



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0051
385 LEE STREET

Petitioners, Sarah Burg and Andrew Danford, applied to the Building Commissioner for a building permit to finish unfinished portions of their basement to construct a bathroom at 385 Lee Street. 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 August 25, 2016 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 August 11, 2016 and August 18, 2016 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: **385 LEE ST - Finish unfinished portions of basement in an S-25, (Single-Family), Residence District, on August 25,**

**2016, at 7:00 in Town Hall Room 6th Floor Selectmen's Hearing Room
(Petitioner/Owner: DANFORD ANDREW J BURG SARAH S) Precinct 15**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.20: Floor Area Ratio**
- 2. Section 8.02.2: Alteration or Extension**
- 3. Any Additional Relief the Board May Find Necessary**

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 Christopher Hussey and Kate Poverman. Michael Yanovitch was present on behalf of the Building Department and Ashley Clark was present on behalf of the Planning Department. The owners Sarah Burg and Andrew Danford were also present for the hearing.

Ms. Burg described the application to finish unfinished portions of their basement at 385 Lee Street. Ms. Burg stated the house is a preexisting non-conforming structure in an S-25 zone on a triangular shaped plot of land. Ms. Burg stated the basement has 393 finished square feet and approximately 543 of unfinished square feet. Ms. Burg stated that they are

seeking a so-called finding for a Special Permit under Massachusetts General Laws Chapter 40A, Section 6 to finish an 80 square foot bathroom in their basement, within the the unfinished square feet of the basement.

Ms. Burg explained that there will be no new nonconforming use, the small change in the additional 80 square feet increases the FAR from .35 to .36, and there is no substantial detriment to the neighborhood from this change within the existing footprint of the basement (and will not be visible from the exterior). Ms. Burg stated there is no change in occupancy or change from the current use.

Ms. Burg then reviewed how the proposed relief meets the requirements of Section 9.05 of the Zoning By-Law: (1) the specific site is an appropriate location for the proposed use where the proposed FAR increase is minimal, noting a number of neighboring homes on Lee Street are of similar size and their lot is smaller than abutting properties; (2) the use will not adversely affect the neighborhood because the proposed changes are minimal and entirely to the interior of the structure and are without change to the footprint of the building or the exterior; (3) there will be no nuisance or serious hazard to vehicles or pedestrians; (4) there will be adequate and appropriate facilities provided for the proper operation of the proposed use; and (5) the proposal will not have a significant adverse effect of the supply of housing available for low and moderate income people.

Board Member Poverman inquired whether there was a previous special permit issued for this property that created this FAR nonconformity. Ms. Burg stated from her research there is no evidence to support a modification to the original footprint of the home. Mr. Yanovitch stated there is no record of a special permit creating the nonconformity in FAR.

Board Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner's proposal. There was no public comment.

Board Chairman Geller called upon Zoning Coordinator, Ashley Clark, from the Planning Department to review the findings of the Planning Board:

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.20 (100%)	.35 (173%)	.36 (178%)	Special Permit/Variance
Floor Area (s.f.)	1,627.8	2,812	2,892	

Section 8.02.1 and 8.02.2 – Alteration or Extension

A special permit is required to extend this non-conforming use and alter this non-conforming structure.

Ms. Clark stated that 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 two finished rooms. This proposal will add a bathroom. The space can be finished with no impact on neighboring structures. Due to the small size and scope of the project, the Planning Board recommended that a final sketch plan will be sufficient in place of stamped and signed plans.

Therefore, the Planning Board recommended approval of the plans, subject to the following conditions:

1. Prior to the issuance of a building permit, final basement floor plans 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 sketch; 2) final basement floor plan; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Geller requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief requested. Mr. Yanovitch stated the relief is minimal and fits the criteria for a so-called **Massachusetts General Laws Chapter 40A, Section 6** finding. Mr. Yanovitch noted that should the Board grant relief, the Building Department will work with the Petitioner to ensure compliance.

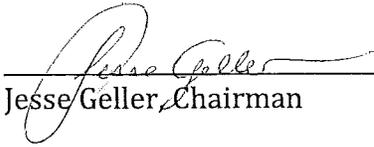
The Board then deliberated on the merits of a special permit as requested. Board Members Hussey and Poverman were in support of the requested relief. Chairman Geller stated it appears to fall within the provisions of **Massachusetts General Laws Chapter 40A, Section 6** as interpreted by Deadrick vs. Zoning Board of Appeals of Chatham and meets the requirements under **Section 9.05** of the Zoning By-Law. He also commented that the proposed relief is for a minimal change.

Accordingly, the Board voted unanimously to grant the requested relief under **Section 9.05** of the Zoning By-Law, granting relief from the provisions of **Section 5.20** and **Section 8.02.2** of the Zoning By-Law subject to the following conditions:

1. Prior to the issuance of a building permit, final basement floor plans 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 sketch; 2) final basement floor plan; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

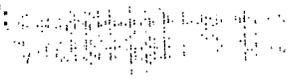
Unanimous Decision of
The Board of Appeals

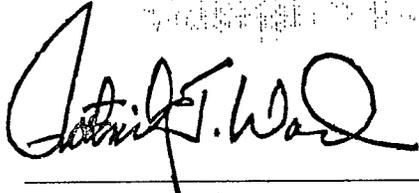
Filing Date: 9/27/16



Jesse Geller, Chairman

A True Copy

ATTEST: 



Patrick J. Ward
Clerk, Board of Appeals