



City of Boston
Mayor Martin J. Walsh
Board of Appeal

**NOTICE OF DECISION
CASE NO. BOA 921129
PERMIT # ALT909494
APPEAL SUSTAINED**

In reference to appeal of

Alpine Advisory Service

concerning premises

33 Mount Vernon Street, Ward 05

to vary the application of the Zoning Act, Ch. 665, Acts of 1956, as amended, in this specific case, I beg to advise that the petition has been granted.

Decision has been filed in the office of the Commissioner of the Inspectional Services Department, 1010 Massachusetts Avenue, fifth floor, Boston, MA 02118, and is open for public inspection. Date of entry of this decision in the Inspectional Services Department was 5/10/2019.

FOR THE BOARD OF APPEAL

Kevin P. O'Connor, Jr.

Kevin P. O'Connor, Jr.

Principal Administrative Assistant



DECISION OF THE BOARD ON THE APPEAL OF

April 09, 2019
DATE

Alpine Advisory Service

to vary the terms of the Boston Zoning Code, under Statute 1956, Chapter 665, as amended, Section 8, at premises:

33 Mount Vernon Street, Ward 05

For the terms of the Boston Zoning Code (see Acts of 1956, c. 665) in the following respect: Variance

Article(s): 15 (15-1)

Purpose: Change occupancy from Office to three dwellings; interior demolition and rehabilitation with roof deck and rear decks per plans filed herewith. Full construction drawing will be filed after zoning relief.

In his formal appeal, the Appellant states briefly in writing the grounds of and the reasons for his appeal from the refusal of the Building Commissioner, as set forth in papers on file numbered BOA-921129 and made a part of this record.

In conformity with the law, the Board mailed reasonable notice of the public hearing to the petitioner and to the owners of all property deemed by the Board to be affected thereby, as they appeared on the then most recent local tax lists, which notice of public hearing was duly advertised in a daily newspaper published in the City of Boston, namely:

THE BOSTON HERALD on Tuesday, March 19, 2019

The Board took a view of the petitioner's land, examined its location, layout and other characteristics.

The Boston Redevelopment Authority was sent notice of the appeal by the Building Department and the legal required period of time was allotted to enable the BRA to render a recommendation to the Board, as prescribed in the Code.

After hearing all the facts and evidence presented at the public hearing held on Tuesday, April 09, 2019 in accordance with notice and advertisement aforementioned, the Board finds as follows:

The Appellant appeals to be relieved of complying with the aforementioned section of the Boston Zoning Code, all as per Application for Permit# ALT909494 December 20, 2018 plans submitted to the Board at its hearing and now on file in the Building Department.



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Appellant seeks with reference to 33 Mount Vernon Street, Ward 5, relief from Article 15, Section 15-1: Excessive Floor Area Ratio. Appellant seeks to change the existing office occupancy in a multifamily residential subdistrict (H-2-65) of Boston Proper zoning district to three (3) dwelling units with reconstruction of the interior; adding rear decks; dormer with a deck together with facade restoration. The excessive Floor Area Ratio is an existing condition and Appellant seeks a variance as zoning relief.

Appellant testified that the locus is within a residential district of Beacon Hill in a H-2-65 subdistrict. Further Appellant testified that the existing law office use is a non-conforming use. Appellant submitted photographs illustrating that all of the adjoining properties exceed that maximum Floor Area Ratio of 2.00. The existing Floor Area Ratio is 3.15 and the proposed Floor Area Ratio is 3.15. Appellant testified that the property is located in the Beacon Hill Historic District which requires Landmarks approval of any and all alterations visible from a public way or area. Without zoning relief, Appellant would be deprived of the reasonable use of the pre-zoning code structure since reduction of the building's massing is prohibited by Landmarks regulation.

Appellant testified that the three proposed dwelling units would consist of a garden and first floor duplex of 1,944 S.F with two bedrooms; a second floor flow through unit of 972 SF with two bedrooms and fourth and fifth floor duplex of 1,659 SF with three bedrooms. Further, testifying Appellant stated the as of right rear decks were altered in length and projection in response to concerns of abutting owner of 31 Mount Vernon Street.

Among the goals and objectives of Article 1 are to encourage the most appropriate use of land throughout the City; to conserve the value of land and buildings; to lessen congestion in the streets; and to preserve and increase the amenities of the City.

Appellant presented the project to abutters requesting support for the zoning relief at the Mayor's Office of Neighborhood Services' site meeting coordinated by Yissel Guerrero, Neighborhood/Constituency Liaison. Appellant testified that at the site meeting and subsequent presentation before the Beacon Hill Civic Association there was general support for the change of use back to residential but concerns were voiced about the proposed rear decks. In response Appellant reduced the projection and length of the decks as shown on the plans filed with the Board.



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Appellant submitted to the Board aerial photographs of the immediate environment verifying the project site to be located in the middle of continuous row housing on Mount Vernon Street and with a mixture of various elevations of building height which exceed the maximum Floor Area Ratio. The Board finds the locus to be in a dense urban environment and all of the immediate buildings exceed the maximum Floor Area Ratio.

At the hearing Yissel Guerrero, Neighborhood/Constituency Liaison, Mayor's Office of Neighborhood Services testified in support of the zoning relief and a representative of the adjacent condominium stood in support. Appellant testified and Ms Guerrero confirmed that the Beacon Hill Civic Association voted not to oppose the project. There were no opposition letters presented at the hearing and there is none on file with the Board. This showing of approval from the community further supports the Board's finding that the requested relief will have no negative impact on the surrounding area, and is in harmony with the general purpose and intent of the Code.

The Board finds the existing excessive Floor Area Ratio in this historical building is not being increased and relief is consistent with the goals and objectives of Article 1 to conserve the value of land and buildings. For these reasons, the requested relief may be granted in harmony with the general purpose and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The Board of Appeal finds that all of the following conditions are met:

- (a) That there are special circumstances or conditions, fully described in the findings, applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness or shape of the lot, or exceptional topographical conditions thereof), which circumstances or conditions are peculiar to such land or structure but not the neighborhood, and that said circumstances or conditions are such that the application of the provisions of this Code would deprive the appellant of the reasonable use of such land or structure; and
- (b) That for reasons of practical difficulty and demonstrable and substantial hardship fully described in the findings, the granting of the variance is necessary for the



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reasonable use of the land or structure and that the variance as granted by the Board is the minimum variance that will accomplish this purpose; and

- (c) That the granting of the variance will be in harmony with the general purposes and intent of this Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

In determining its findings, the Board of Appeal has taken into account: (1) the number of persons residing or working upon such land or in such structure; (2) the character and use of adjoining lots and those in the neighborhood; and (3) traffic conditions in the neighborhood.

The Board is of the opinion that all conditions required for the granting of a variance under Article 7, Section 7-3 of the Zoning Code have been met, and that the varying of the terms of the Zoning Code as outlined above will not conflict with the intent and spirit of the Zoning Code.



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Therefore, acting under its discretionary power, the Board (the members and substitute member(s) sitting on this appeal) unanimously voted to grant the requested variance as described above, annuls the refusal of the Building Commissioner and orders him to grant a permit in accordance with this decision, with the following proviso which, if not complied with, shall render this decision null and void.

APPROVED AS TO FORM:

PROVISO: None


Assistant Corporation Counsel

Signed, May 7, 2019


Christine Araujo - Chairperson


Kerry Walsh Logue


Anthony Pisani


Bruce Bickerstaff


Mark Erlich


Tyrone Kindell


Craig Galvin - Acting Secretary