



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0047
ADAM AND ELIZABETH WILLIAMS
16 CLARK COURT, BROOKLINE, MA

Petitioners, Adam and Elizabeth Williams, applied to the Building Commissioner for permission to convert 188 sq. ft. of basement to habitable space. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 18, 2016 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 August 4, 2016 & August 11, 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:

16 CLARK CT- Finish 188 square feet of basement in an S-7 (Single-Family) Residence District on August 18th, 2016 at 7:15PM in the 6th Floor Selectmen's Hearing Room (Petitioner:

ROBERT ALLEN; Owner: WILLIAMS ADAM G & ELIZABETH). 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 8.02.2: Alteration and 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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Kate Poverman and Steve Chiumenti. Zoning Coordinator and Planner Ashley Clark was also present. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Petitioner, Adam Williams, along with project architect Bill Penny, Andover Renovations, 110 Winn Street, Woburn, MA 01801.

Attorney Allen stated that property is off of Walnut Street, and is located at the end of Clark Court, directly abutting Clark Park.

Mr. Allen stated that the Petitioners seek relief from **Section 5.20** of the Zoning By-Law in order to finish 188 sq. ft. of basement area into habitable space. Attorney Allen stated that prior to this request for relief, the Petitioners were issued a building permit to finish other

portions of basement space. They subsequently sought a building permit to finish an office space in the basement and were notified that relief was required.

Attorney Allen stated that case law precedent has established that under **Chapter 40A, Section 6**, the owner of a nonconforming single-family or two-family house needs a variance for any reconstruction that creates a new nonconformity. Attorney Allen continued that case law (Deadrick v. Board of Appeals of Chatham, 85 MassApp Ct. 539) has further established that an owner can however expand an existing nonconformity via a special permit granted under Massachusetts General Laws **Chapter 40 A, Section 6**, provided there is a finding that such expansion causes no substantial detriment. Attorney Allen stated that the maximum allowable FAR in the S-7 District is .35 and noted that the Petitioners are currently at .63. He specified that the nonconforming FAR is pre-existing. Attorney Allen commented that the relief requested will increase an existing non-conformity, without creating any new non-conformities, and will not create any substantial detriment to the neighborhood.

Attorney Allen then reviewed the requirements under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location because the home will remain a single family; all work is interior to the home, and the exterior will remain completely unaltered; (2) there will be no adverse effect on the neighborhood where the house is barely visible from any main public way (also noting that the Petitioners contacted their neighbors and the neighbors are supportive of the requested relief); (3) there will be no nuisance or serious hazard to vehicles or pedestrians since there will be no increase in use or occupancy; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; (5) there will be no effect on the supply on housing available for low and moderate income people.

Chairman Geller asked for confirmation that no prior relief has been granted in connection with the floor area ratio of the premises such that relief under Chapter 40A, Section 6 is not available. Attorney Allen confirmed that the home is pre-existing non-conforming at .63 and that a review of the building jacket did not produce evidence of any prior relief granted on the property.

Chairman Geller then called for public comment in favor of, or in opposition to the proposal. No comments were offered.

Ms. Clark delivered the findings for the Planning Board:

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.63 (175%)	.66 (182%)	Variance*
Floor Area (s.f.)	1537.9	2693.38	2881.38	

* Under Deadrick, the Board of Appeals may allow an extension of an existing non-conformity if it finds there is no substantial detriment to the neighborhood.

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 Planning Board determined that the structure has extensive basement-level space that currently contains one finished room and additional finished storage space that will be renovated and added to with this proposal. The Planning Board felt that the conversion will have no impact to abutters. Therefore, the Planning Board recommended approval of the plans by Andover Renovation Solutions, dated 2/10/16, subject to the following conditions:

1. Prior to the issuance of a building permit, final basement floor plans and elevations 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 plan stamped and signed by a registered engineer or land surveyor; 2) final basement floor plan stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Clark then delivered the findings on behalf of the Building Department stating that the Building Department has no objection to this proposal. The Building Department felt that the proposal is within the footprint and the request is minimal. The Building Department opined that relief may be granted under Massachusetts General Laws **Chapter 40A, Section 6** as interpreted under Deadrick because the FAR is pre-existing nonconforming. The Building Department noted that the additional FAR requested will affect the interior and cannot be seen from the street and that the scale of the structure is in harmony with the neighborhood. Ms. Clark continued that if the Board grants the requested relief, the Building Department will work with the Petitioners to ensure compliance.

The Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.20**, of the Zoning By-Law were met under Massachusetts General Laws Chapter 40A, Section 6, as interpreted by Deadrick, and may be granted without substantial detriment, under **Section 9.05** of the Zoning By-Law and under **8.02.1**, and **8.02.2**, each of the Zoning By-Law. 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 no 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. Development will not have any effect on the supply of housing available for low and moderate income people.

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

1. Prior to the issuance of a building permit, final basement floor plans and elevations 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 plan stamped and signed by a registered engineer or land surveyor; 2) final basement floor plan 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

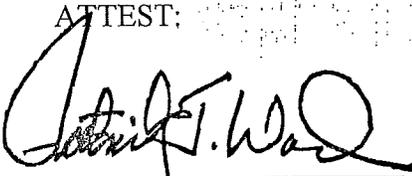
Filing Date: 9/27/16



Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals