



Town of Brookline Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

BOARD OF APPEALS
Ed Starr, Co-Chair
John Geller, Co-Chair
Robert De Vries

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2009 APR 17

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090006

Petitioners, Robert and Deborah Lindeman, applied to the Building Commissioner for permission to remove the existing attic and roof structure and to construct a new third level addition to their existing two-family residence at 61 Atherton Road. The application was denied and an appeal was taken to this Board.

On 12 February 2009, 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 19 March 2009, at 7:00 p.m. in the Selectmen's Hearing room, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the 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 26 February and 5 March 2009 in the Brookline Tab, a newspaper published in Brookline. 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: ROBERT AND DEBORAH LINDEMAN

Location of Premises: **61 ATHERTON RD BRKL**
Date of Hearing: **03/19/2009**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th floor**

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

5.43, Exceptions to Yard and Setback Regulations, Special Permit Required.

5.60, Side Yard Requirements, Variance Required.

5.70, Rear Yard Requirements, Variance Required.

5.91, Minimum Usable Open Space, Variance Required.

8.02.2, Alteration or Extension; Special Permit Required of the Zoning By-Law to remove the existing attic roof structure and to construct a new third level addition above the existing two-family residence.

Said Premise located in a T-5 (two-family and attached single family) 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
Robert De Vries**

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, Jonathan Book and Christina Wolfe. The petitioners, Mr. and Mrs. Lindeman, were present as was their architect, Mr. Benjamin Ber of Artisanal Architects, 23 Strathmore Road, Brookline, Ma. 02445. Mr. Ber presented the case before the Board

Mr. Ber described the site and neighborhood at 61 Atherton Road as being located near the

intersection of Atherton and Winchester Street near Coolidge Corner. On the property is a two-and-a-half story two-family dwelling with a unit each on the first and second floors. The building has an unfinished basement as well as a sub-basement with a garage. The property has frontage on both Atherton Road and Winchester Street due to a narrow vehicle passageway in the rear leading to Winchester Street. The property has a significant change in grade of about twenty feet from one frontage to the other, leading down from Atherton towards Winchester. He said the existing lot is smaller than required for the district and is therefore pre-existing, non-conforming. Also, the side yard and rear yard are non-conforming, and the requirement for usable open space is not met due to the minimum 15 foot requirement and the maximum grade requirements of Section 5.91.2 of the Zoning By-Law. With regard to open space, Mr. Ber said that the unusual shape and topography of the lot make it impossible to meet the usable open space requirements of the Zoning By-Law.

Mr. Ber said that his clients propose to remove the existing roof and build a third-story addition and new roof to create additional floor area for the second-floor unit. The addition would be 767 s.f. and provide for a master bedroom and bathroom, closet, study and office. A small covered deck would be built above the second-floor roof at the rear. He said the addition's exterior would be finished with a fiber-cement horizontal siding in two different widths. The new hip-style roof would be finished with asphalt shingles.

Mr. Ber said Mr. and Mrs. Lindeman have proposed a landscape plan including a fence and two gates as well as significant plantings and walkways on the property. He said that the existing trees would not be altered. Mrs. Lindeman said she had spoken to their neighbors to the side and rear and they were in support of the proposal. She also presented a photograph showing the current conditions on the lot with no landscaping or other improvements.

Chairman Geller asked whether the landscaping was proposed as a counter-balancing amenity as required under §5.43 of the Zoning By-Law. Mr. Ber replied that a detailed landscape plan had been submitted and the landscaping is being proposed as the counterbalancing amenity. Mr. Geller asked about drainage issues given the steepness of the existing slope. Mr. Ber responded that drainage would not be an issue given that the structure currently exists and he anticipates no appreciable increase in drainage water once the project is completed. Mr. Ber noted that the existing gutters and drain spouts will be maintained and that the new landscaping will act as natural drainage of water from those gutters and downspouts. Board Member Wolfe asked whether fire apparatus could access the rear of the house given the narrow, steep driveway. The Building Commissioner responded that given the steepness of the driveway, that it may be difficult to approach the house from the rear but that since the house was very close to Atherton any potential fire could be knocked-down from that side. Ms. Wolfe asked why the existing garage to the rear of the property could not be accessed. Mrs. Lindeman responded that at some point, a neighbor constructed a structure that encroaches on the Lindeman property that prevents the use of the garage.

The Chairman asked whether anyone was present who wished to speak in favor or in opposition to the proposal. No one rose to speak.

Lara Curtis, Senior Planner delivered the findings of the proposal.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.91 – Minimum Usable Open Space: By increasing the floor area of the dwelling, the applicant is required to provide additional usable open space for that additional floor area. There is no usable open space on site. *Variance required.*

Section 8.02.2 – Alteration or Extension: A special permit is required to alter and/or extend this non-conforming structure.

	Required	Existing	Proposed	Finding
Side Yard Setback	10 feet	4.9 feet	4.9 feet	Special Permit*

Rear Yard Setback	30 feet	4.9 feet	4.9 feet	Special Permit*
Usable Open Space	1037 s.f.	0 feet	0 feet	Variance

*Under Section 5.43, the Board of Appeals by special permit may allow the substitution of other dimensions for yard and setback requirements if counterbalancing amenities are provided.

Ms. Curtis said that the Planning Board was not opposed to the proposal to construct a third-floor addition, although, the Board is concerned that there is no usable open space on site. This is largely due to the placement of the dwelling on the lot so that no open space is at least 15 feet wide by 15 feet deep, as well as the lot's relatively steep slope. The dwelling would continue to comply with the maximum allowed FAR, and the addition has been designed to correspond well with the existing dwelling. The building would still comply with the zoning district's height limit. She said that the petitioner should submit a landscaping plan that clearly indicates all hardscaped and landscaped areas, fencing, and all counterbalancing amenities, which should be significant due to the lack of usable open space on site. The Planning Board felt that the landscaping as shown in the submitted schematic plan would greatly improve the overall appearance of the lot. Additionally, the building's existing elevations should be submitted to clearly show the change in the building's roofline. Therefore, she said, should the Board of Appeals determine the proposal qualifies for a variance, the Planning Board recommends approval of the proposal and the plans, prepared by Benjamin Ber and dated 2/10/09, subject to the following conditions:

- 1. Prior to issuance of a building permit, final elevations, both existing and proposed, of the dwelling and third-floor addition 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, accurately indicating all hardscape areas, fencing, existing trees, and counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

3. **Prior to 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 elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. Mr. Shepard said that both the petitioners and the architect have been very cooperative in working with both the Building and Planning Departments. Regarding the lack of open space and the lack of landscaped open space, Mr. Shepard opined that both are pre-existing conditions, neither of which is exacerbated by the petitioner's proposal. He said, referring to the atlas, that this lot is an entirely different shape than the surrounding lots, and is further hampered by the steep topography. He said that the relatively small size of this particular lot further exacerbates the lack of open space both landscaped and otherwise. Mr. Shepard said the quality of the proposed landscape and site improvements would, in his opinion, overcome the lack of quality open space. Mr. Shepard said that the Building Department is supportive of the project as well as the conditions recommended by the Planning Board and will insure that any potential drainage conditions are ameliorated during construction.

During deliberations, Christina Wolfe said she was in favor of the proposal and the neighbors most affected seemed happy. Jonathan Book stated that he felt that the petitioners had met the burden of proof with respect to the requested Special Permit and Variance relief. Chairman Geller stated that the landscaping as a counterbalancing amenity was required because of certain dimensional non-conformities and was not a consideration in determining the appropriateness of granting a variance related to the lack of open space.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the petitioner has adequately shown that they have met the standards for the grant of a

Variance under Massachusetts General Law 40A, Section 10 as well as the conditions necessary for the grant of Special Permits in accordance with Section 9.05 of the Zoning By-Law, Special Permits, Section 5.43 of the Zoning By-Law, exceptions to yard and setback requirements, and Section 8.02.2 of the Zoning By-Law, alteration or extension of a pre-existing, non-conforming structure, and, with respect to said Section 9.05, makes the following specific findings:

- 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.
- e. The development as proposed will not have a significant adverse 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 issuance of a building permit, final elevations, both existing and proposed, of the dwelling and third-floor addition 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, accurately indicating all hardscape areas, fencing, existing trees, and counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to 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 elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

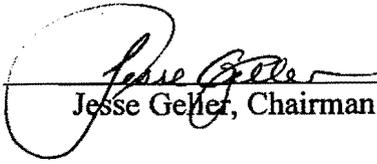
Unanimous Decision of
The Board of Appeals

Filing Date: April 17, 2009

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Jesse Geler, Chairman