



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

Town of Brookline

Massachusetts

Town Hall, 1st Floor
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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0048**

Petitioner, Steven Seltzer, applied to the Building Commissioner for permission to convert his single family home at 4 Perry Street into a two-family. The application was denied and an appeal was taken to this Board.

On August 10, 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 October 14, 2010 at 7:45 p.m. in the Selectmen's Hearing Room, 6th floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the 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 September 23 and 30, 2010 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

**LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
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: SELTZER STEVEN M
Owner: SELTZER STEVEN M
Location of Premises: 4 PERRY ST
Date of Hearing: October 14, 2010
Time of Hearing: 7:45 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. 5.10; Minimum Lot Size, variance required. See Table 5.01, Table of Dimensional Requirements, lot size, M-1.0, 1 – 2 family.
2. 5.05; Conversions, special permit required.
3. 6.01.2.a; General Regulations Applying to Required Off-Street Parking Facilities, special permit required. (may waive up to half the required spaces)
4. 8.02.2; Alteration or Extension, special permit required.

Of the Zoning By-Law to conversion of existing dwelling into 2 units requiring BOA relief at 4 PERRY ST BRKL.

Said premise located in a M-1.0 (apartment house) 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.

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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 Lisa Serafin. The petitioner was represented by Attorney Robert Allen of 300 Washington Street, Brookline, MA.

Mr. Allen described the property at 4 Perry Street as an 1843 single-family house in a neighborhood of multi-family buildings. Located in Central Village across from Linden Square he said it was on the National Register of Historic Homes. Mr. Allen said the structure is noteworthy because it is one of only two remaining homes with columns on the front of this style. He noted that it was a two-family house for more than 85 years, beginning in 1903. It was changed to a single-family house around 1990. This white colonial home is characterized by its gable roof and wrap-around porch with decorative pillars. The structure is two and a half stories, with an existing finished basement and rear below-grade garage. The surrounding neighborhood consists of a 22 unit apartment buildings on one side and eight units on the other. He said there are other two-families directly behind his client's home. There is a driveway on the west side of the house that leads to the subject's garage, to a parking space for a rear property, and to two parking spaces in a gravel area behind the adjacent apartment building.

Mr. Allen said that his client, Steven Seltzer, is proposing to convert his single family home back to a two-family through the following construction: 1) new exterior stairs and entrance for Unit 2, using part of the garage and the 1st floor kitchen space; 2) new bath for Unit 2 on 2nd floor (existing bath is removed to make space for stairs), 3) a partition wall on the second floor that separates Unit 1 from Unit 2; 4) new kitchen for Unit 2 on 3rd floor; 5) new door from 2nd floor bedroom to bathroom (Unit 1). There will be one parking space for each unit: one provided in the garage, and one under an overhanging deck on the rear façade. By tucking the parking space under the deck, passageway to the gravel two care parking area of the adjacent multi-family building is not blocked. Mr. Allen said that the Board had received letters of support from the property owner to the left and the owner to the right expressed support at the Planning Board hearing. He said the Planning Board voiced unanimous support for the proposal. Mr. Allen said that his client has gone

to great expense in an effort to preserve this significant structure and he wishes to continue doing so in the future. He said that Mr. Seltzer has made significant improvements in the landscaping and drainage around his property that has had a positive affect upon neighboring property as well. He said the driveway to the property is unique in that it is an easement that allows two cars from the adjacent 22 unit building to park in back of the 4 Perry Street Property. Mr. Allen said that there would only be a minimal change to the exterior of the structure to accommodate the conversion.

Mr. Allen said that most of the requested relief would be on the form of special permits. He said that a special permit under Section 5.05 is required to convert the structure to accommodate an additional unit. He stated that the structure lies within a multi family zoning district. He said the Board could waive up to half the required parking spaces under Section 6.01.2.a. Mr. Allen said his client would like to provide two spaces instead of the four required under the Zoning By-Law. Because the lot is pre-existing non-conforming as to minimum lot size and set-backs he said his client also needed relief under Section 8.02.2 of the Zoning By-Law.

Addressing the lot size issue Mr. Allen said that his client also needed relief in the form of a variance from Section 5.10 of the Zoning By-Law. He said the lot is only 3363 sf in area. He said that the minimum lot size for a single-family home in this district is 4,000 sf and a two-family minimum lot size is 5,000 sf. He said that the restrictive lot size requirement has created an undue hardship on his client and his reasonable use of the property. Mr. Allen said that considering the unique setting of the property between large multifamily dwellings and the uniqueness of the structure itself the requirements for a variance in his opinion are met. Further, Mr. Allen said that Mr. Seltzer desires to live in close proximity to his son and not being able to convert the property may not allow him to continue living at this address or maintain it as he has been accustomed to doing. He said there are unique limitations on this particular property. There are significant grade

changes from the front to the rear of the property which prevents his client from many architectural options available to similar sized lots that are flat. He said that granting of a variance in this case would be consistent with the general purposes of the Zoning By-Law, in that the proposal would allow the preservation of an architecturally significant structure, it creates additional tax revenue for the community, but most importantly, it restores the use to a two-family home, a use that endured for 85 years. Mr. Allen said the uniqueness that qualifies this petition for the grant of a variance has primarily to do with the structure, its shape, history, and proximity to much larger multi-family buildings.

Board Member Book asked what exterior changes would be required for the conversion if relief was granted by the Board. Attorney Allen said that exterior changes would be very minimal at the back of the home. Mr. Allen outlined improvements that his client had planned for the property. Board Member Book asked what counterbalancing amenities were being proposed as part of the special permit request. Attorney Allen said that the old metal garage door was recently replaced with a barn style wooden door; also, Mr. Seltzer planned on re-pointing the brick foundation and adding some flower boxes to the deck in appropriate weather. Board Member Book felt that these were acceptable.

The Chairman asked whether anyone wished to speak in support or in opposition to the application. Ms. Ruthann Sneider of Perry Street asked whether the neighbor to the rear was protected in this proposal as to use of the driveway. Attorney Allen reported that her rights were protected.

Lara Curtis Hayes delivered the findings of the Planning Board.

Section 5.10 – Minimum Lot Size (Table 5.01, Table of Dimensional Requirements)

The minimum lot size for a single family in this M-1.0 zone is 4,000 s.f. and for a two-family is 5,000 s.f. Since this lot is non-conforming at 3,363 s.f., a variance will be required to add a unit.

Section 5.05 – Conversions

The Board of Appeals may issue a **special permit** for conversions for dimensional requirements except for minimum lot size.

Section 6.01.2.a –Required Off-Street Parking

In M districts, where an additional unit is added, the required parking spaces may be waived by half by **special permit**. The applicant is providing two parking spaces, which is half the requirement for the required four spaces for two dwelling units.

Section 8.02.2 – Alteration or Extension

A **special permit** is required for an alteration or extension of a non-conforming structure.

Ms. Curtis Hayes stated that the Planning Board supported the conversion of this large house from a single to a two-family if findings for a variance are demonstrated. It operated as a two-family for over 85 years and is surrounded by apartment buildings with much more limited on-site parking. Since it is in walking distance to rapid transit, the parking waiver of two cars should not be an issue, and with only minimal changes to the exterior, there should be no negative impacts on the abutters. Therefore, if the Board of Appeals finds the grounds for a variance, the Planning Board recommended approval subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to 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 and floor plans stamped and signed by a registered architect; and 3) evidence the 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 he had been working with the petitioner for quite some time and is impressed with the quality of the preservation work he has done on his home. He said there would be only minimal change in appearance of the home should relief be granted and granting the relief would allow continuance of its current stewardship. He said that the

structure itself is unique in many ways and in his opinion the grant of the requested relief would not undermine the intent of the Zoning By-Law. Mr. Shepard said that the Building Department is supportive of the requested relief as well as the conditions proposed by the Planning Board.

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 Sections 5.05, 601.2.a, 8.02.2, and 9.05 of the Zoning By-Law and 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.

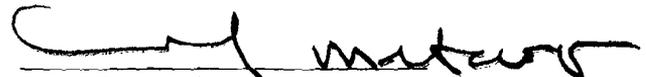
As to the request for relief in form of a variance from the requirements of Section 5.10, minimum lot size, Board Members Starr, Book and Serafin all agreed that the uniqueness of the structure itself supported the grant of a variance. Chairman Starr said specific findings were required so that the Board's decision is abundantly clear. She said that Massachusetts General Law, Section 40 A, Section 10 said that where the permit granting authority specifically finds that owing to circumstances relating to 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, 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. The Chairman observed that the property at 4 Perry

Street was clearly a unique structure and certainly outstanding in its uniqueness within the zoning district and therefore clearly meets the criteria set out in the statute.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. **Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **Prior to 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 and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.**

Unanimous Decision of the
Board of Appeals


Enid Starr, Chairman

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

Filing Date: October 20, 2010

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals