



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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090019

Petitioner, Brookline Development Corporation, LLC, applied to the Building Commissioner for permission to convert existing basement area into additional habitable floor space and to convert the existing single family townhouse into a two-family townhouse per plans at 322 Tappan Street. The application was denied and an appeal was taken to this Board.

On 23 April 2009, 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 9 July 2009, at 7:15 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 his 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 18 and 25 June 2009 in the Brookline Tab, a newspaper published in Brookline. 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: **BROOKLINE DEVELOPMENT CORP. LLC**

Location of Premises: **322 TAPPAN ST BRKL**

Date of Hearing: **07/09/09**

Time of Hearing: **7:15p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th floor**

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

5.05; Conversions; Special Permit Required

5.20; Floor Area Ratio; Variance Required

5.30; Maximum Height of Buildings; Variance Required

5.43; Exceptions to Yard and Setback Regulations; Special permit required

5.50; Front Yard Requirements; Variance Required

5.60; Side Yard Requirements; Variance Required

5.62; Fences and Terraces in Side Yards; Variance Required

5.70; Rear Yard Requirements; Variance Required

5.74; Fences and Terraces in Rear Yards; Variance Required

5.91; Minimum Usable Open Space, Variance Required

6.01.2.a; General Regulations Applicable to Required Off-Street Required Parking Facilities; Special Permit Required

6.02.1; Table of Off-Street Parking Space Requirements Variance Required.

6.03.1.a; Location of Required Off-Street Parking Facilities; Variance Required

6.03.1.a; Location of Required Off-Street Parking Facilities; Variance Required.

8.02.2; Alteration or Extension; Special Permit Required of the Zoning By-Law to convert existing basement area into additional habitable floor space (increase in FAR) and to convert the existing single family townhouse into a two-family townhouse per plans at **322 TAPPAN ST BRKL**.

Said Premise located in a **M-2.0** (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, Jesse Geller and Board Members, Mark Zuroff and Jonathan Book. The petitioner, Brookline Development Corporation, LLC, was represented by their attorney, Jeffrey P. Allen of Denner Pellegrino, LLP, 4 Longfellow Place, 35th Floor, Boston, MA 02630.

Attorney Allen described the site at 322 Tappan Street as a single-family attached townhouse in a block of six townhouses, built in 1891 and known as the Marguerite Terrace, one of the Beaconsfield Terraces built by Eugene R. Knapp and a contributing property to the Beaconsfield Terrace National Register. The Chateausque style masonry building has steep hip roofs and conical roofed turrets at each end. This unit has several floors, consisting of a basement, lower level, first, second, third and attic floors. Some of these floors are partially finished. A two-car garage is behind the building and accessed by a long vehicle passageway serving multiple properties in the immediate area. Surrounding properties include other attached townhouses, some of which have been converted into multiple-unit dwellings, and other condominium buildings. The Star Market on Beacon Street is located nearby.

Attorney Allen said that his client, Jeffrey Feuerman, proposes to convert unfinished floor area into finished space and convert the single-family into a two-family. Most alterations will be interior to the building; the applicant originally proposed a new front stair leading down from the street level and a new entrance for the lower unit, but the plans have since been revised to use the existing front façade for both units and a second door will be added, replacing a window in the facade. Other exterior alterations include a connector at the rear of the building between the building's lower level and the roof of the garage, which is currently used as patio space and would be improved with additional landscaping. Additionally, the applicant proposes to raise a portion of the building's flat roof and construct a roof hatch to access a new roof deck,

as well as install two skylights. The roof deck will not be visible from the street due to the shape of the roof.

Mr. Allen noted that there are limited changes to be made to the exterior of the building and that granting the relief sought by the petitioner will permit the continued use of a structure that has outlived its usefulness as a single family dwelling. Mr. Allen stated that a variance was appropriate in this case because of the unique shape and historic nature of the building and the grade change in the lot.

David O'Sullivan of O'Sullivan Architects reviewed for the Board the proposed alterations to the building. Mr. O'Sullivan noted that changes to the street facing window wells and basement windows will not be visible from the street.

The Chairman asked whether anyone in attendance wished to speak in favor of the proposed relief. No one spoke in favor of the proposal.

The Chairman then asked whether anyone wished to speak against the proposal. Nathan and Marcia Wise of 324 Tappan Street and Tom Connors of 320 Tappan Street expressed concerns about changes in the façade of the building, in particular the addition of a second front door where a window now exists and alterations to the basement window wells and windows facing the street.

Lara Curtis, Senior Planner delivered the findings of the Planning Department and listed the following zoning relief needed for the project to proceed:

Section 5.05 – Conversions: When a structure is converted to create additional dwelling units, the structure shall conform to all dimensional requirements specified in §5.01. The Board of Appeals may by special permit waive any of the dimensional requirements except minimum lot size, provided that no previously existing nonconformity is increased. The structure at 322 Tappan Street is being converted to create an additional dwelling unit in the building's lower levels, but the structure does not currently conform to front and rear yard setback and height

requirements; if the main building is connected to the garage roof, the garage would no longer meet side or rear yard setback requirements. *Special permit required.*

Section 5.20 – Floor Area Ratio: *Variance required.*

Section 5.30 – Maximum Height of Buildings

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.62 – Fences and Terraces in Side Yards: The applicant is proposing to connect the main structure to the garage structure by outside stairs leading from the first story to the roof the garage. This structure would then become part of the main structure and need to meet the side and rear yard requirements for principal structures.

Section 5.70 – Rear Yard Requirements

Section 5.74 – Fences and Terraces in Rear Yards: See §5.62 above.

Section 5.91 – Minimum Usable Open Space: All of the usable open space being provided on site is on a roof: either the roof of the garage or the roof of the principal structure. The site requires 705 s.f. of usable open space, and the applicant is proposing 591 s.f. Only up to 50 percent of the usable open space requirement may be met by providing space on a roof, terrace, or the like, therefore, the proposal lacks 50 percent (352 s.f.) of the required usable open space. *Variance required.*

Section 6.01.2.a – General Regulations Applying to Required Off-Street Parking Facilities: In M Districts, when a structure is converted for one or more additional dwelling units, parking requirements for the entire structure shall be provided. However, the Board of Appeals may by special permit waive up to one half of the required parking spaces.

Section 6.02.1 – Table of Off-Street Parking Space Requirements: *Variance required.*

Section 6.03.1.a – Location of Required Off-Street Parking Facilities: Required off-street parking facilities shall be provided on the same lot or premises with the principal use served. The applicant is proposing two on-site parking spaces in the garage, and two spaces at a nearby off-site location.

Section 8.02.2 – Alteration or Extension: *A special permit is required to alter this non-conforming structure.*

	Required	Existing	Proposed	Finding
Front Yard Setback	20.7 feet	19 feet	19 feet	Pre-existing non-conforming, special permit required*
Side Yard Setback	0 feet when attached to another structure, 10+L/10 when not attached	0 feet (dwelling); 3.5 feet (garage)	0 feet (dwelling); 3.5 feet (garage)	Pre-existing non-conforming, special permit required**
Rear Yard Setback	30 feet	31 feet (not considering bay)	0 feet (due to garage)	Pre-existing non-conforming, special permit required**

	Required	Existing	Proposed	Planning
Floor Area Ratio (FAR)	2.0; 4,620 s.f.	2.5; 5,821 s.f.	3.05; 7,054 s.f.	Variance required
Parking Spaces	5	2	2 (and 2 off site)	Variance required†

*Under Section 5.05, Conversions, the Board of Appeals may waive yard and setback requirements when a building is converted for additional units.

**Under Section 5.43, the Board of Appeals may substitute by special permit other dimensional requirements for yards and setbacks if counterbalancing amenities are provided.

†Under Section 6.01.2.a, the Board of Appeals may waive by special permit up to half of the required parking spaces for structures that are converted for additional units. This would allow for no less than 3 parking spaces on site. The applicant is proposing 2 parking spaces on site and 2 parking spaces at another location.

Ms. Curtis said that the Planning Board was not opposed to the conversion of the single-family dwelling into a two-family dwelling, especially since the applicant has modified the proposal so that it does not require a new stair and lower entrance on the front façade. This property is a historically significant building with a uniquely designed façade. The original proposal for this building’s conversion, with a new lower entrance door and stair on the building’s front façade, would have negatively affected the building’s appearance. The applicant has revised the proposal so that an additional exterior entrance is installed where there is currently a side window, and this proposal has substantially improved. The building’s rear façade is of less concern, and the new door and stair leading to the garage is a minor improvement. Additional landscaping on the garage roof would improve the usable open space on site. It is not clear whether the proposed roof deck will be visible from the street; if not, the roof deck would add additional usable open space for the property and would be a benefit. If the deck is a visible alteration to the building’s façade, the Board does not support its construction because it would detract from the building’s very unique and complicated roofline.

The applicant needs multiple variances for this proposal: FAR, parking, and usable open space. However, the dwelling has more than sufficient floor area to accommodate two dwelling

units, and it is located close to public transit and has an agreement for two additional off-site parking spaces. Information about the location of these off-site parking spaces should be provided. Regarding usable open space, the proposal will be improving the usable open space on site, and though the space is provided on top of structures, the roof of the garage is very much like a garden level patio. Ms. Curtis said that should the Board of Appeals find the proposal meets the requirements for a variance, the Planning Board recommends approval of the proposal and the plans, prepared by O'Sullivan Architects and dated 6/3/2009, 5/11/2009, and 2/9/2009, subject to the following conditions:

- 1. Prior to issuance of a building permit, final front and rear elevations, indicating all alterations to the building façade, including new stairways and structures, shall be submitted to the Assistant Director for Regulatory Planning for review and approval. No stairway or new entrance shall be constructed on the building's front façade.**
- 2. Prior to issuance of a building permit, a final landscaping plan, indicating planting types and locations, hardscape materials, and fencing and railing details, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to issuance of a building permit, details about the location and easement or lease agreement for the off-site parking spaces shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 4. The surface of the rear adjacent alleyway shall be maintained in good condition, and if damage occurs during construction, it shall be repaired prior to issuance of a certificate of occupancy.**
- 5. Prior to issuance of a building permit, a construction management plan indicating dust management and trash disposal practices, and location of dumpsters, portable toilets and construction vehicle parking, shall be submitted for the review and approval of the Building and Planning Departments, with a copy of the approved plan forwarded to the Health Department.**
- 6. 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 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.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He stated that the Building Department is supportive of the proposal. He said that the developer has an outstanding record within the community for quality projects and he expects the same from this project as well. The upgrading of mechanical systems in a building as old as the subject building is always assumed to be positive from a public safety standpoint. The building will be more energy efficient as well.

Chairman Geller asked whether relief could be granted under Section 5.05, conversions given that any additional FAR relief would exacerbate the floor area non-conformity. Mr. Shepard explained that previous Boards have given Section 5.05 relief after granting the floor area relief. Chairman Geller asked whether it was just an issue of the order in which the relief is granted and Mr. Shepard responded in the affirmative that this was the precedent.

The Board then discussed the relief sought, in particular the requirements for a variance. Mr. Geller asked Mr. Allen whether being an historic structure was the equivalent of being a unique structure pursuant to G.L. c. 40A §10. Mr. Allen responded in the negative and noted that this building was, however, historic and unique because it has an unusual, unique façade and a complicated roofline. Mr. Allen continued that while several of the townhouses are similarly shaped, this building is unique and is not generally found outside of this cluster of townhouses or in this zoning district. Mr. Geller questioned whether this structure was any different from other neighboring structures in the zoning district.

The Board also a discussed the need for providing a condition to any special permit to insure that the proposed roof deck is not visible from the street.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the conditions necessary for granting Variances under Massachusetts

General Laws Chapter 40A, Section 10 to the provisions of Sections 5.20, 6.02.1 and 5.91 of the Zoning By-Law because of the unique shape of the building are present and the requirements for Special Permits under Section 9.05 of the Zoning By-Law to the provisions of Sections 5.05, 5.20, 5.30, 5.43, 5.50, 5.60, 5.62, 5.70, 5.74, 5.91, 6.01.2.a, 6.02.1, 6.03.1.a, and 8.02.2 of the Zoning By-Law have been satisfied and relief should be granted as requested.

More specifically, the Board makes the following findings pursuant to Section 9.05 of the Zoning By-Law in regard to the Special Permits:

- 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.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

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

- 1. Prior to issuance of a building permit, final front and rear elevations, indicating all alterations to the building façade, including new stairways and structures, shall be submitted to the Assistant Director for Regulatory Planning for review and approval. No stairway or new entrance shall be constructed on the building's front façade.**
- 2. Prior to issuance of a building permit, a final landscaping plan, indicating planting types and locations, hardscape materials, and fencing and railing details, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to issuance of a building permit, details about the location and easement or lease agreement for the off-site parking spaces shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

4. The surface of the rear adjacent alleyway shall be maintained in good condition, and if damage occurs during construction, it shall be repaired prior to issuance of a certificate of occupancy.
5. Prior to issuance of a building permit, a construction management plan indicating dust management and trash disposal practices, and location of dumpsters, portable toilets and construction vehicle parking, shall be submitted for the review and approval of the Department of Engineering with a copy of the approved plan forwarded to the Building and Planning Departments, with a copy of the approved plan forwarded to the Health Department.
6. The roof deck (and related alterations to the roof) shall not be visible from the street and that shall be demonstrated to the Assistant Director for Regulatory Planning prior to construction of said roof deck.
7. 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 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



Jesse Geller, Chairman

Filing Date: August 04, 2009

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2009 AUG 11 P 2:34
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ATTEST:



Patrick J. Ward
Clerk, Board of Appeals