



# *Town of Brookline*

## *Massachusetts*

**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
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Brookline, MA 02445-6899  
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**Patrick J. Ward, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0067  
ANDREW BERNSTEIN &  
JACQUELINE SHOBACK

Petitioners, Andrew Bernstein and Jacqueline Shoback, applied to the Building Commissioner for permission to renovate an existing garage and construct a second story addition. 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 December 11, 2014 at 7:00 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 Petitioners, 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 November 20, 2014 and November 27, 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:

**262 CLINTON RD – DEMOLISH EXISTING GARAGE AND REBUILD WITH SECOND STORY ADDITION in an S-7, SINGLE-FAMILY residential district on December 11, 2014, at 7:00 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: BERNSTEIN ANDREW J & SHOBACK J S; Owner: BERNSTEIN ANDREW J SHOBACK J S) Precinct 14**

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

- 1. Section 5.20: Floor Area Ratio**
- 2. Section 5.43: Exceptions to Yard and Setback Regulations**
- 3. Section 5.60: Side Yard Requirements**
- 4. Section 8.02.2: Alteration or Extension**
- 5. Modification, as needed, of BOA case #3667 June 28, 2001**

*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](http://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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneider@brooklinema.gov](mailto:rsneider@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

**Publish: November 20, 2014 & November 27, 2014**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jonathan Book, and Board Members Christopher Hussey and Johanna Schneider. The case was presented by the attorney for the Petitioner, Michael Merrill, Merrill & McGeary, 100 State Street, Suite 200, Boston, Massachusetts 02109. Also in attendance were Andrew Bernstein, owner of the property located at 262 Clinton Road, and Paul Burke, the Petitioner’s architect.

On December 11, 2014, Zoning Board of Appeals Chairman called the hearing to order at 7:00 p.m. Attorney Merrill stated that the Petitioners propose to renovate the existing garage, construct a second garage bay and construct a second floor addition on the current footprint.

Attorney Merrill presented to the Board a background of the Petitioners and the property, stating that 262 Clinton Road is a single-family dwelling constructed at some point between 1875 and 1898 and is part of the Fisher Hill National Historic District. The home represents a transition from the Shingle style to Colonial Revival style and is located near the MBTA, Runkle School and Waldstein Playground.

Attorney Merrill stated that the property is located on a triangular shaped lot in an S-7 zoning district, bounded by Clinton Road and Druce Street. Attorney Merrill stated that the home is on a steeply sloped lot on the corner of the intersecting roads. Attorney Merrill stated that the Petitioners propose to renovate an existing garage, add a second garage bay and construct a second floor addition on the existing footprint.

Attorney Merrill then discussed the zoning relief required from the Zoning Board of Appeals. Attorney Merrill stated that the Planning Board voted unanimously in support of the garage renovation and second floor addition to the single-family dwelling as requested by the Petitioner.

Attorney Merrill stated that the Petitioners' require special permit relief pursuant to **Sections 5.20, 5.43, 5.60, and 8.02.2** of the Zoning By-Law. As for **Section 9.05**, Attorney Merrill noted: (1) the specific site is an appropriate location where the proposed use is consistent with more the single-family homes in the S-7 District on Clinton Road and Druce Street; (2) there will be no adverse effect on the neighborhood where the single-family use, front, and rear yard setbacks will remain the same and the proposal will improve the overall aesthetic of the

neighborhood; (3) no nuisance or serious hazard to vehicles or pedestrians exists where there will be no effect of the ingress or egress to the property; (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.

Attorney Merrill stated that the size of the lot is pre-existing non-conforming and is located on a corner lot. Attorney Merrill stated that according to **Section 5.43** of the Zoning By-Laws, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. Attorney Merrill stated that pursuant to the conditions issued by the Planning Board, the Petitioners will submit a landscaping plan to serve as the counterbalancing amenity.

Attorney Merrill next discussed relief under MGL c. 40A Section 10, pursuant to **Section 5.20** of the Zoning By-Law to grant a variance from the floor area ratio requirements for the S-7 District. Attorney Merrill stated that the Petitioners meet the requirements for a variance under M.G.L. Chapter 40A, Section 10 and should therefore be granted a variance. Attorney Merrill stated that M.G.L. Chapter 40A, Section 10 states in relevant part:

The permit granting authority shall have the power . . . to grant upon appeal ... a variance . . . where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

Attorney Merrill stated that 262 Clinton Road is located in an S-7 district. He further stated that adding 341 square feet to the single-family home is in keeping with the neighborhood

and would not substantially alter the home. Attorney Merrill stated that the difference is inconsequential where the proposed design will positively contribute to the streetscape and will blend with the colonial-revival style neighborhood.

Attorney Merrill addressed the uniqueness of the size and shape of the lot by noting that 262 Clinton Road is a triangular shaped lot that anchors Clinton Road and Druce Street. Attorney Merrill stated that the angulation of the lot in relation to the size and shape of the structure significantly contributes to the need to build on the existing foundation.

Attorney Merrill next addressed the elements of hardship and detriment to public good by focusing on the Petitioners need to increase the amount of livable space without negatively affecting the neighborhood. Attorney Merrill stated that in order to make the project financially feasible, the Petitioners desired to expand their family room over the garage rather than demolish interior space on the other side of the house.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in favor or in opposition to the application. No one spoke in favor or in opposition.

John Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

**FINDINGS**

**Section 5.20 – Floor Area Ratio**

<b>Dimensional Requirements</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Floor Area Ratio</b>	.30	.66	.70	Variance
<b>FAR Percentage</b>	100%	220%	233%	
<b>Floor Area</b>	2,726 s.f.	5,162 s.f.	5,503 s.f.	

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.60 – Side Yard Setback**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard Setback</b>	7.5'	0.8'-2.7	0.8'-2.7	Special Permit*

\* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The Planning Board suggests that the applicant install additional landscaping as a counterbalancing amenity.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a pre-existing non-conforming structure.

Mr. Rosa stated that the Planning Board was supportive of the proposal despite the proposed new house being well above the allowed Floor Area Ratio. Mr. Rosa stated the design of the house is attractive and will enhance the neighborhood. Mr. Rosa stated that the Planning Board appreciated the applicant’s revisions to their window plans and water run off plan in response to comments by the Planning Board. Therefore, the Planning Board in a unanimous vote, recommended approval of the proposal and plans, subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit a final site plan, floor plans, and elevations, indicating all dimensions and material 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 a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. 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 floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

In deliberation, Zoning Board of Appeals Chairman Jonathan Book stated that it was an impressive design but noted the amount over the allowable F.A.R. was substantial. Additionally, Board Member Johanna Schneider was not satisfied the hardship on the Petitioners was related to

the shape of the lot. Board Member Hussey suggested the hardship on the Petitioners was related to the structure and asked if the applicant could submit plans showing the existing interior first floor layout and the proposed interior first floor layout so he could fully understand the uniqueness of the structure and the hardship it caused to the Petitioners.

Zoning Board of Appeals Chairman Jonathan Book asked if the Petitioners were interested in continuing the hearing in order to redesign the final plan and reduce the square footage to comply with the Zoning By-Laws or provide further explanation of the uniqueness of the structure and the hardship it imposed on the Petitioners. Attorney Merrill requested that the Board continue the hearing to give the Petitioners an opportunity to address the Board's concerns. The Board granted the continuance.

The hearing was continued to February 5, 2015 at 7:00 p.m. At the continued hearing, Zoning Board of Appeals Chairman Jonathan Book moved to re-open the hearing to allow the Petitioners to present more detailed plans of the first floor of the structure. The motion was passed by Members Christopher Hussey and Johanna Schneider and the hearing was re-opened.

Attorney Merrill presented the new plans prepared by the Petitioners' architect, Paul Burke. Attorney Merrill first addressed the uniqueness of the structure. The current structure is a long, skinny and tall house. It was surmised that the original structure was built in this shape to mitigate the slope of the lot. Also, the living areas in the home are smaller than traditional homes due to the configuration of the structure. Further, as the home is on a slope, the main entrance to the home is one story higher than the actual living space. The ideal entry is through the garage or an interior staircase in the front of the home. The garage currently has a patio on top of it which is fenced in creating a void in the design of the home.

Attorney Merrill called upon Andrew Bernstein to speak to his family's hardship caused by the structure and layout of the first floor. Mr. Bernstein explained to the Board that the garage has an interior staircase that is no longer safe to use because of its age. He also indicated that a water heater was removed from the garage and there is unused space. This requires his family to exit the garage and enter the home from outside. He also described a congested interior where the kitchen meets the family room. The Petitioners have children who attend the Runkle School. It is common for the family to gather in the family room and kitchen area after school when the children do their homework while the Petitioners prepare dinner. The current size of those two rooms makes this impractical as the children do not have space to do their work. Mr. Bernstein also explained that his mother frequently visits the home and requires additional assistance and monitoring due to health reasons. The bathroom on the first floor is not suitable for her level of mobility. The kitchen area is often occupied by the applicants, their two children, and Mr. Bernstein's mother and mother in law. By expanding the family room and improving the access from the garage, the family would be able to fully use their home in a safe and enjoyable manner. Mr. Bernstein submitted a letter to the Board summarizing the hardship caused to his family by the small kitchen and family room.

Attorney Merrill yielded the floor to Paul Burke, the Petitioner's Architect, to present the revised plans to the Board. Mr. Burke explained to the Board the proposed new design of the kitchen and family room layout in and how it accommodated the family's needs. Mr. Burke further explained that a gut renovation of the first floor home would be economically infeasible, but also would essentially rid the home on the first floor of some of the beautiful detail in the rooms which give the home its character and historic beauty.

The Board members then asked several questions of Mr. Burke and Mr. Bernstein. Member Christopher Hussey asked the Mr. Burke to further address the uniqueness of the structure and the financial hardship involved in expanding into the existing home, rather than creating new space. Mr. Burke, stated that the interior features of the home are historically and architecturally significant and beautiful. Therefore, a gut demolition of the interior would be a tragic loss for the property and would be tremendously expensive to recreate so that the new space matched the character of the rest of the home.

Zoning Board of Appeals Member Christopher Hussey asked if there was any consideration of adding a mechanical lift to the staircase from the garage for easier access for elderly parents. Mr. Bernstein responded that it had been considered, however the stair case was so narrow it would not ultimately be possible.

The meeting was opened to the public to either speak in favor or opposition to the application. There was no comment from the public.

Attorney Merrill stated that the Petitioners included the abutters and the surrounding home owners throughout the design process and as a result, there has been unanimous support for the proposal except for one neighbor who was concerned about shadows. After deliberation by the Board, it was determined that no significant increase in shadows would be cast on the neighboring property due to the location of the addition.

Chairman Book again called upon John Rosa, Zoning Coordinator for the Town of Brookline, to deliver the findings of the Planning Board. Mr. Rosa stated that that Planning Department approved the plan and had no changes from the initial report.

The Chairman then called upon John Rosa to deliver the comments of the Building Department. Mr. Rosa read comments from the Chief Building Inspector Michael Yanovitch,

which stated that if the Zoning Board of Appeals finds the proposal meets the statutory requirements for a variance, the Building Department will work with the Petitioners to ensure compliance with the building code.

In deliberation, Chairman Book stated that based upon the new plans submitted and the testimony of the Mr. Bernstein and his letter describing the Petitioners' hardship the structure meets the hardship requirement and is unique in terms of its shape, configuration and location and he was in support of granting the variance and special permit. Board Member Hussey noted that the hardship issue is one of lifestyle, safety and use of the property and that unlike the 1960's Cape style design where the rooms were very small, today's family life revolves around the kitchen. He recognized that the proposed design is a family-oriented space that revolves around the kitchen and mitigated the Petitioners' hardship. He also acknowledged the reconstruction of interior space would render the project economically feasible if it were done in a way that maintained the historical significance of the property.

Zoning Board of Appeals Members Christopher Hussey re-stated support for the proposal. Zoning Board of Appeals Member Johanna Schneider appreciated the Petitioners' efforts to be responsive to the concerns addressed in the previous hearing.

Zoning Board of Appeals Member Johanna Schneider expressed concern with the project and noted that her vote in support, but to her this was a very close case based upon the specific hardship of the Petitioners. However, she did agree that the structure was unique and a there was a valid hardship.

The Board then determined, by unanimous vote that the requirements for a variance from **Section 5.20** and special permit relief from **Sections 5.43; 5.60; Section 8.02.2** 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.

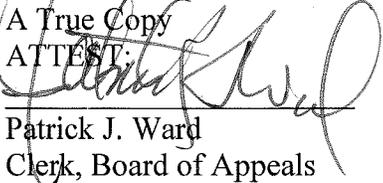
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

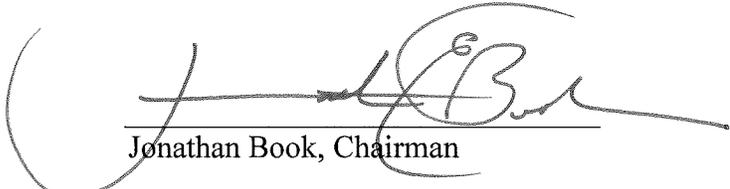
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- 2. **Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 3. **Prior to the 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 floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of  
The Board of Appeals

Filing Date: 3/11/15

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

  
Jonathan Book, Chairman

2015 MAR 11 P 2:07

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK