



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

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HARRY MILLER, Co-Chair
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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
NO. BOA060012

Petitioner Mordecai Danesh applied to the Building Commissioner for permission to construct a two level addition at the rear of the property at 305 Buckminster Road. The addition would include a below street grade two car garage and a kitchen extension and living area above the garage. The Building Commissioner denied the petitioner's application due to the fact that the proposed addition violated the Zoning By-Law and an appeal taken to this Board.

On March 9th, 2006 the Board 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. The Board then fixed the date of May 11th, 2006 at 7:45 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of 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 on April 27th and May 4th, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
NOTICE OF HEARING
PETITIONERS: Mordecai Danesh

LOCATION OF PREMISES: 305 Buckminster Rd. BKRL

DATE AND PLACE OF HEARING

Thursday May 11th, 2006

At 7:45 p.m. in the Selectman's Hearing Room on the sixth floor of Town Hall
333 Washington Street Brookline, Massachusetts.

A public hearing will be held for a Special Permit from Section 5.09.2.j; Design Review, Section 5.22.3.b.1.b; Exceptions to Maximum Floor Area Ratio Regulations, and Section 8.02.2 ; Alteration or Extension; and Variance from Section 5.20; Floor Area Ratio; of the Zoning By-Law to construct an addition as per plans.

At 305 Buckminster Road
Said premises is located in an M 1.0
Apartment House Residence District

The Town of Brookline does not discriminate on the basis of disability in admission to, or 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 Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Diane R. Gordon
Harry Miller
Bailey Silbert

At the time and place specified in the notice a public hearing was held by this Board. Present were Harry S. Miller, Chair, Enid Starr and Murray Shockett.

Petitioner was represented by Attorney Jacob Walters of Goldenberg, Walters and Popkewitz of Seven Harvard Street in Brookline. Mr. Walters stated that all the requested relief could be granted by Special Permit, pursuant to Sections 5.09.2.j, 5.22.3.b.1.b and 8.02.2 of the Zoning By-Law. Mr. Walters stated that the kitchen of the existing dwelling is quite small and the petitioner hopes to expand the kitchen in order to meet the needs of his family. Mr. Walters added that the new 2 car garage and family room above the garage would have little or no impact upon the neighborhood, and met the guidelines for bonus floor area ratio in accordance with Section 5.22.3.b.1.b. Mr. Walters stated that pursuant to 5.09.2.j of the By-Law design

review was required, and went on to say that the petitioner had adopted the suggestions offered by an architect hired by one of the abutters. In response to the written suggestions made by Lynn Osborn, architect located in Brookline, the vent pipe was removed, a fence was also removed, the garage now shows two wooden doors and a stone veneer was added at the basement level. Mr. Walters added that the Planning Board was satisfied with the design of the proposed project and had unanimously voted its approval. Mr Walters stated that 305 Buckminster Road was the smallest house on the block, with a lot that contained plenty of front and rear yard. Mr. Walters pointed out that even with the proposed addition the rear yard contains approximately twice the required rear yard depth. Mr. Walters stated that relief from Section 8.02.2 was needed only because one of the existing side yards is non-conforming and the non-conformity was not being increased. Mr. Walters concluded by referring to the letters of support received from some of the abutters and previously submitted.

Christopher Hussey from CYMA2 architects addressed the Board next. Mr. Hussey referenced the revised plan dated May 10, 2006. Mr. Hussey also described the rationale for a new enlarged kitchen, stating that at the time the property was built kitchens were small and life centered around a formal dining room. In more recent times, the kitchen is the central gathering place and most families spend a significant time in the kitchen. Mr. Hussey added that the proposed addition meets the bonus requirements under Section 5.22.3.b.1.b of the By-Law.

The Chair asked if any members of the public wished to be heard in favor or in opposition to the applicant's proposal. First to speak with Sheri Mattel, of 309 Buckminster Road. Mrs. Mattel stated that she believed the addition was too massive to be allowed on an already non-conforming dwelling. Mrs. Mattel stated further that while the Buckminster Road area was originally designed by Frederick Law Olmstead, she regretted that the lots were too small and the houses too big to allow for expansions such as being proposed in this case. Mrs. Mattel went on to say that if the proposed addition were allowed it would have a detrimental effect upon the amount of light coming into her house, making the interior too dark. Mrs. Mattel stated that while the Danesh house and most houses were sited so that the majority of windows and views were toward the front, her home has most of its windows facing east, looking out toward the Danesh property. Mrs. Mattel also stated that the addition with large windows would compromise her privacy as well as the privacy of the Danesh household. Mrs. Mattel also took issue with the floor area ratio calculation suggesting that a portion of the basement was used in the past as office space but not counted by the petitioner or the building department. Mrs. Mattel also stated that the Planning Board Report to the Zoning Board of Appeals

contained errors, and that both the Planning Board staff and the Building Department had incorrectly excluded what Mrs. Mattel considered habitable living space from the plans submitted by the applicant's architect. Mrs. Mattel concluded by making reference to letters of opposition from other neighbors and stating that the 305 Buckminster Road house was for sale, and that the applicant and his family had not yet lived there.

The chair then recognized Town Meeting Member Harry Friedman, who stated that he was in attendance to support the Mattel's. Mr. Frideman stated that he had reviewed the site of the proposed addition from inside the Matell's house and he agreed that it would impede their views and light.

Next to speak was Janice Kahn of Craftsland Road in Brookline. Mrs. Kahn acknowledged that she was not a resident in the zoning district, but felt that the objections raised by Mrs. Mattel regarding privacy and daylight were significant issues. She also made reference to health concerns and indicated she was in opposition to the proposal.

The Chair then called upon Timothy Greenhill of the Planning Board. Mr. Greenhill stated that the Planning Board had no objections to the proposed addition, as the proposed addition is compatible with the existing structure. The garage and driveway are at the rear of the property and will have no impact upon the street front. The Planning Board believed that the only location for an addition to this property was the rear of the property. Mr. Greenhill concluded by stating that the Planning Board recommends approval of the applicant's proposed addition, subject to the following condition:

1. 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, a) a final site plan, stamped and signed by a registered architect or land surveyor, and b) final building elevations stamped and signed by a registered architect.

The Chair then called upon Frank Hitchcock of the Brookline Building Department. Mr. Hitchcock stated that relief could be granted by three Special Permits. Mr. Hitchcock stated with regard to the basement of the subject premises, that the basement is below grade level and not in compliance with code requirements for habitable living space. Mr. Hitchcock added that under Section 5.22.3.b.1.b the applicant may add habitable living space of 20 % over what is allowed under the By-Law which is what the applicant is doing in this case. Mr. Hitchcock stated that the

Planning Board comments regarding design are inclusive and to the point. As for the Special Permit needed under Section 8.02.2, Mr. Hitchcock indicated that it is the structure that is non-conforming in this instance and the non-conformity is not being increased. Mr. Hitchcock added that the lot in question is located in an S-10 district and contains over 11,000 square feet, providing more than enough open space to meet all requirements of the By-Law. Mr. Hitchcock stated that normally setbacks are required to insure privacy and in this case there are no setback issues before the Board. Mr. Hitchcock concluded by stating that the Building Department has no objection to the applicant's proposal.

The Chair then called upon Christopher Hussey, who addressed the issue of sunlight and the effect of the proposed addition on the Mattel property. Mr. Hussey was able to show, on an enlarged copy of the street atlas, the path of the sun during the winter months, rising in the morning and traversing the sky at 17 degrees above the horizon before setting in the evening. Mr. Hussey showed the path of the sun during the winter months and was able to demonstrate that the shadows created by the addition would have no significant impact upon the Mattel dwelling. Mr. Hussey was able to provide the same demonstration of the sun's path during the summer months and again was able to show that the addition would have no significant effect upon the Mattel's house.

The Chair then closed the hearing and the Board began its deliberations. Enid Starr stated that she had made a site visit to the property and noted that the foliage between the Mattel dwelling and that of the applicant was dense and provided a sufficient screen to soften the impact of the proposed addition. Ms. Starr also stated that 305 Buckminster was the smallest house on the block and that the proposed addition would not extend the rear of the dwelling any farther back than the rear of any other house on the block. Ms. Starr concluded by stating that she appreciated the applicant's willingness to adopt the suggestions of architect brought in by an abutter and indicated that she would vote in favor of the needed relief.

Mr. Shockett stated that he had no problem with the proposed addition and did not feel it would have any impact upon the neighborhood. Mr. Shockett stated that he did not like the vent stack shown on the original plan and appreciated the applicant's willingness to revise the plan to meet the neighbors concerns. Mr. Shockett concluded by stating that he felt the addition would be a benefit to both the applicant's home and the Mattel property.

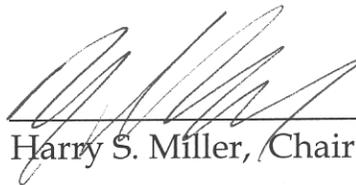
The Chair indicated that his only concern was the privacy issue raised by Mrs. Mattel. Mr. Miller stated that he hoped the applicant would be sensitive to that

issue and perhaps consider modifying the size of the proposed kitchen window facing the Mattel residence. Mr. Miller added that this was not being made a condition of the grant of relief, but restated his hope that the applicant would consider making the requested change of window size.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously to grant special permits under Sections 5.09.2.j, 5.22.3.b.1.b and 8.02.2 to allow the proposed addition with the following condition:

1. 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, a) a final site plan, stamped and signed by a registered architect or land surveyor, and b) final building elevations stamped and signed by a registered architect.

Unanimous decision of
the Board of Appeals



Harry S. Miller, Chair

Date of Filing: June 7, 2006

A True Copy:
ATTEST:



Patrick J. Ward
Board of Appeals