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Town of Brookline Massachusetts

BOARD OF APPEALS
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Jesse Geller, Co-Chair
Christopher Hussey

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0067

Petitioners, Marian and Grazyna Marzynski, applied to the Building Commissioner for permission to convert their existing single-family home at 736 Washington Street into a bed and breakfast offering up to four rooms. The application was denied and an appeal was taken to this Board.

On December 8, 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 February 16, 2012 at 7:30 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 January 26, and February 2, 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: MARZYNSKI, MARIAN & GRAZYNA TRS

Owner: **MARZYNSKI, MARIAN & GRAZYNA TRS**
Location of Premises: **736 WASHINGTON ST**
Date of Hearing: **February 16, 2012**
Time of Hearing: **7:30 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

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

- 1. 4.07 - Use #7; Lodging House, licensed and unlicensed, variance required.**
- 2. 8.02.2; Alteration or Extension, special permit required of the Zoning By-Law to convert the existing single-family home into a bed and breakfast offering up to four rooms at 736 WASHINGTON STREET.**

Said premise located in a **S-7 (single-family)** 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, Jonathan Book, and Board Members, Mark G. Zuroff and Lisa Serafin. The case was presented by the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Brookline MA.

By way of background information, the Planning Board report noted previous relief granted at this location by previous Boards of Appeal:

July 27, 2000 – Planning Board recommended denial for an application to legalize a second surface parking area. The case was withdrawn in 2001.

BOA Case #040055, 2004 – Relief was sought to construct a new garage in the side yard of the property, accessed from Salisbury Road. The case was postponed, and the case never returned to the Board of Appeals. There is a record of a building permit being issued on 9/27/2004 to construct the garage, so the applicants may have revised the plan to construct the garage by right.

Mr. Allen began his presentation.

Mr. Allen said that the petitioners, Marian and Grazyna Marzynski live at 736 Washington Street. Their home is located in an S-7 Zoning District, across the street from a T-5 District and two doors down from a G 1.75 District. *See Exhibit A - Zoning Map.* The Applicants are seeking to legalize the conversion of the single-family dwelling into a bed and breakfast (B&B) with four rental rooms. No changes to the exterior of the building are proposed. There is a two car garage servicing the property. The Petitioner owns a separate 8100 sf vacant lot located immediately adjacent to the south side of the property along Washington Street, which is known and numbered as 0 Washington Street.

Because the premise is located in an S-7 (single family) district, the Building Commissioner concluded that previously submitted Architectural Plans did not conform to the following provisions Town of Brookline Zoning By-Law:

4.07 – Use #7 Lodging House (variance required), and;

8.02.2 – Alteration or Extension (special permit required).

Mr. Allen said that **Section 9.09.1** of the Zoning By-Law for the Town of Brookline states that the Board of Appeals may grant a use variance (provided statutory variance requirements are met), only on a lot that conforms to one of conditions outlined therein. Specifically, **9.09.1.d** states in relevant part:

Existence... of a structure... which is either of historical or architectural significance which shall be preserved or restored in a manner sufficient to justify the relief granted herein, and/or contains gross floor area excessive for the use permitted in the district..., and which can reasonably be maintained as a visual and taxable asset only if nonconformity of use is permitted.

The Marzynskis' have been using the property as an owner occupied B&B for approximately 3 years under the belief that it was a lawful use. Prior to moving to Brookline, the Marzynskis ran a successful B&B in Chicago, where they won numerous awards for architectural preservation. They were never required to undergo this type of approval process for their Chicago B&B.

736 Washington Street in a beautiful Queen Anne style home built in 1899-1900. The home was designed by F. Joseph Untersee, a New England architect who lived in Brookline (at the corner of Davis & Keiffer Road). He was better known for his designs of churches, such as St. Lawrence Church, the Basilica and Rectory of Our Lady of Perpetual Help in Brooklyn and the towers on the Mission Church in Roxbury. Untersee was also responsible for the designs of the Manual Training School at Brookline High School, the old Bathhouse and Gym, the Brookline Savings Bank, and St. Mary's School along with several other commercial buildings and residences.

There is a gracious wraparound porch with a fieldstone foundation and a stone archway, polygonal dormers and a rounded tower bay window. The house is decorated with dart moldings, leaded glass and modillions. The exterior as well as the interior retains a high degree of integrity. The large original windows have also been retained by the Applicant. There is little doubt of the historic significance of this house.

When the Marzynskis' originally purchased the property, the dwelling, the fieldstone foundation, and surrounding grounds were completely run down. They had outbid a developer who intended on tearing down the house and building two homes on each of the two lots. They had to perform extensive renovations prior to being able to move into the property. This restoration included the field stone and stone walls, dart moldings, leaded glass and modillions, the entire exterior as well a significant gutting of the interior, and the refurbishment of the large original windows. It is undisputed that the property was completely neglected prior to the Marzynskis' purchase. The slate roof with numerous peaks, the

Queen Anne style with so many dormers and curves added significant expense to the roof and exterior renovations as well as the ongoing maintenance. The Marzynskis' restoration took into account the historic importance of this property and was done in such a manner to justify this relief they are requesting.

To further support the argument under Section 9.09.1.d, Preservation Staff has opined that this is a significant structure and an "important building" and site that should be maintained.

The structure at 736 Washington Street is substantial in size and is constructed of materials that create a considerable financial burden to maintain. The Marzynskis' invested a significant amount of their savings in order to restore the building while maintaining the important features designed by Mr. Untersee. The uniqueness of this shape of this house compared to others within the district drove renovation cost. After move in, in order to recoup some of these expenses, the Marzynskis' began renting out only two bedrooms; however, as they continued to invest in the restoration and continued to pay the property taxes, they began to rent out another bedroom, unaware of any restrictions. When the Building Commissioner made the owners aware that their use of the property as a B&B violated the zoning ordinance, they immediately sought this appeal to legalize the renting of four bedrooms. Even though the request is for four bedrooms, it is important to note that that they only rent to 3 families, as the forth bedroom is small with no private bathroom so it is only utilized when a guest has children and they can all share a private bath. Currently, the rental bedrooms are located on the second floor and the owners live on the third.

Both Grace and Marian are retired and the income derived from the B&B helps with the payment of taxes and the expensive upkeep of the property. They currently pay taxes in the amount of \$17,279 for their home and \$4,544 for the vacant lot, totaling \$21,823. Mr. Allen said that he was advised by the Assessor that the vacant lot is currently and has always been (at least as far back at 2002) been assessed

as a buildable lot. If not for the income derived from the B&B, it would not be financially feasible for them to continue to maintain this taxable asset.¹

Mr. Allen said that the Board has recently cited 9.09.1.d in Case No. *2011-0051* (44 Linden Street) where a use variance was granted to allow a 3 unit building in a two family district. There, as here, there was a pre-existing non-conforming use that the petitioners needed to legalize by way of obtaining a use variance. The Board, relying on the statements of the homeowners and the proof of restoration, found that “due to the historic nature of the property and the financial hardship of maintaining that property without having the three units” a variance was appropriate. Further, the Board confirmed that a use variance can be granted for a structure that is of architectural or historical significance to allow an owner to be able to reasonably maintain the structure as a visual and taxable asset. Clearly 736 Washington Street falls securely within the legal reasoning and precedent established in the 44 Linden Case. As stated by the majority of the Planning Board in their approval, the use as a Bed & Breakfast by the petitioners may have saved the house from demolition and provided the owners the means to finance renovations of the house and improvements to the grounds.

The Marzynskis’ also have saved the house from demolition and preserved the historic and architectural integrity of the house for everyone to appreciate. The inability to allow this change of use would cause a significant financial impact on the petitioners, and most likely will result in the inability to preserve the historical aspects of this important structure, and perhaps even force them to sell the structure. The irony is that, if they were to sell, the best way for them to recoup their investment in restoring the property is to file a demolition permit and sell the property as two buildable lots. This would not be in the best interest of the Town nor the neighborhood and would be the least appealing, but potentially necessary, alternative for the owners. Their request, for four rental rooms is the least

intrusive use on the house and the neighborhood, yet still allows the petitioners to accomplish their goals of maintaining this important structure. For example, a request to change the use to a two family residence, which would also require a variance, would have a drastic effect on the integrity of the structure. Even the Preservation Staff found that the use of the property as a B&B will have minimal impact on the house itself, but will assist greatly in the long-term maintenance of its features and siting. Mr. Allen stated that it is important to insert that a couple of memos have been submitted hypothesizes about the Marzynskis' true financial hardship using the power of Google to somehow assume that every transaction they have been involved with has been a whopping success, but this is real. In fact it is so real that a demolition permit has been filed on this property because if the Marzynskis' are forced to shoulder the expenses associated with this house, they do not think they can afford to continue living here and filing a demo permit, waiting a year and marketing the property as two separate lots, maximizes the profits and allow them to recoup some of the investment they made in restoring this property. This is no joke, these are people who care deeply about preservation, but also need to do what's best for them and their family. Further, while some objection exists, many from individuals who reside in the other side of the Town, the Applicants have provided this Board with over 46 letters supporting this change in use.

As to the requested variance, 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 soil conditions, shape, or topography of such land or 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."

As previously mentioned, the Marzynskis' own and pay taxes on an adjacent vacant lot next to their B&B known as 0 Washington Street (the "Lot") which is 8100 sf. Typically, in an S-7 district this Lot would be buildable, however, the size and shape of the structure on 736 Washington prevents the Lot from being buildable. The reason is that 736 Washington Street is an 8314 sf lot, and the B&B is approximately 5222 sf²; thus, the Floor Area Ratio (FAR) for the property is .63. This is the highest FAR of the immediate abutting houses and nearly twice the allowable amount. The allowed FAR in an S-7 District is .35. Therefore, the Lot could not be sold off to a separate buyer or subdivided for purposes of building a separate dwelling. If tried, as the Board knows, 736 Washington would be left as a non-conforming lot and because the lots were in common ownership, the hardship would be deemed to be self-created, thus precluding it from relief. Even if, hypothetically, the petitioners were to carve off 1100 sf from the Lot and seek a special permit under the Zoning By-Law Section 5.22.2 (Increase FAR by 150%), 736 Washington Street would still exceed the allowable FAR. Both lots are needed in order to meet the FAR requirements of the existing home at 736 Washington Street.

Consequently, 736 Washington Street is unique in that it is the only lot in this zoning district located on a corner of a main street, immediately adjacent to an M-1.0 Zoning District, across the street from a T-5 District and two doors down from a G 1.75 District, and adjacent to a separate but unbuildable lot. In fact it is the only separate vacant lot in this very large zoning district. The lot is assessed as a buildable lot at nearly \$400,000 and the Marzynskis' have had to incur the financial hardship of paying an annual tax bill of \$4544 for a Lot that has little value. When compared to the immediate surrounding homes as well as the homes within the district, the shape of the Applicants' structure is unique both in size of the house in comparison to the size of lot and the number of dormers, curves and unique roofline. This uniquely shaped house leaves the Marzynskis' with the albatross of a

fully taxable yet unbuildable lot that really has no financial benefit. Again, it is important to note that when the Marzynskis' purchased their home there was one other bidder that wanted to pursue tearing down the structure in order to build two new homes on the two lots, thus, losing the historical significant property in a fairly prominent location. It is self-evident that tearing down this structure and selling two buildable lots has more value than selling the two properties "as is".

Granted, the Marzynskis' did not understand that zoning relief was necessary prior to operating as a B&B, and now understand and appreciate that they should have consulted with the Building Commissioner prior to renting out rooms. But, with the benefit of hindsight, it is clear that granting a variance to allow for a B&B can be done without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. There are no records of police calls to the property within the three years that this has been in operation. There have been no complaints filed with the building or health departments. There have been no issues with overcrowding of people or vehicles on the property and three years have passed without any incident. Mainly because this is a very small operation; there is no signage, only one agency handles reservations, walk ups are not allowed and stays are usually quite short in duration. The B&B closes by Dec 1, and does not open until April 1 – so it is only in operation 8 months out of the year. It is mainly occupied by parents visiting their college children or professionals passing in and out of Town who prefer the cozy nature of a B&B. It helps to address the lack of short term rental in this area and patrons are encouraged to shop and dine at local businesses.

As stated by the Planning Board, after listening to significant neighborhood comments, the impacts of the B&B must be negligible since it has been in operation for three years and most neighbors did not even know it existed. They also noted that there are three group homes across the street and up the block, and that the property is proximal to the Washington Square commercial area and good public

transportation. Further, they opined that because of the uniqueness of this particular property, and the difficulty in obtaining a use variance, the chance of setting a precedent is fairly remote as each application is reviewed on an individualized case-by-case basis. Also noted by a majority of the Planning Board was that the B&B would require an annual license from the Selectmen, and this would give residents the opportunity to bring up any concerns that may arise over time.

For these reasons, the Marzynskis' have met the statutory requirements of variance under M.G.L., C.40A, section 10 and respectfully request the approval of the Board.

Mr. Allen ended his presentation.

The Chairman asked whether anyone in attendance wished to speak in favor of the proposal.

Sidney Koretsky of 756 Washington Street, said that he appreciated work already completed by petitioner and supports their efforts.

Alan Wong of 747 Washington Street, said that he liked the idea of a B&B. He reported that the house prior to the current ownership was dilapidated and is now no longer an eyesore.

Tye Bodie of 12 Salisbury Road, the only abutter in attendance reported that he didn't understand the opposition to this request. He said some people in attendance have lied and smeared the reputation of the petitioner.

Alan Haven of 90 Salisbury Road, said that he was an architect by trade. He reported seeing a lot of changes including dilapidated homes. He stated that this was the best historic preservation he'd seen. He opined that the use as a B&B would be minimal.

Ned Addelson of 750 Washington Street, said he had lived in the neighborhood for 50 years. He said that the petitioners have "added to the delicious casserole of the neighborhood." Mr. Adelson reported that it was good to have a beautiful B&B.

Raoul Roseberg of 72 Salisbury Road, said that the petitioners are remarkable people and their home is friendly and charming.

Cathleen McKenna of 22 Columbia Street, said that she had met the petitioners when they were first running a B&B in Chicago. She reported that they were wonderful people with a strong business sense.

Lydia Shrier of 17 Corey Road, said that the B&B enhanced the neighborhood. She said she would have liked to have had one there years ago. She reported that she walks by it every day and has observed no disruptions.

Jaun Mandelbaum of 45 Marshal Street supported the proposal

David & Elaine Koretsky of 756 Washington Street, stated that they supported the proposal.

Eliot Rivo of 20 Willow Crescent stated that he supported the proposal and sees no traffic issues.

The Chairman asked whether anyone in attendance wished to speak in opposition to the proposal.

Nancy Mims of 18 Salisbury Street, said that she was concerned about the proposal. She said that she understood that relief would run with the land and she was worried about who might take over in future.

Werner Lohe of 25 Salisbury Street, a Town Meeting member, reported that the neighborhood seemed divided on the proposal.

Eric Hardt of 43 Salisbury Street, stated that he had lived in the neighborhood for 23 years. He said he was not against his neighbors, but against the proposal.

Kris Chanyasulkit of 16 Corey Road, a Town Meeting Member spoke in opposition to the proposal.

Lee Selwyn of 285 Reservoir Road, submitted a memo in opposition detailing why the proposal does not meet variance standard.

Sam Weglien of 7 Windsor Road, Roger Blood of 69 Cleveland Road, Ted Nolte of 9 Salisbury Road and Jeff Feldgoise of 15 Windsor Road spoke in general opposition to the proposal.

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

Section 4.07 - Table of Use Regulations, Use #7 – Lodging House, licensed and unlicensed: This use is not allowed in single-family zoning districts. Therefore, the proposal requires a use variance.

Section 8.02.2 - Alteration or Extension

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

Ms. Synowiec reported that the Planning Board voted 4-2 to recommend approval of this proposal. The majority felt that the use may have saved the house from demolition and provided the owners the means to finance renovations of the house and improvements to the grounds. One member noted that there are three group homes across the street and up the block, and that the property is proximal to the Washington Square commercial area and good public transportation. The Board majority felt this case would not set a precedent as each application is reviewed on an individualized case-by-case basis. Also noted by the majority was that the bed and breakfast would require an annual license from the Selectmen, and this would give residents the opportunity to bring up any concerns that may arise over time. Lastly, Board members felt the impacts of the bed and breakfast must be negligible since it has been in operation for three years and most neighbors did not know it existed.

The minority felt that the use should not be approved because the grounds for a use variance and variance have not been met. The house is quite viable as a single-family home, which is what is allowed in this S-7 district. If the applicant had come in prior to converting the house to a bed and breakfast, the likelihood for support from the Planning Board would have been much less. The applicants are allowed by-right, under Use 51 of the Zoning By-law Use Regulations, to rent two rooms in their home, without

separate cooking facilities, for not more than two lodgers, and thus could make use of the renovated bedrooms. Please also note that the front yard parking arrangement is not one that has been approved by the Board of Appeals.

Therefore, if the Board of Appeals finds that the statutory requirements for a use variance and variance are met, the Planning Board recommended approval of this proposal for a bed and breakfast, subject to the following conditions:

1. Prior to the issuance of a new certificate of occupancy, a final site plan indicating all dimensions and exact locations of onsite parking spaces shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The bed and breakfast shall have no more than four rooms available for guests.
3. Prior to the issuance of a new certificate of occupancy, the applicant shall obtain a lodging house license for the bed and breakfast use.
4. Prior to the issuance of a new certificate of occupancy, 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

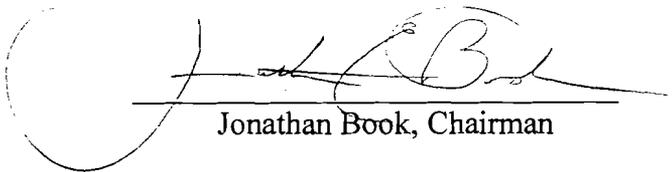
The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard said that he could not comment on whether the petitioner had made a satisfactory case for a use variance but opined that since the establishment had been operating for several years without anyone noticing, contributed to the argument that the requested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-Law.

During deliberations, the Board discussed whether the case deserved the benefit of the grant of a use variance. They explained that while they have much more discretion in cases that require special permits, in the case of a variance, the Board is constrained by M.G.L. 40A Section 10 which has rather strict criteria, all of which must be satisfied in order to warrant the grant of a variance. The Board felt that a case for substantial hardship, financial or otherwise, had not been made. One member stated that, while both the petitioners and the work done on the home was admirable, the petitioners, in effect, created their own hardship by purchasing a home that imposed too great of financial strain on them to renovate and maintain. The Board member believed that the house could be maintained by other potential owners as a single-family residence (and without a use variance). The Board member also commented that the petitioners should investigate whether financial relief in the form of a tax abatement may be available for the vacant lot. The Chairman said that this was an S-7 district and that relief to allow for a bed and breakfast would need to come from Town Meeting. All Board members agreed that the required criteria for the grant of a variance had not been satisfied.

Accordingly, the Board voted unanimously not to grant the requested relief.

Unanimous Decision of

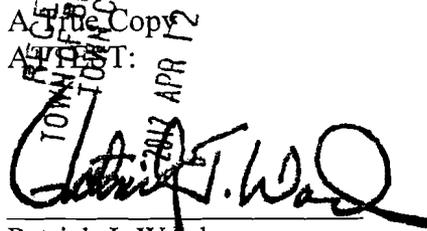
The Board of Appeals



Jonathan Book, Chairman

Filing Date: April 12, 2012

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