



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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0043**

Petitioners, Lee, Kit H and Yun, J H, applied to the Building Commissioner for permission to convert a three (3) story, three-family apartment building into four (4) dwelling units by converting the basement of the building into a separate dwelling unit at 16 Strathmore Road. The application was denied and an appeal was taken to this Board.

On July 22, 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 August 25, 2011, 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 August 4 and 11, 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: **LEE KIT H & YUN J H**
Owner: **LEE KIT H & YUN J H**
Location of Premises: **16 Strathmore Rd**
Date of Hearing: **August 25, 2011**
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 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, Special Permit Required.**
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 THE EXISTING 3 UNIT APARTMENT BUILDING TO 4 UNITS REQUIRING BOARD OF APPEALS RELIEF at 16 STRATHMORE RD.

Said premise located in a **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, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members Jonathan Book and Mark G. Zuroff. The case was presented by the Attorney for the petitioner, Robert L. Allen, Jr., LLP of 300 Washington Street, 2nd floor, Brookline, MA 02445.

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

August 26, 2010 – The Planning Board reviewed plans for the conversion of the basement area of the dwelling into a fourth unit. The plans involved excavating the front yard and installing a new front entrance for the basement unit, as well as some modifications to the rear façade. The Planning Board recommended denial of the proposal. At the Board of Appeals hearing for the proposal on September 23, 2010, the applicant presented a revised proposal to the Board of Appeals. The Board of Appeals referred the proposal back to the Planning Board.

October 28, 2010 – The Planning Board reviewed revised plans for the conversion of the basement area into a fourth unit. The Planning Board heard public comments in opposition to the proposal, and the Board indicated that any basement conversion proposal should not involve a new front basement entrance and front yard excavation. The Planning Board initially continued the proposal at the applicant's request, and on November 18, 2010, the Board voted to recommend denial of the proposal.

Mr. Allen said that his client, Vincent C. Lee, proposes to convert this property from three to four apartment units by converting the existing unfinished basement into a 1,525 s.f. three-bedroom apartment, with an additional 186 s.f. of common area. Mr. Allen said that the proposal had been revised multiple times. This proposal would remove the previously proposed new exterior front entryway and stair, and instead provide access to the new basement unit from within the building, keeping the single common main entrance. Instead of a new excavated front patio at the basement level, the basement windows would be extended to make them larger, and a single concrete window well

servicing all of the front windows would be installed along the front façade. Mr. Allen said that proposed changes to the rear elevation have not been altered with the revised proposal and include the installation of a new door, platform and stairs to provide egress for the existing units, the replacement of the existing egress door with a window, the installation of two new windows on the rear and side facades, and the installation of a new downward stair and egress door for the new basement unit. There are currently seven existing parking spaces in the rear yard, two of which are within an existing garage attached to the rear of the building. The garage is in poor condition, and the applicant is proposing to improve the garage and install doors. The applicant is not proposing any changes to the parking on site, which currently does not meet the dimensional standards of the Zoning By-law. The applicant has indicated that trash storage for loose garbage cans for the building will be located along the western exterior wall of the garage.

Attorney Allen informed the Board that the Petitioner is seeking a Special Permit under 5.22.3.b.2 which allows the Board to grant relief up to 120% of the allowed Floor Area Ratio, well below the requested FAR in this proposal. He also suggested that much of the dimensional relief being requested is all pre-existing nonconforming and no increases are being made to those non-conforming conditions. As for parking, Attorney Allen reminded the Board of its ability to reduce the number of spaces in light of the extreme close proximity to public transportation. In regards to the variance, Attorney Allen provided the Board with evidence of a 1958 taking of a portion of the Petitioner's property by the MBTA. He argued that this unique condition reduced the square footage available to create additional open space and thus creates a hardship to the Petitioner. Further, Attorney Allen suggested that the numerous basement apartments on the street suggest that there will be no detriment to the public good.

Chairman Starr asked whether anyone in attendance wished to speak in favor of or against the proposal. An abutter from 18 Strathmore Road spoke about concerns with trash and noise but felt that Mr. Lee was doing a good job with maintain the property.

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

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. The applicant has submitted a statement reviewing the community and environmental impact and design standards under this section. Comments on the most applicable follow:

- a. Preservation of Trees and Landscape – The only landscaping currently on this property is in the front yard, and is primarily shrubbery. The revised proposal is an improvement over previous plans in that the applicant is no longer proposing to remove this landscaping to install a new patio and plantings at the basement level. The proposed window well would allow for significant landscaping in the front yard, and minimizes the amount of soil removal that would be required.
- b. Relation of Buildings to Environment – Shadow impacts are not expected, as the proposed development is located within the existing basement.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The most recent proposal for this basement-unit conversion is the most in keeping with the other buildings along Strathmore, as all of the other attached buildings have street-level front yards and single entrances. The existing buildings along the length of Strathmore have consistent yard and fenestration details; although this proposal would enlarge the basement-level windows and install a new trough-like window well, these changes aren't expected to dramatically affect the streetscape.
- d. Open Space – The applicant is proposing additional open space at the rear of the building.
- e. Circulation – The applicant is not proposing changes to the onsite circulation. The existing garage is mainly used for storage now, and the applicant expects to improve the structure and use it as parking.

g. Utility Service – The applicant is proposing to either maintain the storage of the garbage containers inside the garage, which does not have doors on it presently, or move them to the side of the garage furthest away from the rear egresses.

k. Heritage – Strathmore Road is a National Register District that exhibits significant consistency among buildings with respect to building design, fenestration, and yard setbacks. While the proposed new windows and window well would alter the building’s front façade, the general façade and feel of the streetscape would be retained.

Section 5.20 – Floor Area Ratio

	Allowed		Existing	Proposed	Relief
	By Right	By Special Permit			
F.A.R	1.5 (100%)	1.8 (120%)	1.22 (81%)	1.57 (104%)	Special Permit*
Floor Area (s.f.)	6,559.5	7,871.4	5,319	6,844	

* 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 5.63 – Accessory Buildings or Structures in Side Yards

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.	16'7"	16'7"	Complies
Side Yard Setback	14.3 ft. (10+L/10)	3.9 ft.	3.9 ft.	Special Permit**
Rear Yard Setback	30 ft.	34.4'	34.4'	Complies
Minimum Landscaped Open Space***	10% (684.4 s.f.)	11% (746 s.f.)	18% (1,216 s.f.)	Complies
Minimum Usable Open Space***	15% (1,026.6 s.f.)	5% (342 s.f.)	5% (342 s.f.)	Variance***

** Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided; the Board of Appeals may also waive dimensional requirements under Section 5.05 for conversions provided no non-conformity is increased.

*** The applicant has provided detailed information as to what he is considering usable and landscaped open space on site. However, some of the area proposed as usable space does not meet the 15' by 15' minimum requirement. As such, the proposed front and rear patios, the front path, and the second and third floor rear balconies have been included by Planning staff in the landscaped open space calculations; the deck above the garage has been included in the usable open space calculations. A copy of the applicant’s analysis is attached to this report. Should the Board of Appeals determine these areas should be included in the usable open space calculations, the applicant has indicated total usable open space of 818 s.f., or 11.95 percent.

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.a – Design of All Off-Street Parking Facilities (standard stall width)

Section 6.04.2.b – Design of All Off-Street Parking Facilities (standard stall depth)

Section 6.04.2.c – Design of All Off-Street Parking Facilities (aisle width)

Section 6.04.3 – Design of All Off-Street Parking Facilities (parking facilities designed so vehicles may proceed to and from parking spaces without requiring the moving of other vehicles)

Section 6.04.4.f – Design of All Off-Street Parking Facilities (designed to ensure pedestrian safety)

Section 6.04.5.b – Design of All Off-Street Parking Facilities (parking area setback)

Parking Requirements	Required/Allowed	Existing	Proposed	Relief
Standard Stall Width	8.5 feet	8 feet	8 feet	Special Permit [†]
Standard Stall Depth	18 feet	9'7"	9'7"	Special Permit [†]
Aisle Width	23 feet	12 feet	12 feet	Special Permit [†]
Parking Area Side and Rear Setback	5 feet	0 feet	0 feet	Special Permit [†]
Parking Spaces	9	7	7	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.

Section 8.02.2 – Alteration or Extension

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

Ms. Synowiec reported that the Planning Board was not opposed to this revised proposal to convert the basement into a fourth dwelling unit, primarily because the new plans provide access for the proposed unit from within the building rather than through a new excavated entrance and patio on the front of the dwelling. She said that the Board was pleased the applicant has developed a proposal more reflective of existing development patterns in the neighborhood. Several dwellings along Strathmore Road have converted their basements for additional units, and although the proposed new windows and long window well do alter the building's front façade, they do not dramatically alter it in a way that would detract from the streetscape and the current consistency in building form that supports the street's National Register District status. However, they said that the applicant should ensure that the well does not infringe on the neighbor's property. A proposed basement unit that utilizes the existing front

entrance and has an interior stair accessing the unit is more in keeping with existing precedent in this neighborhood as opposed to the applicant's previous proposals. Although the Planning Board in the past has also asked the applicant to reduce the overall size of the basement unit, in this case the revised floor plan with an interior stair appeared appropriate. The Planning Board is supportive of the new rear patio and improvements to the rear garage and the retaining wall. Landscaping improvements should be submitted to staff for final review and approval prior to installation. Therefore, should the Board of Appeals find the proposal meets the requirements for a variance, the Planning Board recommends approval of the plans, prepared by A. Zukerman, and dated 6/23/2011 and revised 7/13/2011, subject to the following conditions:

- 1) Prior to issuance of a building permit, a final site plan, indicating all parking, landscaping, wall, and trash storage locations and dimensions, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 2) Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 3) Prior to issuance of a building permit, a final landscaping plan, stamped and signed by a landscape architect, and indicating planting types, sizes, and locations; all hardscape materials; and all other counterbalancing amenities; shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 4) Prior to issuance of a certificate of occupancy, the parking spaces shall be striped on the pavement to indicate five parking spaces, and no vehicles shall be parked in front of the rear egress.
- 5) Prior to issuance of a certificate of occupancy, all garbage bins shall be stored either within the building or an appropriate garbage storage shed or structure to minimize the attraction of wildlife and vermin and to ensure bins are organized and not located on neighboring property.
- 6) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor; 2) final 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 stated that the iteration before the Board is most in keeping with that which has been allowed in the neighborhood. He liked the single window well for safety reasons. He said that should the Board grant the requested relief that he would ensure that the project is completed in accordance with the approved plans and the requirements of the State Building Code.

The Board discussed the parking and whether two spaces were needed in the garage. They liked the idea of reducing the number of parking spaces to six (6) and storing the trash in one of the garage spaces and were happy that Mr. Lee agreed. The Board appreciated the changes offered under this plan and agreed with Mr. Shepard that a single well was desirable, and felt that the rear deck and alleyway would benefit from the proposed improvements.

During deliberations the Board Members felt that variance standards under MGL c. 40A section 10 have been met. The Board agreed with Attorney Allen that the taking of the rear portion of the land did create a hardship to the petitioner and caused a lot shape that was unique to this group of buildings along Strathmore Road and not the entire zoning district. Further, they found that the building of this unit would not be a detriment to the public good.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under: **Section 5.22.3.b.2** subject to completion of the counterbalancing amenities as herein below provided; **Section 8.02.2** since the existing non-conformities were not increased in any way; and that the number of parking spaces should be reduced to six (6). 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) Prior to issuance of a building permit, a final site plan, indicating all parking, landscaping, wall, and trash storage locations and dimensions, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2) Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3) Prior to issuance of a building permit, a final landscaping plan, stamped and signed by a landscape architect, and indicating planting types, sizes, and locations; all hardscape materials; and all other counterbalancing amenities; shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 4) Prior to issuance of a certificate of occupancy, the parking spaces shall be striped on the pavement to indicate five parking spaces, and no vehicles shall be parked in front of the rear egress.**
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- 6) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor; 2) final 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

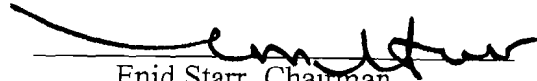
Filing Date: November 10, 2011

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals


Enid Starr, Chairman

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