for a structure that is of architectural or historical significance to be able to reasonably maintain the structure as a visual and taxable asset.

Ms. Synowiec reported that the Planning Board was supportive of this proposal but would like the final floor plans and elevations clearly show how the remaining units will be delineated and what the new basement entrance will look like. The property is eligible for the National Register and is considered to be architecturally significant. As the structure is substantial in size and is constructed of materials (slate and masonry) that create a considerable financial burden to maintain, reducing the intensity of the use while allowing the property to operate as a three-family should alleviate some of the financial strains associated with maintenance. The Planning Board was supportive of the conversion to a three-family should the Board of Appeals find the applicant meets the statutory grounds for a variance as well as the conditions established under **Section 9.09** for the approval of a use variance. With respect to the parking variance they also felt that should the Board of Appeals find the proposal meets the statutory grounds, they are supportive of the provision of four parking spaces to serve three units, particularly as one of the units only has one bedroom. Although the applicant could seek legalization of both of the front yard parking spaces that currently exist, the Planning Board preferred the applicants' plan to eliminate one of those spaces and install additional landscaping. The Planning Board believed that because the property is a corner lot it is difficult to avoid front yard parking and also finds that front yard parking is not contrary to the community standard for off-street parking in this neighborhood. Further, given the proposed materials, additional landscaping and reduction in overall parking, the Planning Board felt the proposed driveway configuration was a vast improvement to the existing conditions on the property. Therefore, should the Board of Appeals find the proposal meets the grounds for a variance and the conditions for a use variance, the Planning Board recommended approval of the proposal subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations accurately and clearly indicating existing and proposed conditions including the shed awning and proposed wooden stairway, all salient dimensions, and all materials shall be submitted 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 final landscape plan indicating the improvements to the front yard parking area subject to the Assistant Director of Regulatory Planning.
3. There shall only be three dwelling units on the subject property.
4. 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 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 Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard delivered the history of the application before the Board. He stated that the Building Department was supportive of the proposal since it would eliminate one of the units that existed reducing the number to three. He also said that given the proximity to public transportation, the reduced number of spaces should be adequate. He did express concern however, about the potential for front yard parking in the future. He asked the Board to consider a condition restricting parking in the existing driveway to three spaces and one to the left in the newly designed space.

Zoning Board of Appeals Chair Enid Starr asked Attorney Allen if his client was willing to accept that amendment to that condition. Attorney Allen stated that amendment would not be an issue.

Zoning Board of Appeals Member Jonathan Book stated that he favored granting the requested relief. He stated that due to the historic nature of the property and the financial hardship of maintaining that property, without having the three units, he was in favor of the use variance, the reduction of the parking spaces and the special permits warranted under Section 9.05.

Zoning Board of Appeals Member Mark Zuroff stated that he believes the petitioners have met the requirements for the variance and that he also supports the relief requested.

Zoning Board of Appeals Chair Enid Starr stated that it is a unanimous grant subject to the conditions recommended by the Planning Board and with the added amendment to condition #3, recommended by the Building Commissioner, that there shall be only four cars parked on the subject property. Chair Starr stated that the Board feels that the requirements for the special permit under Section 8.02.2 – Alteration or Extension has been met and in fact, there is a reduction of the non-conformity as to the use and the parking. Chair Starr added that the Board has determined that the statutory requirements of a variance have been met since the structure is unique; that the shape of the lot is unique to the district and failure to grant the relief would result in a substantial financial hardship to the owners. Chair Starr also added that the conditions for a use variance, under Section 9.09.d have been met since this is a structure of historic significance and the relief will allow the owners to maintain the structure.

During deliberations, the Board determined that the amount of relief required was insignificant and also 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, final plans and elevations accurately and clearly indicating existing and proposed conditions including the shed awning and proposed wooden stairway, all salient dimensions, and all materials shall be submitted 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 final landscape plan indicating the improvements to the front yard parking area subject to the Assistant Director of Regulatory Planning.

3. There shall only be three dwelling units on the subject property and parking shall be limited to three spaces in the existing driveway and one to the left in the newly designed space for a total of four parking spaces.
4. Parking in the main driveway shall be limited to three vehicles and no vehicles shall be allowed to park in the front yard setback.
5. 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 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

Filing Date: November 15, 2015

A True Copy
Attest:



Patrick J. Ward
Clerk, Board of Appeals


Enid Starr, Chairman