



BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff  
Johanna Schneider

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0055  
111 WINTHROP ROAD, BROOKLINE, MA

Petitioner, Lim Epstein Nominee Trust, applied to the Building Commissioner for permission to convert the existing three-unit dwelling to a five-unit dwelling through additions to the existing structure. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed September 26, 2019 at 7:00 PM., in the Select Board's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, 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 September 12, 2019 and September 19, 2019 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. 40A, the Board of Appeals will conduct a public hearing on **09/26/2019** at in the **6th Floor Select Board's Hearing Room, Town Hall, 333 Washington Street, Brookline**, on the following:

**111 WINTHROP ROAD, BROOKLINE, MA 02445.** *Petitioner/Owner - JACOBS TRS, CERISE H LIM & EPSTEIN, GEOFFREY* Convert three unit dwelling into five unit dwelling. M-1.0 APARTMENT HOUSE Zone. Precinct 12.

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

**§5.05 - CONVERSIONS**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.44 - ACCESSORY UNDERGROUND STRUCTURES**

**§5.60 - SIDE YARD REQUIREMENTS**

**§5.62 - FENCES AND TERRACES IN SIDE YARDS**

**§6.02 - OFF-STREET PARKING SPACE REGULATIONS**

**§6.04.5.A DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§8.02 - ALTERATION OR EXTENSION**

**Any additional relief the Board may find necessary.**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.*

*If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider*

**Publish: 09/12/2019 & 09/19/2019**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark Zuroff and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing were Zoning Coordinator & Planner, Charlotte Leis, and Deputy Building Commissioner, Joseph Braga.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also present at the hearing were the Petitioners, Geoffry Epstein and Elliot Epstein, and the architect for the proposal, Philip Kramer.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen introduced the Petitioners and noted that they'd owned the house for thirty-seven years. Mr. Allen then described the proposal stating that the Petitioner proposes to convert the existing three-unit dwelling to a five-unit dwelling through additions to the existing structure. He noted that the structure is located in the M-1.0 Zoning District. He further noted that the proposal was determined to trigger partial demolition; the Preservation Commission upheld an initial determination of significance and placed a 12-month stay of demolition on the property on December 11, 2018. The stay will expire on December 11, 2019. He stated that the proposal received the unanimous support of the Planning Board, but he noted that the Planning Board had some suggestions and ultimately requested that the proposal return to the Planning Board for the review of final plans.

Attorney Allen then stated that the Petitioner seeks relief from Sections 5.60 and Section 5.62 for pre-existing non-conforming side yard setback and a retaining wall within the setback. This relief is available under 5.43 or as a part of Section 5.05, which requires a special permit for the conversion, and in either case will be pursuant to Section 9.05. The applicant also requires relief from Section 6.02,

**Paragraph 1** under **6.01.2.a**. Finally, relief is needed under **8.02.2** for the alteration/ extension of a non-conforming structure. Attorney Allen noted that under **6.01.2.a**, when a conversion for additional units in an M District increases the parking requirements, the Board may waive up to half of the number of parking spaces required under **6.02**. Thus, with the two additional units requiring ten parking spaces, the Board may waive up to five spaces by special permit. He noted that the original proposal kept the nine existing spaces, but per the Planning Board's request, the Petitioner intends to remove one more space. Thus, the Petitioner seeks a special permit for a waiver of two parking spaces to provide eight spaces rather than ten. Mr. Allen noted that the counterbalancing amenities for the setback relief would include additional landscaping, preservation of the historic structure, and removing aluminum siding for improved materials. Attorney Allen then introduced Philip Kramer, the architect for the proposal to present the plans. Philip Kramer, Philip Kramer Design, presented the plans to the Board.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed use as a five-unit dwelling, the lot is within an M-1.0 zoning district and the surrounding neighborhood consists of many other multi-family dwellings; the use will not adversely affect the neighborhood because the proposed conversion will utilize existing space and include additions to the existing structure which will not extend much further into setbacks than the existing structure; there will be no nuisance or serious hazard to vehicles or pedestrians as current parking conditions will be drastically improved and eight parking spaces will be provided while a lengthy curb cut will be reduced; adequate and appropriate facilities will be provided for the proper operation of a five-unit dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. Katharine Schuler, 127 Winthrop Road, Brookline, Massachusetts, spoke neutrally about the proposal;

she addressed use of the driveway where a retaining wall is proposed. Ms. Schuler noted a concern for visibility when exiting the existing driveway next door. Chairman Zuroff noted that those matters would be addressed by the Town during the building process. David Fisher, 127 Winthrop Road, Brookline, Massachusetts, asked about the potential for flooding in the deck area at the rear left corner of the property. Mr. Kramer addressed his concerns. Nancy Bray, 69 University Road, Brookline, Massachusetts, inquired about the retaining wall in the rear. Mr. Kramer addressed her questions.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Charlotte Leis, Zoning Coordinator & Planner, to deliver the findings of the Planning Board. Ms. Leis noted the following:

**FINDINGS**

<b>ZONING: M-1.0</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Use</b>		3-Unit	5-Unit	<b>None</b>
<b>Lot Size</b>	7,000sf	9,250sf	9,250sf	<b>None</b>
<b>Floor Area Ratio</b>	1.0 / 100% 9,250sf	0.62 / 62% 5,706sf	0.88 / 88% 8,157sf	<b>None</b>
<b>Lot Width</b>	None	90'	90'	<b>None</b>
<b>Height</b>	40'	40'11"	40'11"	<b>Special Permit, § 5.05<sup>1</sup></b>
<b>Setbacks: F/S/R</b>	15/14.6/30	21/4/51	21/4/43	<b>Special Permit, §§ 5.05<sup>1</sup>, 5.43<sup>2</sup></b>
<b>OS: Landscaped/Usable</b>	10%/20%		22%/26%	<b>None</b>
<b>Parking Spaces</b>	10	9	9/8	<b>Special Permit, §6.01.2.a<sup>3</sup></b>

1 Section 5.05: Conversions – In M districts, conversions that create additional units must conform to all dimensional requirements. The Zoning Board of Appeals may waive any dimensional requirement (except lot size) by Special Permit provided that “no previously existing nonconformity to such requirements is increased and provided that all other requirements of this By-law for such conversions are met.”

2 Section 5.43: Exceptions to Yard and Setback Regulations – The Zoning Board of Appeals may waive any setback requirement in the Bylaw if appropriate counterbalancing amenities are provided.

3 Section 6.01.2.a: General Regulations Applying to Required Off-Street Parking Facilities – In M districts, when a structure is converted for additional units, the Zoning Board of Appeals may waive up to one half the number of parking spaces required

### **Other Zoning Requirements**

#### **Section 5.44.4: Accessory Underground Structures**

A portion of the main building located below grade is located less than 10 feet from a property line. The Zoning Board of Appeals may waive this by Special Permit, per §5.44, provided that it is “*counterbalanced by appropriate landscaping and screening to assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law.*”

#### **Section 5.62: Fences and Terraces in Side Yards**

The applicant is proposing retaining wall over 7 feet tall within a required side yard setback. The Zoning Board of Appeals may allow this by Special Permit, per §5.62, if the Board determines that it is “*warranted to mitigate noise or other detrimental impact or provide greater safety.*”

#### **Section 6.04.5.a: Design of All Off-Street Parking Facilities**

The existing (and proposed) parking spaces do not comply with a number of the design requirements for parking spaces, including: the width of parking stalls; the setback of the parking area from property lines; the percentage of spaces devoted to compact stalls; the design of stalls to avoid backing out into a public/private way; prohibition on tandem spaces. All of these are pre-existing conditions that will remain unaltered and simply require a Special Permit.

#### **Section 8.02: Alteration or Extension**

A Special Permit is required to alter and/or extend this non-conforming structure.

### **PLANNING BOARD RECOMMENDATION**

The Planning Board is supportive of the proposal, although they suggested a few changes to improve the project. The Board would like the front façade to reflect some of the original design elements. The Planning Board also recommended that the applicant eliminate the parking space furthest from the left-side property line and replace it with landscaping, reduce the width of the curb-cut, and relocate the AC units. **The Board requested that the project return to the Planning Board for final design review after the Zoning Board of Appeal’s decision.**

**The Planning Board recommends approval of the site plan and architectural plans by Philip Kramer Architect, LLC, dated July 9, 2019, and revised July 30, 2019, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations subject to the review and approval of the Planning Board. Revised plans shall also show the elimination of the parking space furthest from the left-side property line, the reduction in the width of the curb cut, and the relocation of the AC units.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan showing all

counterbalancing amenities subject to the review and approval of the Planning Board.

3. 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Joseph Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated that the Building Department had no objections to the relief requested.

During deliberation, Board Member Palermo noted that the proposal would improve the existing conditions and the relief sought was minor. She then stated that she believed the criteria for the requested relief was met. Board Member Meiklejohn and Chairman Zuroff agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for relief for Section 5.05 for conversion to a five-unit building, from Sections 5.60 and 5.62 for pre-existing non-conforming setbacks, and from Section 6.02, Paragraph 1 under Section 6.01.2.a for required parking, all pursuant to Section 9.05 of the Zoning By-Law were met, finding specifically under said Section 9.05:

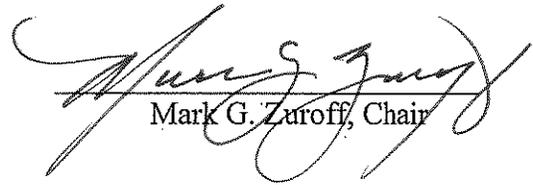
- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed use as a five-unit dwelling is allowed in the M-1.0 district.
- b. The use as developed will not adversely affect the neighborhood because the proposed conversion will utilize existing space and include moderate additions primarily at the rear, and the use is consistent with the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as current parking conditions will be significantly improved, the lengthy curbcut will be shortened, and eight parking spaces will be provided.
- d. Adequate and appropriate facilities will be provided for the proper operation of a five-unit dwelling.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief per the site plan and architectural plans by Philip Kramer Architect, LLC, dated July 9, 2019, and revised July 30, 2019, subject to the following conditions subject to the following conditions:

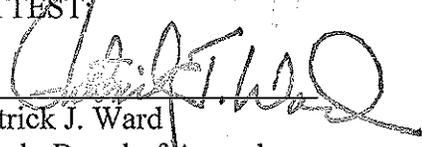
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations subject to the review and approval of the Planning Board. Revised plans shall also show the elimination of the parking space furthest from the left-side property line, the reduction in the width of the curb cut, and the relocation of the AC units.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan showing all counterbalancing amenities subject to the review and approval of the Planning Board.
3. 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:  
a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been

Unanimous Decision of  
The Board of Appeals

Filing Date: 10/11/19

  
Mark G. Zuroff, Chair

A True Copy  
ATTEST

  
Patrick J. Ward  
Clerk, Board of Appeals