

**Brookline Board of Appeals  
August 18, 2016 7:00 PM  
Public Hearing  
333 Washington Street  
6<sup>th</sup> Floor Selectmen's hearing Room**

**Board Members Present** – Jesse Geller (Chairman), Steve Chiumenti, Kate Poverman

**Staff Present** – Ashley Clark (Planning Dept.)

**7:00PM**

**189 Eliot Street      2016-0048      Construct a rear addition**

Board Chairman Geller opened the hearing and called case #2016-0048, 189 Eliot Street. Mr. Geller reviewed standard hearing procedure.

Attorney Robert Allen stated he received an email he from Mel Schuman requesting that he represent him at the hearing this evening. Mr. Allen stated Mr. Schuman was called away and was unable to attend the hearing and requests a continuance to September 8<sup>th</sup>. Mr. Allen stated he told Mr. Schuman he would be glad to stand in.

Mr. Geller stated he would be inclined to grant the continuance.

Ms. Poverman stated she was concerned that this was the exact same proposal that came before them a few months ago where she would not grant a variance. Ms. Poverman stated she was concerned forum shopping was going on.

Mr. Geller stated he did not know whether or not forum shopping was happening but stated his view on continuances and the policy has been to allow a continuance unless there was a compelling reason not to grant a continuance.

There was a discussion regarding whether or not the same panel should review the continuing case. Mr. Geller felt there was no compelling reason to do so. Ms. Poverman stated she wanted to raise the concern as she was substituted on the panel. Mr. Geller stated who ever sits on the panel is going to have to hear the case and make a substantive decision which alleviates concern regarding who is on the panel.

Mr. Geller stated the continuance is granted for 9/8/2016.

**16 Clark Court      2016-0047      Finish 188 Square feet of basement**

Board Chairman Geller called case #2016-0047, 16 Clark Court. Mr. Geller reviewed standard hearing procedure.

Attorney Robert Allen (300 Washington Street, Brookline) waived a reading of the hearing notice. Mr. Allen introduced Adam Williams, the property owner and Bill Penny architect from Somerville. Mr. Allen described the proposal. Mr. Allen stated the building has always been over the FAR.

Mr. Allen stated they are making a 40A Section 6 argument and stated the Board of Appeals may allow an extension of an existing nonconformity if it finds there is no additional nonconformity created and no substantial detriment to the neighborhood.

Mr. Allen stated the proposal is completely interior and makes no changes to the exterior. Mr. Allen reviewed the requirements for granting a special permit pursuant to Section 9.03 of the Town By-law.

Mr. Geller asked if the house has always been in excess of FAR and if there have been previous grants of relief.

Mr. Allen confirmed the house has always been in excess of its FAR and there has been no special permit relief granted.

Ashley Clark from the Planning Department presented the comments from the Planning Board. Ms. Clark stated The Planning Board is not opposed to the proposal to increase the floor area in the existing single-family dwelling. The structure has extensive basement-level space that currently contains one finished room and additional finished storage space that will be renovated and added to with this proposal. The conversion will have no impact to abutters.

Therefore, the Planning Board recommends approval of the plans by Andover Renovation Solutions, dated 2/10/16, subject to the following conditions:

1. Prior to the issuance of a building permit, final basement floor plans and elevations shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
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 basement floor plan stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Clark presented the report on behalf of the Building Department. Ms. Clark stated the Building Department is not opposed to this proposal.

Mr. Chiumenti inquired about abutting properties being over FAR and stated he did not have an issue with the proposal.

Ms. Poverman and Mr. Geller were in favor of the proposal.

**Unanimous grant of the relief as requested subject to the conditions stated for the record.**

**246 Dudley St/ 292 Warren Ave 2002-0032 construct an addition for a new residential dwelling unit over an existing single family residence per plans**

Board Chairman Geller called case #2002-0032, 246 Dudley Street/292 Warren Avenue forward. Mr. Geller reviewed standard hearing procedure. Attorney Wayne Dennison waived a reading of the notice.

Attorney Dennison introduced his client, Mr. Kargman.

Mr. Dennison described the previous time the Board of Appeals reviewed the case for 246 Dudley Street. Mr. Dennison stated there was a previous determination by the Building Department regarding the portion of the addition between the existing garage and main structure of the house which is approximately a 600 square foot addition. The Building Department decided a portion of this addition crossed into the setback. Mr. Dennison described a previous challenge to the determination this portion was in the setback as it was based on a rear yard setback condition where the applicant contends it is not a rear yard. Mr. Dennison stated while in pursuit of an Administrative Appeal, the previous board recommended not pressuring a decision regarding whether the setback was a side yard or a rear yard and instead apply for a modification of an existing special permit.

The existing special permit permitted the modification of the garage which allows the structure to sit roughly 4 feet from the property line. Mr. Dennison stated the current proposal under review does not further encroach on the setback. Mr. Dennison stated this is a second floor addition over an existing first floor. Mr. Dennison further described the conditions of the proposal and its relationship to neighboring structures. Mr. Dennison stated the closest they will be to the lot line is on the other side of the garage is 40 feet from the lot line and 103 feet from any other person's structure.

Mr. Dennison stated in accordance with the suggestion of this board we continued by agreement of simply trying to modify the 2002 special permit. Mr. Dennison described the Planning Board's quick approval for this addition and stated the proposal is very modest. Mr. Dennison stated the 2<sup>nd</sup> floor addition is intended to permit the homeowners to age in place as it provides access to an elevator and a caretaker bedroom. Mr. Dennison stated the addition is perfectly consistent with the bylaw in terms of desired effect to keep people in their homes. Mr. Dennison stated the prior board expressed fairly significant support for this proposal and suggested to go this route.

Mr. Geller stated his issue is not so much the substantive matter at hand but figuring out the substantive matter. Mr. Geller stated there is not site plan or copy of original decision being asked to modify.

Mr. Dennison stated both were attached to application and submitted a copy of the site plan and original decision along with a set of drawings.

Mr. Geller asked Mr. Dennison to walk through the proposal for the addition.

Ms. Poverman clarified with Mr. Dennison the proposal under review was not seeking to construct a driveway and a two car garage.

Mr. Chiumenti referenced a shaded portion on a second level and confirmed that is what the Board of Appeals is reviewing.

Mr. Geller stated what is described in the report is not reflective of what is going on but is reflective of what was in an original proposal.

Mr. Dennison referred to the overall plot plan for the property and stated the nearest property is roughly 103 feet away. Mr. Dennison reviewed the existing structure and stated they propose to build a second floor bedroom with elevator access. Mr. Dennison stated there is a 2<sup>nd</sup> floor en-suite.

Mr. Dennison, while referencing the plans, stated the shaded area represents the portion within the 50 foot setback. Mr. Dennison stated everything else does not need relief.

Ms. Poverman clarified the garage is already existing and the exercise room is not part of this proposal.

Mr. Geller stated the version of the Planning Board report is an old report from a previous application.

Mr. Geller summarized the grey shaded area on the plan supplied as interpreted by the Building Department as crossing into a rear lot setback and the limitation of the request for relief this evening is for the shaded grey second story addition and nothing else.

Mr. Dennison stated there is an existing special permit that allowed a previous proposal to construct a garage within 4 feet from the property line. Mr. Dennison stated the applicant just wants to add some bedroom space and elevator access above the existing first floor walkway. The only portion within the setback is the grey shaded area.

Mr. Geller asked for public comment in favor or opposed. No public comment.

Mr. Geller asked Ms. Clark to review the Planning Board and Building Department reports.

Ms. Clark stated this proposal is for a modification of a previous decision. The relief for front yard rear lot was granted in 1987. The board can choose to issue a new special permit or modify the previous decision to include the new addition. There is currently a building permit for various renovations. The Building Department will work with the petitioner to ensure compliance.

Mr. Poverman and Mr. Chiumenti supported modification of the previous special permit.

Mr. Geller stated as now explained and corrected and within the limitations of the request, which is the grey shaded portion on the second floor which comes no closer to the property line does not appear to have any ramifications. Mr. Geller stated he is in favor of granting the modification as requested, subject to the conditions. Mr. Geller stated condition number two is irrelevant while conditions one and three remain relevant.

**Unanimous grant of the modification as requested subject to the conditions and revised.**