



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

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 TOWN OF BROOKLINE  
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*Town of Brookline*

*Massachusetts*

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BUILDING DEPT.  
 TOWN OF BROOKLINE  
 Town Hall, 1<sup>st</sup> 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. 2012-0013

Petitioner, Michael Minkoff, applied to the Building Commissioner for permission to construct a kitchen addition to his home at 10 Hawes Place/22 Borland Street. The application was denied and an appeal was taken to this Board.

On February 9, 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 7:15 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: **MINKOFF MICHAEL**  
 Owner: **MINKOFF MICHAEL**

Location of Premises: **10 HAWES PL/22 BORLAND STREET**

Date of Hearing: **March 08, 2012**

Time of Hearing: **7:15 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&k; Design Review, special permit required.**
- 2. 5.22.3.3.b.1; Exceptions to Maximum Gross Floor Area (FAR) Regulations for Residential Units, variance Required.**
- 3. 5.22.3.c; Exceptions to Maximum Gross Floor Area (FAR) Regulations for Residential Units, variance required.**
- 4. 8.02.2; Alteration or Extension; special permit required**

Of the Zoning By-Law to construct an addition to their home at **10 HAWES PLACE/22 BORLAND STREET**.

Said premise located in a S-10 (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 attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Brookline, MA.

Attorney Allen introduced the applicants, Michael Minkoff and his wife Dr. Melanie Maytin, as owners of 22 Borland Street. He reminded the Board that at the November 3, 2011 Board of Appeals meeting, the Board reviewed a proposal for 22 Borland Street/10 Hawes Place, BOA case #2011-0032, to allow for the construction of a kitchen addition and two-car garage within the front yard setback. The Board of Appeals granted relief to allow for the construction of the garage and an underground connector to the home. However, the Board did not feel the applicant had presented sufficient grounds to support the granting of a variance under Section 5.20 – Floor Area Ratio - and denied the relief required to construct the kitchen addition without prejudice allowing the applicant to seek legal advice.

Attorney Allen continued that in 1990 this Board granted a special permit to construct a 160 sf kitchen addition as it did not exceed the 150%. Currently the Town counts FAR differently. The applicant was handed a copy of the 1990 decision when he purchased the home in June 1994, assuming that he would build out the kitchen once he started a family. Unfortunately the time period had lapsed. Currently, the Applicants are parents of four month old twins and the need for something more than just a galley kitchen is obvious. The history of the house is such that the kitchen was previously located in the basement and when one was constructed upstairs, it was built as a 90 s.f. galley kitchen. The current proposal is to construct a modest 140 sq. ft. kitchen addition, which was cited for 5.09 design review; Sec 5.22 requires a variance for FAR; and of course 8.02.2.

Relative to Section 5.09 (j), Design Review, Attorney Allen suggested there are only three elements of that Section that apply, namely: Landscape Preservation; Relation of Building to Environment and Open Space. Attorney Allen suggested that no landscaping is to be removed; the architecture of the addition complements the Georgian style of the house and the usable open space remains the same.

Relative to Section 5.22 (FAR), Attorney Allen explained that 22 Borland is a very unique structure. It is a 2½ story large brick single family house located at the corner of Borland Road and Hawes Place, one lot south of Beacon Street. This is the only house fronting on Hawes Place which is a 15 ft.-wide alley shared by other abutters and serves as access to a three car parking area for this lot. The house is on the dividing line between two neighborhoods – single family residences on the uphill side and a relatively new, high rise apartment house on the downhill, or Beacon Street side. The house is very long but extremely narrow, unlike any other house in the zoning district. Further, the topography is such that there really is no other location on the property to construct an addition. The rear drops off significantly toward Beacon Street, and the property is already non-confirming in the rear; and the front has similar issues. The only place to add on is on the side yard which is being proposed. Further, there is no space within the house to add to the kitchen, due to the existing fire places, the formal dining room and load bearing wall. This proposal is the least intrusive to the look, style and layout of the house and maintains the interior symmetry that currently exists. This hardship is directly related to the above mentioned uniqueness of the structure,

Finally, Attorney Allen suggested that this addition would not be a detriment to the neighborhood as it will not be visible from a public way, all neighbors are in support and the fence and landscaping will pretty much make the entire addition disappear.

For these reasons, Attorney Allen suggested that the three prongs necessary to establish a variance have been met as well as the requirements for a special permit under 8.02.

Chairman Starr asked if anyone in the audience was there to speak in favor or in opposition to the application. No one rose.

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

**Section 5.22 - Exceptions to F.A.R. Regulations**

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.30 100%	.45 150.8%	.49 156%	Variance*
<b>Floor Area (s.f.)</b>	3,585	5,422	5,582	

\* Under **Section 5.22.3.c**, a special permit may be granted for an increase in floor area up to 350 sq. ft. but not more than 150% of the permitted gross floor area. The applicant's proposal is to add 160 sq. ft. in the kitchen and underground connector addition bringing the total floor area up to 156%, which is over the 150% maximum allowed by special permit.

Ms. Synowiec reported that this matter did not go back before the Planning Board because the proposal was identical to the earlier submission. The Planning Board had previously recommended favorable action for the kitchen and were supportive of this proposal subject to the following conditions:

1. Prior to issuance of a building permit, final elevations and floor plans shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan indicating all plantings and fencing details and materials shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan incorporating the conditions of the [attached] private agreement between the Hawes Place residents, dated 10/20/11, to the extent possible subject to the review and approval of the Building Commissioner.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations, stamped and signed by a registered architect; and 3) evidence 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, was relatively small in relation to the size of the home. Mr. Shepard agreed that this was a unique structure and stated that the Building Department was supportive of the requested relief.

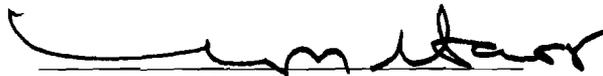
During deliberations, Board Member Book questioned the financial feasibility of expanding the kitchen within the existing structure. The Applicant, who is a developer, explained the difficulty in doing so with the current fireplaces, load bearing walls and all the necessary plumbing that would be required. Further, he informed the Board that while this area of the house was not very formal, the adjacent rooms were all original condition with grand molding and woodwork so it would be detrimental to the historic value of the home to do so. Board member Book suggested that this barely made the variance argument but he did feel that this is a unique structure due to its narrowness and felt that it would be a hardship to try to expand the within the existing house. Board member Hussey read a prepared statement stating, in summary, that he felt there was a hardship trying to make a house built in the early nineteen hundreds, conform to current lifestyles. The house was obviously constructed with no kitchen on the main floor, and built at a time when servants lived within these homes. Currently, the kitchen is the centerpiece of many homes. Thus, Board member Hussey felt that the conditions of a variance have been met. Chairman Starr concurred with her colleagues that the uniqueness of the structure created a hardship and that the proposal would not be detrimental to the neighborhood and concluded that the petitioner has satisfied the requirements necessary for a variance and for relief under **Section 5.22** 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 and readopted the conditions previously imposed in BOA case #2011-0032, to wit:

1. Prior to issuance of a building permit, final elevations and floor plans shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan indicating all plantings and fencing details and materials shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan incorporating the conditions of the [attached] private agreement between the Hawes Place residents, dated 10/20/11, to the extent possible subject to the review and approval of the Building Commissioner.
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Unanimous Decision of  
The Board of Appeals

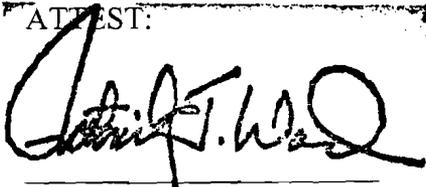


Enid Starr, Chairman

Filing Date: April 6, 2012

A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals