



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0040
STEVEN & SUSAN RITTER

Petitioners, Steven and Susan Ritter, applied to the Building Commissioner for permission to construct a two-story rear addition at 85 Fairway Road. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed July 31, 2014 at 7:15 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, 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 on July 10, 2014 and July 17, 2014 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

85 FAIRWAY ROAD – to construct an addition at the rear in an S-15, Single-Family, residential district, on **July 31, 2014, at 7:15 pm** in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: Steven and Susan Ritter)

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- Section 5.09.2.j; Design Review**
- Section 5.22.3.c; Exceptions To Floor Area Ratio for Residential Units**
- Section 8.02.2; Extension and Alteration**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*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 Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members, Avi Liss and Johanna Schneider. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Steven and Susan Ritter, the owners of the property located at 85 Fairway Road and Paul Worthington, the Petitioners’ architect.

Zoning Board of Appeals Chairman Geller called the hearing to order at 7:15p.m. Attorney Allen stated that the Petitioners propose to construct a two-story rear addition between the existing family room and garage at 85 Fairway Road.

Attorney Allen presented to the Board a background of the Petitioners and the property, stating the following: The Petitioners purchased the home in 2010. Attorney Allen stated that the first floor addition will include the 210 square foot expanded kitchen with dimensions of 17'6" wide by 12' deep. Attorney Allen stated that the second floor addition will include the 112 square foot enlargement for a bedroom, with dimensions of 16' by 7'. Attorney Allen stated that the second floor addition will have gable slate roof to match the existing slate roof and that the existing wood decks at back of the dwelling will be removed and replaced with smaller wood deck and relocated bulkhead. Attorney Allen stated that 85 Fairway Road is a two-and-a-half-story single-family dwelling with an attached garage on the corner of Fairway and Hilltop Roads. Attorney Allen stated that the Petitioners spoke with many neighbors about the proposal and several have expressed support for the project, which are shown through four letters of support, and there are no neighbors in opposition.

Attorney Allen stated that the Planning Board voted unanimously in support of the relief requested.

Attorney Allen stated that relief was triggered and met under Section 5.09.2.j of the Zoning By-Law because there will be no removal of trees or significant landscaping,; the location of the addition will be at the rear of the dwelling and will not create shadows on abutting properties or be visible from the street; and the property will continue to have significant areas of open space. Attorney Allen stated that under Section 5.22.3.c of the Zoning By-Law, the Board of Appeals by special permit may allow an increase in floor area up to 350 square feet, if the total gross floor area of the building is not more than 150% of allowed. Attorney Allen noted that the total FAR proposed is 128%, which is under the 150% allowed, and the total additional floor area proposed is 322 square feet, which is under the 350 square feet permitted.

Attorney Allen discussed relief under Section 8.02.2 of the Zoning By-Law where a special permit is required under Section 9.05 of the Zoning By-Law. As for Section 9.05, in looking at the relief requested, (1) the specific site is an appropriate location because the property is located in an S-15 District that will keep its existing use as a single-family dwelling, and will be consistent with other existing single-family homes in the district; (2) there will be no adverse effect on the neighborhood because the rear addition will not be visible from the street and will fit right into the existing house with the use of second-level gable slate roof to match the existing slate roof, so it will not affect the streetscape, and the addition is not expected to have shadow impacts on neighboring properties; (3) no nuisance or serious hazard to vehicles or pedestrians exists; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Zoning Board of Appeals Member Liss asked if there was already a previous addition to the property. Paul Worthington, 88 Boylston Street, Brookline, MA 02445, stated that there was a previous family room addition made to the property in 1984.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in favor of this application. No one spoke in favor of this application.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to this application.

Timothy Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

1. Section 5.09.2.j – Design Review

Any exterior addition for which a special permit is requested under *Section 5.22*, a special permit subject to the community and environmental impact and design review standards of *Section 5.09* is also required. The following standards are applicable to this proposal:

- *Preservation of Trees and Landscape*: The proposal would not involve the removal of any trees or significant landscaping. The addition would be sited in the same location as an existing deck.
- *Relation of Buildings to Environment*: Since the addition would be located at the rear of the dwelling between a family room projection and existing attached garage, it would not create shadows on abutting properties nor involve modifying the existing terrain.
- *Relation of Buildings to the Form of the Streetscape and Neighborhood*: Since the addition is sited and designed to be between two existing projections at the rear of the dwelling, the proposal is not likely to be very visible from the street. The applicants have included an attractive landscaping and fencing plan.
- *Open Space*: The property would continue to have significant areas of open space, particularly in the front yard along the street as well as in the rear.

2. Section 5.22.3.c – Exceptions to Floor Area Ratio for Residential Units

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.25 (100%)	.29 (118%)	.32 (128%)	Special Permit*
Floor Area (s.f.)	3,112	3,660	3,982	

**Under Section 5.22.3.c, the Board of Appeals by special permit may allow an increase in floor area up to 350 s.f. if the total gross floor area of the building is not more than 150% of allowed.*

3. Section 8.02.2 – Alteration or Extension: A special permit is required to alter and/or extend this non-conforming structure. The structure is non-conforming with respect to existing gross floor area.

Mr. Richard stated that the Planning Board is supportive of the proposal to construct a 322 square foot addition at the rear of the dwelling. Mr. Richard stated that the design is attractive, incorporates well with the existing dwelling and the other planned improvements, and would be largely hidden from the street. Therefore the Planning Board recommends approval of the proposal and plans by Paul Worthington, Design & Restoration Inc., dated 7/24/14, and the site plan prepared by Bruce Bradford, dated 7/3/2014, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.

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 building elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Mr. Richard, to deliver the comments of the Building Department. Mr. Richard stated that the Building Department had no objections to the relief sought under this application and that the proposal was a modest request for the relief sought.

Zoning Board of Appeals Chairman Geller directed Attorney Allen to the language of **Section 5.22.3.c**, which states “[t]he prior grant of additional gross floor area as of right or by special permit under **Section 5.22** or any prior version of **Section 5.22** shall preclude a subsequent grant of a special permit under this **paragraph 3, subparagraph c.**” Attorney Allen stated that there was never reference to a previous addition, and that the relief sought is for a special permit and not a variance. Chairman Geller stated that there is a question whether the noted language of **Section 5.22.3.c** applies just to additions for which relief was granted or all additions as of right or for which relief was granted and therefore the Section can be read to prohibit the relief requested by the applicant due to the earlier addition

Zoning Board of Appeals Member Schneider asked Attorney Allen if there was another Section of the By-Law, other than **Section 5.22.3.c**, under which relief could be granted. Attorney Allen stated that another section under which to obtain relief is under **Section 5.22.3.b.1.c** of the Zoning By-Law because the additional floor area does not exceed the 35% allowed by special permit. Mr. Richard stated that the notice called for **Section 5.22.3.c**. Attorney Allen stated that **Section 5.22.3.b.1.c** is a stricter standard than **Section 5.22.3.c**, therefore the notice is sufficient. Chairman Geller stated that he would be willing to support the Petitioners request for relief under **Section 5.22.3.b.1.c** as long as they understand the potential risk of not complying with the notice requirement, because the notice did not

specifically cite relief for Section 5.22.3.b.1.c. Attorney Allen stated that the Petitioners understood the risk and were willing to move forward with the relief requested under Section 5.22.3.b.1.c instead of Section 5.22.3.c.

In deliberation, Zoning Board of Appeals Chairman Geller stated that the applicant now proposes to obtain special permit under Section 5.22.3.b.1.c.

Zoning Board of Appeals Member Liss stated that he was in support of the relief requested and that relief obtained under Section 5.22.3.b.1.c is a more stringent requirement than the original relief requested under Section 5.22.3.c.

Zoning Board of Appeals Member Schneider echoed support for the relief requested.

Zoning Board of Appeals Chairman Geller stated that he was in support of the relief requested.

The Board then determined, by unanimous vote that the requirements for a special permit for Sections 5.09.2.i; 5.22.3.b.1.c; 8.02.2 and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

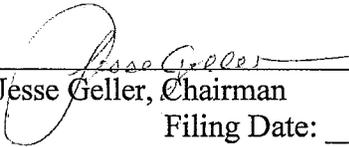
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 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 building elevations; and 3) evidence that the Board of Appeals decision has been recorded**

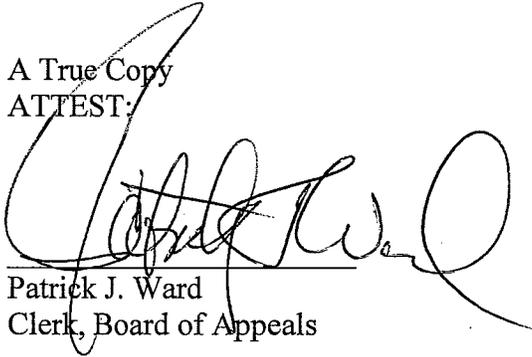
at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals



Jesse Geller, Chairman
Filing Date: 9/15/14

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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