



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

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0005

Petitioner, Tony Tam, applied to the Building Commissioner for permission to convert a three story, three family apartment building into four dwelling units by converting the basement into a separate dwelling unit at 10 Strathmore Road. The application was denied and an appeal was taken to this Board.

On 4 February 2010, the Board of Appeals 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 8 April 2010, at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, 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 18 and 25 March 2010, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS

**BOARD OF APPEALS
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: Tony Tam
Owner: KAI FAI INVESTMENT REALTY LLC
Location of Premises: 10 STRATHMORE RD
Date of Hearing: Thursday, 8 April 2010
Time of Hearing: 7:00 p.m.
Place of Hearing: Selectmen's Hearing Room, 6th floor**

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

- 1) 5.05; Conversions; Special Permit Required.**
- 2) 5.09.2.d; Design Review, multiple dwellings, Special Permit Required.**
- 3) 5.20; Floor Area Ratio; Variance Required.**
- 4) 5.22.3.b.2) Exceptions to Maximum Floor Area Ratio Regulations for Residential Units.**
- 5) 5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.**
- 6) 5.50; Front Yard Requirements; Variance Required.**
- 7) 5.60; Side Yard Requirements; Variance Required.**
- 8) 5.63; Accessory Buildings or Structures in Side Yards; Variance Required.**
- 9) 5.70; Rear Yard Requirements; Variance Required.**
- 10) 5.90; Minimum Landscaped Open Space; Variance Required.**
- 11) 5.91; Minimum Usable Open Space; Variance Required.**
- 12) 6.01.2.a; General Regulations Applying to Required Off-Street Parking Facilities; Special Permit Required.**
- 13) 6.02.1; Table of Off-Street Parking Space Requirements; Variance Required.**
- 14) For the Design of All Off-Street Parking Facilities:**
 - 6.04.2.a; Variance Required.**
 - 6.04.2.b; Variance Required.**
 - 6.04.2.c; Variance Required.**
 - 6.04.4.f; Variance Required.**
 - 6.04.3; Variance Required.**
 - 6.04.5.b; Variance Required.**
 - 6.04.7; Variance Required.**
 - 6.04.12; Special Permit Required.**
- 15) 8.02.2; Alteration or Extension; Special Permit Required.**

of the Zoning By-Law to convert a three story, three family apartment building into four dwelling units by converting the basement into a separate dwelling unit at 10 Strathmore Road. The property located at **1720 BEACON ST., BRKL.**

Said premises located in an **M-1.5** (apartment house) 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.***

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At the time and place specified in the notice, a public hearing was held by this Board.

Present at the hearing was Chairman, Mark Zuroff, and Board Members Jonathan Book and Christopher Hussey. The petitioner was represented by Attorney Scott Gladstone, 1244 Boylston Street, Suite 200, Chestnut Hill, MA, and Fred Lebow of FSL Associates, 18 Shepard Street Brighton, MA.

Mr. Lebow presented the Engineering perspective of the project. He described 10 Strathmore Road as an interior row house in a group of twelve attached three-story, multi-family row-houses. The property is bounded to the rear by the MBTA trolley tracks, and has a common alley in the rear yard that provides vehicular access to the off-street parking for all the row-houses in this strip. Waldstein Playground is at the east end of this block along Clinton Path and the MBTA's Cleveland Circle /Reservoir Yards are on the west end, directly opposite Strathmore Road at

Beacon Street. Mr. Lebow said neighboring uses are almost entirely multifamily residential properties.

Mr. Lebow said the petitioner, Kai Fai Investment Realty LLC, proposes to convert this property from three to four apartment units by converting the existing unfinished basement into a 1,610 s.f. two-bedroom apartment. Access to the new basement unit will be provided by an existing stairway in the rear of the building, and a new stairway in the front. There will be some exterior alterations to the building. In the rear yard, the basement unit windows are under the first floor deck. Mr. Lebow said that the petitioner had initially proposed building a 240 s.f. deck atop the building but has since re-thought the idea in deference to potential safety concerns regarding a rooftop decks. He said the petitioner is also proposing to install a stair down to the rear door of the new unit to create a more attractive entry.

Mr. Lebow said the petitioner proposes to reduce the parking available on-site from seven to four. He reported that the location supports fewer spaces than that required under the Zoning By-Law. He reported that four spaces would facilitate entry/exit and would allow the spaces to be located at the rear of the property along the T-tracks thereby providing the needed parking without parking adjacent to the building. Mr. Lebow said that although the site meets the requisite requirements for landscaped open space, fulfilling the usable open space requirement has been more challenging. In the front yard, landscaped open space will be provided with additional plantings to improve the street-scape and obscure the existing gas meters. Mr. Lebow said pavers and flower boxes will be installed at ground level in the rear of the building to soften the asphalt appearance of the rear yard and provide an enjoyable area for picnic tables and grills. The flower boxes will provide a visual safety barrier delineating the open space from the parking/travel lane. Mr. Lebow said that the petitioner also owns a raised area to the rear of the lot approximately 10

by 40 feet. He said the petitioner intends to landscape this area with hearty plants to soften the substantial retaining wall and provide some needed usable open space. He said that the T enjoys an easement across this property but he surmised that they would have no problem with the owner providing landscaping. Mr. Lebow reported that the interior design of the new unit will be efficient and the height of the exterior windows will provide abundant light and air. The wife of the petitioner is an architect and Mr. Lebow reported that she will be providing the final plans.

Attorney Gladstone reported that the planning staff thought the plan before the Board was an example of good urban design. He said the challenge in this case was to come up with a plan that looks pleasing and is allowable within the legal framework of the Zoning By-Law. He said parking has not been a big issue in this case, he said that the By-Law allowed the parking requirement to be adjusted downward to the five requested spaces. Attorney Goldstone referring to the site plan dated 3/11/10 said the petitioner's preference is for the five car layout without the stairs to the useable open space by the T, if they were required to make this space indeed useable. Either the five or four car layout may be allowed by special permit. To the question of whether the space near the T tracks is actually usable, Attorney Goldstone opined that useable open space could include gardening and that it is not uncommon for crops such as grapes to be grown on a trellis similar to the retaining wall that retains the area in question. While there seems to be an adequate amount of landscaped open space Attorney Goldstone said useable open space with its 15 foot minimum dimension is more problematic. He said however that this dimensional requirement could be waived at the pleasure of the Board under §5.43 , waiver of dimensional requirements providing counterbalancing amenities are provided. Attorney Goldstone cited several cases over the last three years that the Board used this section to overcome dimensions less than the required fifteen feet. As to counterbalancing amenities he cited the extensive landscaping

planned for the lot as well as the new area behind the building done with pavers and flower boxes. Attorney Goldstone maintained that they had the requisite square footage for the district but lacked in some cases the fifteen foot minimum required by the By-Law. Attorney Goldstone said his client wanted initially to build a roof deck in order to accommodate the useable open space requirement but citing safety concerns of the Building Commissioner opted instead to count the three decks already on the rear of the building. He pointed out however, that while the decks are very long, their depth does not meet the fifteen foot minimum dimension requirement. As to precedent, Attorney Goldstone reminded the Board that there was another case that had difficulty meeting the minimum open space requirement. He said that 48-50 Jamaica Road was across the street from a playground not unlike the petitioner's proximity to Waldstein Playground. Attorney Goldstein said in that case relief was granted in the form of a special permit under §5.43. 23 Strathmore was also given similar relief in consideration of its proximity to the park and MBTA he said.

Referring to the 10' x 40' space near the MBTA tracks Chairman Zuroff asked whether open space assigned to another entity could be counted a usable open space. The Building Commissioner responded that the petitioner in this case owned the land and barring any prior agreement to the contrary, he could develop it with landscaping. Regarding use of the existing decks, Mr. Zuroff asked whether their square footage could be counted collectively. Board Member Book responded that the Board had in the past allowed exclusive use areas to be counted collectively. Board Member Hussey spoke about depressing the area under the first floor porch to create a dedicated area for the inhabitants of the proposed basement unit. Board Members discussed this option and concluded that the depression might create a safety issue with cars maneuvering in close proximity.

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 staff.

Section 5.05 – Conversions

When converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met.

Section 5.09.2.d - Design Review

A special permit is required for any exterior alterations to multiple dwellings with 4 or more units on the premises, whether contained in one or more structures. All of the design standards in paragraph (d) have been met and comments on the most relevant follow:

- a. Preservation of Trees and Landscape – There currently is virtually no landscaping on this property. It appears any landscaping that was installed in the front yard was a casualty of the basement windows being removed and enlarged (resulting in a stop work order). At the very least, this landscaping should be restored as it has already been disturbed by this proposal.
- b. Relation of Buildings to Environment – Impacts on abutting properties should be minimal, as the existing building footprint will not be changing.
- c. Relation of Buildings to the Streetscape and Neighborhood – The alterations to the building façade are unlikely to have a negative impact on the neighborhood, however, the addition of another roof deck in a neighborhood that is predominantly populated by students may raise noise concerns.

Section 5.20 – Floor Area Ratio

	Allowed		Existing	Proposed	Relief
	By Right	By Special Permit			
F.A.R.	1.5 (100%)	1.8 (120%)	1.34 (90%)	1.76 (117%)	Special Permit*
Floor Area (s.f.)	5,854.5	7,025.4	5,268	6,878	

* Under Section 5.22.3.b.2 the Board may allow by special permit an interior/exterior addition up to 120% of the permitted gross floor area so long as the maximum allowed FAR of 120% has not been reached.

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Front Yard Setback	15 ft.	11'6"	11'6"	Special Permit**
Side Yard Setback	13.8 ft.	Est. 4 ft.	Est. 4 ft.	Special Permit **
Rear Yard Setback	30 ft.	48'9"	48'9"	Complies
Minimum Landscaped Open Space	11.5%*** (791 s.f.)	11% (584 s.f.)	14% (960 s.f.)	Complies
Minimum Usable Open Space	15% (1,031 s.f.)	0	3% (240 s.f.)***	Variance

** Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant is proposing to construct additional landscaped and recreational open space in the rear yard of the building.

*** Under Section 5.91.2.e, landscaped area above ground level may be counted up to 50% of the required landscaped open space provided that for every two percent counted toward open space, an additional one percent of open space shall be provided at ground level. The applicant is proposing to construct a 15' x 16' roof deck.

Section 6.01.2a – General Regulations Applying to Required Off-Street Parking Facilities

Section 6.02.1 – Table of Off-Street Parking Space Requirements

Section 6.04.2.b – Design of All Off-Street Parking Facilities

Section 6.04.2.c – Design of All Off-Street Parking Facilities

Section 6.04.4.f – Design of All Off-Street Parking Facilities

Section 6.04.5.b – Design of All Off-Street Parking Facilities

Parking Requirements	Required/Allowed	Existing	Proposed	Relief
Standard Stall Depth	18 feet	18 feet	18 feet	Complies
Clear Backing Distance	23 feet	24 feet	24 feet	Complies
Parking Area Side and Rear Setback	5 feet	0 feet	0 feet	Special Permit[§]
Parking Spaces	8	7	5	Special Permit^{§§}

[§]Under Section 6.04.12 the Board of Appeals may waive dimensional requirements for parking facilities to serve existing buildings.

^{§§}Under Section 6.01.2.a , the Board of Appeals may waive up to one half of the required parking spaces when a structure is converted for one or more additional dwelling units. The structure would contain three three-bedroom units and one two bedroom unit for a total of 7.9 required parking spaces.

Section 8.02.2 – Alteration or Extension

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

Ms. Synowiec said that the Planning Board was not supportive of this proposal. The Planning Board feels the applicant did not submit a sufficient amount of information and noted there were inconsistencies on the plans. The Planning Board would like the applicant to submit a certified

site plan, as the plans the applicant's engineer made were based on an existing survey which contains conflicting dimensions. The Planning Board also would like to see a section of the rear yard to show the landscaped strip between the parking and the MBTA parcel, as the plans are misleading because the landscaped strip is not at ground level but is above grade behind a retaining wall. The Planning Board also noted that a section of the rear stairs would be helpful as the elevations do not give enough detail with respect to materials or dimensions for the stairs. The Planning Board also did not feel the proposal met the criteria for a variance. The Planning Board believes that despite the fact that applicant is improving the nonconformity of minimum usable open space by proposing to construct a roof deck; the applicant did not provide an argument consistent with the criteria under MGL Chapter 40A.

Finally, the Planning Board notes that as the applicants started work without permits several months ago, all of the landscaping in the front yard has been destroyed and the windows are boarded up. These conditions have been noted by neighbors and have generated complaint. The Planning Board would like the applicant to replace the landscaping in the front yard and complete the work on the windows, with permits, despite the fact that they do not recommend relief for this proposal. Therefore, the Planning Board unanimously recommended denial of the plans by FSL Associates, dated 12/17/09 and revised 3/8/10.

The Chair then called upon Michael Shepard the Brookline Building Commissioner. Mr. Shepard stated that the plan before the Board takes care of a lot of issues. The grounds of the building were in the past poorly maintained. The inclusion of landscaping would in his opinion go a long way towards helping this situation. Mr. Shepard opined that most of the below grade units in the neighborhood, given their proximity to the schools, were inhabited by college students. A reduced parking requirement would work given the parking history of the area, he said. Mr.

Shepard observed that many of these pre-existing, non-conforming apartment buildings could never meet the requirements for useable open space. Mr. Shepard said that to be truly usable the elevated area adjacent to the MBTA tracks should have some sort of stairs. He said that the parking should be limited to four spaces and with or without stairs, the parking should be diagonal to facilitate ease of entry/exit given the close proximity to the open space directly behind the building. Mr. Shepard also said something more permanent like bollards should be installed to separate the vehicular access from the pedestrian use of the open space. He opined that flower boxes, while more pleasing from a landscape perspective, are easily moved or not maintained and would do little to insure the safety of the inhabitants or visitors to the building. Speaking to the interior layout of the space, Mr. Shepard said the Building Code would have to be satisfied in this respect. Mr. Shepard said in his opinion special permit relief under §5.05, conversions was not appropriate as this section does not allow one to exacerbate a pre-existing, non-conforming condition, the lack of useable open space. As to the applicability of §5.45 in this instance, Mr. Shepard said he would leave that to the Board.

During deliberations the Board discussed the case. Chairman Zuroff stated that he felt four parking spaces were all the Board could approve given the size of the proposed spaces and their proximity to the alley behind the premises. Mr. Book said that the Board has very recently used §5.43 to modify the dimensional requirements of usable open space and he thought it was appropriate in this case as well. He said that in his opinion a compelling case for relief in the form of a variance was not made. Chairman Zuroff asked about the petitioner's ability to use the right of way adjacent to the tracks. Attorney Gladstone suggested that he would verify that the right-of-way at the rear of the property does not prevent its usage as usable open space or prevent landscaping being installed. Board Member Hussey recommended the elimination of the stairs

to the area adjacent to the MBTA and changing the parking to diagonal. He also agreed with the Building Commissioner that the proposed flower boxes be replaced with bollards. Mr. Zuroff went on to say that he felt relief pursuant to Section 5.43 was warranted as the applicant was providing adequate counterbalancing amenities and the proposal would be a benefit to the neighborhood. The Chairman stated that he believed that a case for granting the requested relief was made. The Building Commissioner opined that the Board should consider a condition that the decks, since they are being used as a portion of usable open space requirements, never be enclosed. Referring to Section 9.05 of the Zoning By-Law, Chairman Zuroff said the following prerequisites were met:

- 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.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously to grant special permits under Sections 5.09.2.d, 5.22.3.b.2, 5.43, 6.01.2.a, 6.04.12 and 8.02.2 of the Brookline Zoning By-Law to allow the construction of the proposed addition, The grant of relief was made with the following conditions:

- 1. Prior to the issuance of a building permit, the petitioner shall submit existing and proposed floor plans and elevations indicating all exterior alterations and materials stamped and signed by a registered engineer subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the petitioner shall submit a final site plan prepared by a registered land surveyor indicating the dimensions of the lot as well as the building thereon, the location of decks and garbage storage and all parking spaces including dimensions subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 3. Prior to the issuance of a building permit, the petitioner shall submit a landscape plan prepared by a registered landscape architect for the front and rear yards indicating**

plantings that conceal the gas meters as well as all other counter balancing amenities including bollards to prevent the accidental incursion of vehicles onto the open space adjacent to the rear of the building, subject to the review and approval of the Assistant Director of Regulatory Planning.

4. Prior to the issuance of a certificate of occupancy, the parking spaces shall be restriped to indicate four angled parking spaces. No vehicles shall be parked in front of the rear egress.
5. Prior to the issuance of a certificate of occupancy, all building refuse including pipes under the deck shall be properly disposed-of.
6. Provisions for facilities within the building shall be made for storage of all garbage and recycling and all landscaped areas shall remain free of litter and debris.
7. The three decks on the rear of the building used as a portion of the useable open space requirement shall not be enclosed with walls, including screening or roofing and shall be retained as commonly available to all building occupants.
8. Prior to the issuance of a building permit, the petitioner shall provide evidence to the Assistant Director of Regulatory Planning that the easement at the rear of the property adjacent to the T-tracks does not prevent planting and preserving the space as useable open space.
9. Prior to obtaining a building permit, the petitioner shall submit to the Building Commissioner: 1) a final site plan by a registered land surveyor; 2) building plans including elevations stamped and signed by a registered engineer; and 3) evidence that the Board of Appeals decision has been recorded at the registry of deeds.

Unanimous Decision of
The Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2010 APR 21 P


Mark Zuroff, Chairman

Filing Date: April 21, 2010

A True Copy ATTEST



Patrick J. Ward
Clerk, Board of Appeal