



Zoning Board of Appeals
Jesse Geller, Chair

Town of Brookline Massachusetts

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BROOKLINE ZONING BOARD OF APPEALS MINUTES By Zoom Event March 24, 2022 – 7:00 p.m.

Board Present: Jesse Geller, Mark Zuroff, Neil Wishinsky
Staff Present: Victor Panak, Paul Campbell

Jesse Geller opened the meeting.

- 1) **BOARD OF APPEALS CASE** (Tentative Zoning Board of Appeals Hearing Date) and relevant Precinct:

965 Hammond Street – Construct an attached garage with a roof deck and a shed; remove deck in front yard

Jacob Walters (attorney) requested a continuance to June 23, 2022.

761 Washington Street – Construct a new two-family attached dwelling. Case # 2021-000071. Pct. 11

Mr. Geller indicated that the case requires that the Board address a procedural issue prior to moving forward with the substantive discussion.

Bob Allen (attorney) introduced members of the team and suggested that the procedural question can and should be taken at the end of the discussion. Mr. Geller allowed this. Mr. Allen summarized the history of the project and noted some of the support received from surrounding neighbors. Mr. Allen made the case that the case should be allowed despite it having been previously withdrawn with prejudice. Mr. Allen argued that the new proposal represented specific and material changes in the conditions upon which the previous unfavorable action was based.

Mr. Geller underscored that the specific and material changes in the conditions must be related to the basis upon which the previous unfavorable action was based. Mr. Allen emphasized that the project has been reduced by 1,300sf and the changes have eliminated several of the zoning citations. Mr. Zuroff suggested that the applicant focus particularly on what has materially changed to allow a new hearing.

Robert Shin (applicant) made a statement about why he was requesting zoning relief from the Board and briefly described the work that went into the current design.

Elizabeth Whittaker (architect) provided the Board with a presentation of the proposed plans. Ms. Whittaker began her presentation by focusing on the material changes that were made to the project since the withdrawal with prejudice.

Kate Kennen (landscape architect) provided the Board with a presentation on the proposed landscaping.

Mr. Allen summarized the ways in which the project had been changed significantly. He also discussed the previous reasons for why the project was withdrawn with prejudice and made arguments on why the project should be approved this time.

Mr. Geller reemphasized his concern with the procedural obstacles. He noted that the project was previously withdrawn with prejudice due to (1) massing concerns, (2) non-traditional architecture, and (3) neighborhood concerns. Mr. Geller did not feel that item 2 had sufficiently changed for a re-hearing. Mr. Zuroff did not agree and felt that Mr. Geller was holding the applicant to too high a standard in terms of meeting the requirement for a re-hearing. The Board and Mr. Allen continued to discuss whether the building had undergone sufficient material changes to be reviewed again. Mr. Geller maintained that the applicant was not meeting the requirements of M.G.L. c.40A §16 and asked Mr. Allen to provide further legal briefs to support his position.

The case was continued to April 14, 2022.

98 Chestnut Street – Demolish two-family and construct a single-family home and garage. Case # 2022-000064. Pct. 5

Jacob Walters (attorney) introduced members of the design team, summarized discussions that were had at the Planning Board, and reviewed the necessary zoning relief.

Mr. Geller clarified whether the argument for the project is being made under M.G.L. c.40A §6. Mr. Walters stated that he believes the project should be approvable under Section 6.

Mr. Geller asked whether the new structure (the accessory structure) is covered under Section 6.

Mr. Geller confirmed that the project complies with Section 5.15 of the Zoning By-law.

Mr. Geller asked that the applicant confirm that no other locations were feasible for the detached garage. Ian Masters (architect) confirmed that no other location was feasible.

Mr. Wishinsky asked whether the applicant had considered not having a garage at all and having open air parking. Mr. Masters responded that the garage is needed to ensure that the applicant's electric vehicles operate at maximum efficiency.

Victor Panak read the Planning Board's recommendation into the record.

Paul Campbell indicated that the Building Department has no objection to the applicant's proposal.

Mr. Zuroff said he believes that the building is attractive but asked whether the garage could not be located a bit further away from the side property line. The applicant emphasized that a robust planting plan would provide sufficient screening for abutting properties.

Mr. Wishinsky expressed concerns with the prominence of the detached garage along the front property line but otherwise said he would be prepared to support the proposal.

Public Comments

Polly Welch, 96 Chestnut Avenue, expressed opposition to the proposal on the grounds that the proposed building's architecture is not consistent with other buildings in the neighborhood as well as the proximity of the garage to the left property line. She also indicated that her and other abutters had not been consulted about the landscaping.

Mr. Geller felt that the applicant had made a reasonable argument and that the application meets the requirements under Section 9.05 of the Zoning By-law. He felt that parking in the front yard is not positive but noted that this is an idealist viewpoint when dealing with narrow lots like the subject one. However, he emphasized the need for the applicant to provide the necessary counterbalancing amenities.

Other Board members agreed.

The Board voted unanimously to grant the requested zoning relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.**
- 2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan prepared in consultation with abutters that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.**
- 3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.**

809-811 Heath Street – Construct a new two-family dwelling. Case # 2021-000042. Pct. 15

Mark Kablack (attorney) introduced members of the applicant team, summarized the proposed project, and discussed the required zoning relief.

Carlos Ferreira (architect and engineer) provided the Board with a presentation of the proposed plans.

Mr. Geller clarified with the applicant that the underground garage's intrusion into the required setback is allowed by-right under the By-law.

Public Comments

There were no public comments in opposition or in support.

Victor Panak read the Planning Board's recommendation into the record.

Paul Campbell indicated that the Building Department has no objection to the applicant's proposal.

Mr. Wishinsky indicated he has no objection to the proposal and would be prepared to vote in favor of finding the proposal appropriate for the site and that it meets all requirements of Section 9.05.

Mr. Zuroff agreed and added that he believes the project represents as close to an as-of-right project as possible.

Mr. Geller also felt that the project meets the requirements of Section 9.05 of the Zoning By-law and noted that the project only requires zoning relief for the use.

The Board voted unanimously to grant the requested zoning relief subject to the following conditions:

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58 Brook Street – Convert a one family to a two-family requiring relief for lot size. Case # 2021-000013. Pct. 4

Cameron Merrill (attorney) provided a brief summary of the case's history with the Zoning Board of Appeals and an overview of the property's history. Mr. Merrill also reviewed the proposed project and the required zoning relief.

Michael Kim (architect) provided the Board with a presentation of the proposed plans.

Mr. Zuroff asked why the Planning Board report does not include the FAR numbers. Mr. Panak indicated that the report may have been based on an older planset that did not provide those numbers.

Mr. Zuroff asked the applicant to clarify the argument for a Variance. Mr. Merrill stated that a Variance could be granted on the grounds that the maintenance of the building as a single-family home is no longer financially feasible.

The Board and Mr. Merrill discussed the merits of an argument under M.G.L. c.40A §6.

Public Comments

There were no public comments in opposition or in support.

Victor Panak read the Planning Board's recommendation into the record.

Paul Campbell indicated that the Building Department has no objection to the applicant's proposal.

Mr. Wishinsky felt that the application could be approved through a M.G.L. c.40A §6. He stated that he did not see how the proposal could be substantially detrimental to the neighborhood.

Mr. Zuroff said he is not sure that he agrees with the arguments for a Variance or a Section 6 finding. Mr. Zuroff said he certainly does not agree with the economic hardship argument for a Variance.

Mr. Geller agreed that a Variance argument could no hold because the lot is not unique in terms of shape, soil, or topography. Regarding the viability of a Section 6 finding, Mr. Geller noted that the conversion of the building to a two-family use causes an intensification of an existing nonconformity.

Mr. Zuroff remained unconvinced because he emphasized that the change of use requires a Variance by increasing the required lot size. After other Board members noted that the zone is a T district and the two-family use is allowed by right, Mr. Zuroff agreed that a Section 6 argument could in fact be made.

The Board voted unanimously to grant the requested zoning relief subject to the following conditions:

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The meeting was adjourned.