



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

Town of Brookline

Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090035

Petitioner, Ronald Burns, applied to the Building Commissioner for permission to construct a one room addition with sundeck over an existing garage per plans at 1865 Beacon Street. The application was denied and an appeal was taken to this Board.

On 11 June 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 23 July 2009, at 7:15 p.m. in the Selectmen's Hearing Room, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its 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 2 and 9 July 2009 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: RONALD BURNS

Location of Premises: 1865 BEACON ST BRKL
Date of Hearing: 07/23/2009
Time of Hearing: 7:15 p.m.
Place of Hearing: Selectmen's Hearing Room

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

1. 5.09.2. A and 5.09.2.d, Design Review, Special Permit Required.
2. 5.43, Exceptions to Yards and Setback Regulation, Special Permit Required.
3. 5.60, Side Yard Requirements, Variance Required.
4. 5.61 Projections into Side Yards, Variance Required.
5. 5.62, Fences and Terraces in Side Yard, Variances Required.
6. 5.70, Rear Yard Requirements, variance required.
7. 5.91, Minimum Usable Open Space, Variance Required.
8. 5.91.2.e, Minimum Open Space, Variance Required.
9. 8.02.2, Alterations or extensions, Special Permit Required of the Zoning By-Law to construct a one room addition including a sundeck over the existing garage, per plans at 1865 BEACON ST BRKL.

Said Premise located in a M-1.5 (apartment house) 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, Jonathan Book and Rob Devries. The petitioner, Ronald Burns with his designer, Darrell Aldrich, presented the case before the Board.

Mr. Burns described the property at 1865 Beacon Street as a three-story attached brick dwelling with four condominium units on the south side of Beacon Street near Cleveland Circle.

The building was constructed in 1900, and includes stone detailing, an arched entrance and a central rounded bay window. An exterior basement entrance was constructed on the front façade in 2005. A three-car garage is at the rear of the property, accessed from an interior alleyway that serves several other dwellings. The entire rear yard is paved to provide for parking. A three-story deck structure exists between the rear wall of the building and the garage. Surrounding properties are similar in size and design; some multi-families also have rear garages, and one has a deck on the garage roof.

Mr. Aldrich said that the petitioner proposes to construct an addition to the rear of his condominium unit, Unit #1, to provide for a new master bedroom to the Unit, as well as an outdoor sundeck. This addition would be above the existing three-car garage, and an existing window on the rear of the main building would be turned into a door to access the new bedroom. The entire new structure would be 33'4" wide by 23'2" deep; the enclosed portion of the addition would be 16 feet wide with a roof extending partially over the new deck area 6'3". The rest of the area would be open deck with a lattice screen around the perimeter. The new deck would be connected to the existing deck at the back of the building. The addition would be finished in vinyl siding and trim.

The Members of the Zoning Board of Appeals questioned whether the property met the requirements for the grant of a variance from the Landscaped Open Space Requirements under Massachusetts General Laws Chapter 40A, Section 10. Mr. Aldrich was specifically asked to specify what features of the lot or structure were unique in the zoning district. Mr. Aldrich indicated that the applicant, in cooperation with the condominium association, might in the alternative be able to provide sufficient landscaped open space. Mr. Aldrich then described the

counterbalancing amenities that were being offered pursuant to **Section 5.43** of the Zoning By-Law, including installation of landscape plantings, screening and construction of a “green” wall.

The Chairman then asked if there were any members of the public who wished to speak in favor or in opposition to the applicant’s proposal. Noone spoke.

Lara Curtis, Senior Planner, delivered the findings of the Planning Department on behalf of the Planning Board.

Section 5.09.2.a, d – Design Review: Exterior additions and alterations to structures on Beacon Street and to multiple dwellings with four or more units require a *special permit*, subject to the Community and Environmental Impact and Design Standards of Section 5.09. The standards relative to this application are as follows:

Preservation of Trees and Landscape: The proposal does not remove any existing landscaping as it is located entirely on the roof of an existing garage.

Relation of Buildings to Environment: The addition would add floor area in a region that is dedicated primarily to vehicular use and parking. Any shadows or visual impacts from the addition would impact only the parking area; however some of the garage roofs are also used as open space.

Relation of Buildings to the Form of the Streetscape and Neighborhood: This addition would not be visible from the street, but it would be visible to the several residents who also use the parking area and live in the immediate neighborhood. This would be the first addition built on a garage roof in this immediate area; other garage roofs have been converted to decks and some rear decks have been enclosed.

Open Space: The site currently has no open space that meets usable open space requirements. This proposal would add usable open space; however the property would still be non-conforming. This new usable open space would not be visible from nearby properties because it would be surrounded by a lattice screen.

Circulation: The vehicular and pedestrian circulation is not expected to be affected by this proposal.

Section 5.42 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.61 – Projections into Side Yards

Section 5.62 – Fences and Terraces in Side Yards: Uncovered porches or decks may not extend into the yard more than 50 percent of the required yard setback, but in no case closer than six feet to the property line.

Section 5.70 – Rear Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space: The minimum usable open space requirement is dependent upon the building’s gross floor area. Since this proposal would add floor area to the

building, the minimum usable open space requirement is increased. Currently there is no usable open space on site, and this proposal would actually create usable open space, although not enough to bring the property into compliance.

Section 5.91.2.e – Minimum Usable Open Space Above Ground Level: Usable open space above ground level on a roof may be counted up to 50 percent of the usable open space requirement, provided that for every two percent counted toward that requirement an additional one percent of landscaped open space, beyond that required by Table 5.01, shall be provided at ground level.

Section 8.02.2 – Alterations or Extensions: A *special permit* is required to alter or extend a non-conforming structure.

	Required	Existing	Proposed	Finding
Side Yard Setback	13.5 feet (10+L/10)	1.3 feet	1.3 feet	Special Permit*
Rear Yard Setback	30 feet	25.2 feet	25.2 feet	Special Permit*
Usable Open Space	822 s.f. (15% of gross floor area)	0 s.f.	402 s.f. (new deck)	Pre-Existing Non-Conforming**
Landscaped Open Space	548 s.f. (10% of gross floor area)	232 s.f. (estimate)	232 s.f. (estimate)	Variance†

*Under Section 5.43, the Board of Appeals may substitute other dimensional requirements for required yards and setbacks when counterbalancing amenities are provided.

**The requirement for usable open space is increased because of the increase in gross floor area with the rear addition. Currently there is no usable open space on-site. However, this proposal will create usable open space on site with the addition of a deck that is of adequate dimension; it will not bring the property into total compliance with the usable open space requirement. Under Section 8.02.2, a non-conforming structure may be altered, repaired or enlarged as long as any nonconforming condition is not increased unless specifically provided for in another section. The applicant is not increasing the non-conforming nature of the site's usable open space, and instead, is improving the situation.

†The requirement for landscaped open space is increased because of the increase in gross floor area with the rear addition. The applicant is not able to provide adequate landscaped open space, therefore a variance is required.

Ms. Curtis reported that the Planning Board was not opposed to this proposal to construct an addition and deck above the existing rear garage at 1865 Beacon Street. The immediate surrounding area is currently used for either parking or trash storage, and an addition is not expected to have a negative impact on neighbors. The proposal would create usable open space for the property, which currently lacks any such space, and it does not remove any landscaped space. However, the design of the addition could be modified to soften its visual appearance,

including screening the deck area with plantings instead of with a wooden screen. Additionally, the landscaping in front of the property has not been maintained, and landscaping should be installed along this front edge to improve the site's appearance from Beacon Street. Therefore, she said, should the Board of Appeals find the application meets the requirements for a variance, the Planning Board recommends approval of the proposal and the attached plans, prepared by Darrell Aldrich Design and dated 5/8/09, 6/25/09 and 6/28/09, and the site plan prepared by Norman Lipsitz and dated 5/1/09, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations of the addition and privacy screen shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping plan, indicating all new landscaping on the deck and in front of the building, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner a letter from the condominium association approving the plan for an addition and deck above the garage.
4. Prior to the 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 or engineer; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, the Building Department Commissioner, for the report of the Building Department. Mr. Shepard stated that while the design of the proposed addition was not particularly pleasing, the addition was at the rear of the property where the impact would be minimal. Mr. Shepard stated that while the site presently has no open space, the proposed roof deck would provide approximately 402 feet of open space. Mr. Shepard added that 402 feet falls short of the amount required under the By-Law, but is an

improvement over the current open space which is zero. Mr. Shepard indicated that the Building Department had no objection to the petitioner's proposal.

The petitioner then requested a postponement of the hearing, for the purpose of determining whether or not he might be able to meet the landscaped open space requirement as set forth in the Zoning By-Law. The Chairman and other members of the Board agreed to postpone the hearing and visit the site before reconvening on 10 September 2009 at 7:30 p.m.

The Zoning Board of Appeals reconvened on 10 September 2009 at 7:30 p.m. to complete the adjourned hearing. Appearing on behalf of the Petitioner was Attorney Jacob Walters of Goldenberg & Walters, located at 7 Harvard Street in Brookline. Mr. Walters began by bringing to the Board's attention, a new plan submitted by the petitioner, and certified by a professional engineer, showing compliance with the landscaped open space requirements. Mr. Walters indicated that with the cooperation of the Condominium Association the petitioner was able to convert enough of the paved area of the subject lot into landscaped open space, (a total of 623 square feet), so as to comply with the 621 square foot requirement of the Zoning By-Law. Mr. Walters stated that the relief now required was limited to a special permit under **Section 5.09.2.a.d**, Design Review and **Section 5.43**, exceptions to yard and setback requirements. With reference to design review, Mr. Walters stated that the Planning Board had made specific findings relative to (a) Preservation of Trees and Landscape, (b) Relation of Buildings to the Form of the Streetscape and Neighborhood, (c) Open Space and (d) Circulation of vehicles and pedestrians and found the same to be in compliance with the By-Law. Mr. Walters urged this Board to adopt similar findings. With reference to **Section 5.43**, Mr. Walters indicated that the petitioner was providing additional landscaping in the front and rear of the property, at his expense and with the written approval of the condominium association. Mr. Walters went on to

say that the scope of the landscaping on this otherwise paved lot, was in his opinion sufficient to warrant relief pursuant to the aforesaid **Section 5.43**. Mr. Walters then added that while cited for a violation of the open space requirements, the building and garage predate the Zoning By-Law and the absence of any usable open space on the lot, save for the 402 feet being proposed by the petitioner, is a pre-existing non-conforming feature.

Mr. Walters closed by reviewing the requirements of **Section 9.05** of the Zoning By-Law and asking the Board to find that pursuant to said section adequate grounds for special permits exist.

The Chairman asked whether anyone was present to speak in favor or opposed to the proposal. No one spoke in favor or in opposition to the proposal.

The Chairman asked Mr. Shepard if he agreed that the new plans provide adequate landscaped open space, and Mr. Shepard responded that he did.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that the conditions of **Section 5.09.2.j**, (design review) **Section 5.43** (exceptions to yard and setback requirements) had been met and that **Section 9.05** of the Zoning By-law, necessary for the granting of the requested relief, have been satisfied and that it is desirable to grant Special Permits in accordance with said Sections. The Board made the following findings pursuant to **Section 9.05**:

- 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.
- f. 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 the issuance of a building permit, final plans and elevations of the addition and privacy screen shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping plan indicating all areas that contribute to the landscaped open space and counterbalancing amenities as well as landscaping on the deck and in front of the building, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner a letter from the condominium association approving the plan for an addition and deck above the garage.
4. Prior to the 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 or engineer; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

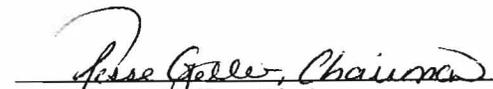
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2009 OCT -5 A

Unanimous Decision of
The Board of Appeals

Filing Date: 10/07/2009

A True Copy
ATTEST:


Jesse Geller, Chairman

Patrick J. Ward
Clerk, Board of Appeals