



Town of Brookline

Massachusetts

PLANNING BOARD

Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Mark J. Zarrillo, Chairman
Linda K. Hamlin, Clerk
Robert Cook
Steven Heikin
Steven Kanes
Sergio Modigliani
Jonathan Simpson

To: Brookline Board of Appeals
From: Brookline Planning Board
Date: February 21, 2013
Subject: **Legalize conversion of two-family to three-family dwelling, including habitable space in the basement**
Location: 172 Fuller Street

Atlas Sheet:	11	Case #:	2013-0009
Block:	161	Zoning:	T-5
Lot:	10	Lot Area (s.f.):	2,899.7

Board of Appeals Hearing: March 7, 2013 at 7:15 pm

BACKGROUND

The property was condemned by the Building Commissioner as a result of neglect by the prior owner. The property was purchased by the applicant, who is seeking to rehabilitate and renovate the building for occupancy. **According to the Building Department, the basement space was not finished prior to the current renovations.**

SITE AND NEIGHBORHOOD

172 Fuller Street is a two-family dwelling that is attached to 165 Coolidge Street at the rear. The structure was built in 1910. The attached rear dwelling facing Coolidge Street, which is also in a two family district, was converted to a three-family dwelling in 1975. The neighborhood is comprised of multi-family units. The abutting properties directly to the south are zoned M-2.0, which allows for three or more units.

APPLICANT'S PROPOSAL

The applicant, Matthew Haney, is proposing to legalize the existing two-family, as a three-

family dwelling, including the habitable space in the basement. With two bedrooms in the basement, the total number of bedrooms will be seven, with 3 bedrooms for the basement and 1st floor unit, two bedrooms for the second floor unit, and two for the third floor unit. The proposed site plan shows two tandem cars in a garage on one side of the house and four cars in a drive to the other side of the house. The applicant maintains that the habitable space in the basement and the parking of four cars in the side yard were a pre-existing condition.

FINDINGS

Section 4.07 – Table of Use Regulations, Use #4A

A three-family dwelling is not an allowed use in the T-5 zoning district. The structure was previously being used as a three-family dwelling. The applicant states that the attached dwelling to the rear, 165 Coolidge Street, was granted relief in 1975 to convert from a two to a three-family use. A **variance** is required.

Section 9.09- Conditions for Approval of Use Variance

Paragraph 1b, under Sec. 9.09 states that: “Existence prior to January 1, 1977, of uses of the same general classification as the use variance applied for, on lots adjoining the lot in question on both sides, or, if the lot in questions is a corner lot, on both the side and the rear”. **In this case, the lot to the rear according to the applicant was granted a variance for three family use in the two family zoning district. However, requirement is for two adjacent lots to have been granted a use variance.**

Paragraph 1d, under Sec. 9.09 states that: “Existence on the lot in question of a structure(s) of appearance compatible with its vicinity which is either of historical or architectural significance which shall be preserved or restored in a manner sufficient to justify the relief granted herein, and/or contains gross floor area excessive for the use permitted in the district wherein the structure is located, and which can reasonably be maintained as a visual and taxable asset only if a nonconformity of use is permitted. A special permit under §5.09 shall be required in conjunction with every variance request pursuant to this subparagraph. **In this case, if it is demonstrated that the building is architecturally or historically significant, it could be argued that the building is being saved from demolition-by-neglect through its rehabilitation and use as a three family.**

Section 5.09 – Design Review

If a use variance is granted under Section 9.09.1.d, then a special permit under design review would be required.

Section 5.10 – Minimum Lot Size

The required lot size for either a two family dwelling or any other structure or principle use in a T-5 zoning district is 5,000 square feet. The lot is only 2,100.3 square and would need a **variance** from minimum lot size.

Section 5.22.3.b.2 – Exception to Maximum Floor Area Ratio (FAR) Regulations for Residential Units

Floor Area	Required	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.0 100%	.81 81%	1.11 111%	Special Permit*/ Variance
Floor Area (s.f.)	2,899.7	2,350	3,210	

**In a T-5 Zoning District, a Special Permit may be granted under Section 5.22.3.b.2 for an increase of 20% of the permitted floor area. The proposed increase is 11% over the required floor area, and qualifies for a special permit since it is under 120%.*

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

	Required	Existing	Proposed	Finding
Front Yard Setback	25'	7.4'	7.4'	Special Permit/ Pre-existing non-conforming
Side Yard Setback (south)	20'	0'	0'	Special Permit/ Pre-existing non-conforming
Side Yard Setback (north)	20'	14'	14'	Special Permit/ Pre-existing non-conforming
Rear Yard Setback	40'	0'	0'	Special Permit/ Pre-existing non-conforming
Landscaped Open Space	321 s.f.	0 s.f.	0 s.f.	Special Permit/Variance** Pre-existing non-conforming
Usable Open Space	963 s.f.	0 s.f.	0 s.f.	Special Permit/Variance** Pre-existing non-conforming

**Under Section 5.43, the Board of Appeals by special permit may allow the substitution of other dimensions for yard and setback requirements if counterbalancing amenities are provided.*

***If the basement space is not pre-existing as habitable space, than an increase in the landscaped and usable open space would be required.*

Section 6.01 – Paragraph 1; Table of Off-Street Parking Requirements

Section 6.04.5.c1 – Design of All Off-Street Parking Facilities

Section 6.04.5.c2 – Design of All Off-Street Parking Facilities

Design of Parking Requirements	Required	Existing	Proposed	Relief
---	-----------------	-----------------	-----------------	---------------

Total Parking Spaces	6	4-6	6	Complies/variance**
Parking within Front Yard	25'	1'	0'	Special Permit/ Pre-existing non-conforming
Parking within Side Yard	5'	1'	1'	Special Permit/ Pre-existing non-conforming

**Under Section 5.43, the Board of Appeals by special permit may allow the substitution of other dimensions for yard and setback requirements if counterbalancing amenities are provided.*

*** If the two parking spaces next to the side lot line are not permitted, a variance for the required parking would be needed.*

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

PLANNING BOARD COMMENTS

The Planning Board is supportive of the proposed legalization from a two to a three-family dwelling. This lot is adjacent to the M-2.0 (multi-family) zoning, so that a multi-family use is consistent with the properties south of it. A support letter has been submitted by an abutter supporting the three-family use, because it allows renovation of this condemned building, which has been a blight on the neighborhood for several years. Although the building is cited for yard setback relief, the footprint and massing of the building will remain the same. If the applicant plans to expand any existing window wells or create a deck above the garage, it is paramount that the Board of Appeals receives revised plans indicating such, so that the proper relief may be granted. The Planning Board recommends that the applicant install landscaping as a counterbalancing amenity to the relief granted. The Board is concerned about the number of cars parked in the driveway within the front and side yard setbacks, especially because there are also two garaged spaces. If variance criteria are met or it is found to be a pre-existing, non-conforming condition, two outdoor spaces should be adequate because of the proximity of this property to rapid transit.

Therefore, should the Board of Appeals find that the proposal meets the statutory requirement for a variance and a use variance, the Planning Board recommends approval of the proposal and plans by Edward Pozio, Architect, dated 12/12/2012, and the site plan by Lawrence Hughes, dated 11/30/12, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan showing a parking lay-out plan for two outdoor cars, the location and dimension of window wells, a landscaping plan, floor plans, and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning, with the latter also subject to review and approval of the Preservation Commission staff.
2. 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 building 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.

Pss/tcr



Front Façade



Existing two car garage