Town of Brookline
Massachusetts

BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 070018

Petitioners, Vijay and Vandana Yajnik applied to the Board of Appeals for zoning relief to construct a two-story addition to the side of their home at 147 Newton Street.

On March 15, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed May 3, 2007 at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, 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 April 5 and 12, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **Vijay and Vandana YAJNIK**
Location of Premises: **147 NEWTON STREET BRKL**
Date of Hearing: **05/03/2007**
Time of Hearing: **07:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a special permit and/or variance from:

1) 5.09.j; Design Review, Special Permit Required.
2) 5.20; Floor Area Ratio; Variance Required.
3) 5.22.3.b.1.b; Exceptions to Maximum Floor Area Ratio: Special Permit Required.
4) 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.
5) 5.60; Side Yard Requirements; Variance Required
6) 8.02.2; Alteration or Extension; Special Permit Required, of the Zoning By-Law to construct additions and renovations per plans at **147 NEWTON ST BRKL.**

Said Premise located in a S-15 District.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ***ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.***

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At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Diane Gordon and Board members Lawrence Kaplan and Jesse Geller. The homeowners, Mr. and Mrs. Yajnik, were in the audience and their petition was presented by Michael Chenevert of Francis Harvey& Sons, a construction firm located at 238 Shrewsbury Street, Worcester, MA.

Mr. Chenevert described the project as the removal of the existing garage roof, expansion on the first floor to accommodate an expanded kitchen, half bath, closet and mudroom. A second story with new roof will be added above the garage/addition to accommodate a new master bedroom suite. The design emulates the existing dwelling incorporating similar materials. He described the neighborhood as mostly single family homes of similar size. He said that the petitioner's home is well screened due to dense vegetation and fencing. Mr. Chenevert stated that the Building Department had initially cited them for relief from Floor Area Ratio requirements. After investigation by an architect it was determined that FAR relief was not required as the gross floor area with the addition was less than the maximum allowed by the bylaw. Mr. Chenevert stated that he believed a special permit was required under section 5.43 since the existing garage did not meet the side yard requirements of the bylaw. He mentioned that the homeowners would install additional landscaping along the side lot line as an amenity required for relief. Since the project consists of the alteration or extension of a pre-existing, non-conforming structure, Mr. Chenevert stated that relief from Section 8.02.2 of the bylaw was also required.

The Chair asked whether anyone wished to speak in favor or in opposition to the proposal and there was no response.

Planner, Adam Serafin, then reviewed the comments and recommendations of the Planning Board. He stated that the applicant proposes to construct an 780 s.f. two-story addition to the side of the dwelling. To construct the addition, the roof of the existing garage will be removed, the garage will be expanded, and a second story with pitched roof will be constructed over the garage. The first floor addition will allow for an expanded kitchen, new half bath, closet and mudroom. The second floor addition will create a new master bedroom, master bathroom and closet. The front

façade of the addition will be constructed of red brick to match brick found on the existing façade of the main house. The side and rear facades will feature 8" cedar clapboard siding, similar to that found on the side and rear of the existing garage. Windows on the addition will match those found on the main house, and new asphalt shingles roof will be installed on both main house as well as the addition. A 48" x 42" wooden deck with stairs will be constructed to the rear of the garage to provide an additional means of ingress/egress. In the denial letter for this proposal, the Building Department originally cited the applicant as needing special permit relief for FAR and Design Review. The applicant's architect has submitted a certified letter which shows the FAR for this property complies with the zoning bylaw. Therefore, this proposal is not subject to design review. Mr. Serafin outlined the relief required for the proposal:

Section 5.60 Side Yard Requirements

Proposed Addition	Required	Proposed	Relief
Side Yard Setback	15 feet	7.4 feet	S.P./Variance*

* A special permit under **Section 5.43** to waive dimensional requirements may be granted provided that counterbalancing amenities are provided. The applicant has stated she is willing to install landscaping along the side lot line as a counterbalancing amenity.

Section 8.02.2 - Alteration or Extension

A special permit may be granted under Section 8.02.2 to alter or enlarge a non-conforming condition.

Mr. Serafin reported that the Planning Board recommends approval of the plans, titled "Vijay and Wendy Yajnik Renovations, 147 Newton Street Brookline MA", prepared by Francis Harvey & Sons Inc., dated December 29, 2006 and revised April 24, 2007, subject to the following conditions:

1. **Prior to the issuance of a building permit, a revised plan of the basement, with labels showing finished areas, unfinished areas and utility areas, shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.**

2. **Prior to the issuance of a building permit, a final landscaping plan, showing all**

counterbalancing amenities, shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.

3. **Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions stamped and signed by a registered architect or land surveyor, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock stated that although initially cited, Floor Area and Design Review relief was not required since an investigation and subsequent affidavit by Robert Lombardi, a registered architect, stated that the FAR, including finished space in the basement and the proposed addition is 23.5%. The maximum allowable under the bylaw is 25%. Mr. Lombardi's affidavit is dated 24 April 2007. Mr. Hitchcock stated that all the relief required could be granted by two special permits. A special permit under **Section 5.43** is required to waive the required side yard setback since the existing structure is 7.4 feet from the property line and 15 feet is required in this district. A special permit under **Section 8.02.2** is required because the non-conforming side yard, although not exacerbated by the proposed addition, is a pre-existing condition. Mr. Hitchcock stated that the Building Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permits under **Section 5.43** and **Section 8.02.2** of the Zoning Bylaw and makes the following findings pursuant to **Section 9.05**:

a. The specific site is an appropriate location for such a use, structure, or condition.

b. The use as developed will not adversely affect the neighborhood.

c. There will be no nuisance or serious hazard to vehicles or pedestrians.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the Board voted unanimously to grant all the Special Permit relief requested with the following conditions:

Prior to the issuance of a building permit the applicant shall submit to:

1. **The Assistant Director for Regulatory planning for review and approval; a) a revised plan of the basement, with labels showing finished areas, unfinished areas and utility areas and b) a final landscaping plan, showing all counterbalancing amenities.**

2. **The Zoning Administrator for review and approval for conformance to the Board of Appeals decision: a) a final site plan showing dimensions stamped and signed by a registered architect or land surveyor, and b) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals

Diane R. Gordon

Filing Date: May 11, 2007

A True Copy:

ATTEST

Patrick J. Ward

Clerk,

Board of Appeals