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Town of Brookline  
BUILDING DEPT.  
TOWN OF BROOKLINE Massachusetts

BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Christopher Hussey

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0004

Petitioners, Maryna Liublinska and Maksym Badrak, applied to the Building Commissioner for permission to construct additions to their home at 60 Jordan Road. The application was denied and an appeal was taken to this Board.

On January 19, 2012 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 and fixed March 08, 2012 at 7:30 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 February 16 and 23, 2012 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **MARYNA LIUBLINSKA & MAKSYM BADRAK**  
Owner: **MARYNA LIUBLINSKA & MAKSYM BADRAK**

Location of Premises: **60 JORDAN ROAD**  
Date of Hearing: **February 23, 2012**  
Time of Hearing: **7:30 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a variance and/or special permit to:

1. **5.09.j; Design Review, special permit required**
2. **5.22.3.b.1.b; Exceptions to Maximum Floor Area Ratio Regulations for Residential units, special permit required.**
3. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
4. **5.51; Projections into Front Yards, variance required.**
5. **5.54.2; Exceptions for Existing Alignment, variance required.**
6. **5.70; Rear Yard Requirements, variance required.**
7. **8.02.2; Alteration or Extension, special permit required.**
8. **Modification as required of Board of Appeals case #1355, dtd 6-21-1965, #1438 dtd 3-1-1967 and case #1458 dtd 8-14-1967.**

**Of the Zoning By-Law to construct additions to their home at 60 JORDAN RD.**

Said premise located in a **S-7 (single-family)** residential district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*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 programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Enid Starr  
Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr, and Board Members, Christopher Hussey and Jonathan Book. The

case was presented by the architect for the petitioner, Yefim Massarsky of YM Design, Inc., 302 Winchester Street, Newton, MA 02461.

The Planning Board report provided a history of relief previously granted at this address.

**June 21, 1965, Board of Appeals Case #1355:** The Board of Appeals granted rear yard setback relief for a new single-family home to replace a previous single-family that had been destroyed by fire.

**March 10, 1967, Board of Appeals Case #1438:** The Board of Appeals granted temporary relief to allow the existing driveway gradient to exceed the allowable 10 percent. The relief was due to expire after three years.

**August 4, 1967, Board of Appeals Case #1458:** The Board of Appeals granted relief to allow the existing driveway gradient to exceed the allowable 10 percent.

Mr. Massarsky described the property at 60 Jordan Road as a two-story single-family dwelling on the uphill side of the road, immediately adjacent to Corey Hill Park. The wood frame home has a shallow-pitched roof and a basement level garage with a steep driveway. Surrounding properties are primarily single-family dwellings. A concrete retaining wall and shrubbery runs along the front lot line and driveway.

Mr. Massarsky said that his clients, Maryna Liublinska and Maksym Badryk, wish to construct a large rear addition and a small front entryway to their home. He described the home as an “upside-down” house with sleeping areas on the entry level and living spaces above. He said that the rear addition would be at the second story on piles and span 48’ 1½”, 8’ 1” wider than the existing building. A new deck and stair would be constructed on the west side of the dwelling next to the addition’s overhang. Underneath the addition would be a patio. On the other side (east) of the dwelling, a new stair would be constructed leading to an observation deck on the dwelling’s roof. Mr. Massarsky reported that the front addition would be located largely where the existing front entryway is, providing for a new entryway as well as a small deck above. New stairs would be constructed to serve the front entryway.

Mr. Massarsky said that his clients needed mostly dimensional relief which he stated could be granted by the Board under **Section 5.43** of the Zoning By-Law. For counterbalancing amenities he said that his clients intended to provide additional landscaping. He also stated that the addition would improve a somewhat dated exterior which could be viewed as an additional amenity for the neighborhood. Mr. Massarsky stated that modest relief for gross floor area was required and that was available by special permit under **Section 5.22.3.b.1.b** of the Zoning By-Law.

The Chairman asked whether anyone in attendance wished to speak in favor or against the proposal.

No one rose to speak.

Courtney Synowiec, Planner, delivered the findings of the Planning Board.

**Section 5.09.2.j – Design Review:** Any exterior addition for which a special permit is requested pursuant to Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations) requires a special permit subject to the design review standards listed under Section 5.09.4(a-1). The most relevant sections of the design review standards are described below:

- *Preservation of Trees and Landscape:* The proposed addition in the rear may remove some existing shrubbery landscaping, but the addition will provide for a patio area underneath. The front addition would not remove any significant landscaping.
- *Relation of Buildings to Environment:* The proposal does not involve significant grading or modification of the surrounding environment, and seeks to take better advantage of the existing hillside and possible views. The additions are not expected to result in shadowing on neighboring properties.
- *Relation of Buildings to the Form of the Streetscape and Neighborhood:* The proposal would result in an improved front façade for the building, including better fenestration. This dwelling currently is not consistent in form with other dwellings along this road, aside from the basement level garage, but the proposal will likely result in an improved overall appearance.

**Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio Regulations for Residential Units**

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	0.35 100%	0.32 92%	0.377 108%	Special Permit
<b>Floor Area (s.f.)</b>	2,305.1	2,122	2,488	

**Section 5.51 – Projections into Front Yards:** Bays and porches not over half the length of the front wall may project into any front yard three and one-half feet.

**Section 5.54.2 – Exceptions for Existing Alignment:** In all residence districts, if the alignment of two or more existing buildings on lots on either or both sides of a lot is farther from the street than the required

front yard depth, the average of the existing alignment of all buildings within 150 feet of said lot shall be the required front yard.

**Section 5.70 – Rear Yard Setback**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Rear Yard Setback</b>	30 ft	26 ft (est)	25.4 ft	Special Permit / Variance*
<b>Front Yard Setback</b>	24.5 ft**	14.3 ft	14.3 ft	Special Permit / Variance*

\*Under Section 5.43, the Board of Appeals may waive yard and setback dimensions if counterbalancing amenities are provided. The applicant is proposing additional landscaping as a counterbalancing amenity.

\*\*Due to the existing front yard alignment of the neighboring dwellings at 52 and 54 Jordan Road, the front yard setback is deeper than normally required, as specified under Section 5.54.2.

**Section 8.02.2 – Alteration or Extension**

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

**Modification as required of Board of Appeals cases:**

- #1355, June 21, 1965
- #1438, March 1, 1967
- #1458, August 14, 1967

Ms. Synowiec reported that the Planning Board was supportive of this proposal for new front and rear additions to an existing single-family dwelling. The proposal will result in an improved overall appearance, as well as better living and outdoor space for the dwelling’s occupants. The smaller rear yard setback is not expected to negatively impact the rear neighbor, who is at a higher elevation, and the front addition is located substantially in the same place as the current front entryway. Therefore, the Planning Board recommended approval of the proposal and the plans by Yefim Massarsky, dated 12/27/2011, subject to the following conditions:

1. Prior to the issuance of a building permit, existing condition plans and final plans and elevations, indicating all salient dimensions and materials, shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities shall be submitted 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 stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that the additions appeared well-designed and noted that, in his opinion, it was a vast improvement to the exterior of the home. He gave a brief history of the relief previously granted by the Board, and stated the Building Department was supportive of the requested relief.

During deliberations, Board Member Book noted that the relief requested seemed de minimis and he would consider favorable action on the request; Board Member Hussey agreed. Chairman Starr reported that the counterbalancing amenities seemed appropriate and she would be supportive of the requested relief.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that all the requested relief could be granted by special permit. The Board found that the petitioner has satisfied the requirements necessary for relief under **Sections 5.09, 5.22, 5.51, 5.54, 5.70** and **5.43**, to waive the dimensional requirements of the Zoning By-Law. Also the requirements of **Section 8.02.2**, and **9.05** of the Zoning By-Law were satisfied, and the Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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, existing condition plans and final plans and elevations indicating all salient dimensions and materials, shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **Prior to the issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities shall be submitted 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 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

  
Enid Starr, Chairman

Filing Date: March 28, 2012

A True Copy  
ATTEST:

  
2012

Patrick J. Ward  
Clerk, Board of Appeals