



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090064

Petitioner, Melissa Foley applied to the Building Commissioner for permission to construct an addition to the side of her home at 78 Dean Road. The application was denied and an appeal was taken to this Board.

On 17 September 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 5 November 2009, at 7:15 p.m. in the Selectmen's hearing room, 6th floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his 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 22 and 29 October 2009 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: FOLEY, MELISSA

Location of Premises: 78 DEAN RD BRKL
Date of Hearing: 11/05/09
Time of Hearing: 7:15p.m.
Place of Hearing: Selectmen's Hearing Room, 6th floor

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

5.09.2.j; Design Review, special permit required.
5.20; Floor area ratio, variance required.
5.22.3.b.1.b; Exceptions to maximum floor area ratio (FAR) regulations for residential units, special permit required.
5.43; Exceptions to yard and setback regulations, special permit required.
5.70; Rear yard requirements, variance required.
8.02.1.a; Alteration or extension, special permit required of the Zoning By-Law to construct an addition per plans at 78 DEAN RD BRKL.

Said Premise located in a S-7 (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.

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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, Mark Zuroff and Mark Allen. The petitioners, Melissa and Todd Foley, presented their case before the Board.

Mr. Foley described his home at 78 Dean Road as a single-family clapboard home located on a corner lot at Dean and Clinton Roads. The home is a 2.5 story center entrance colonial with two gable dormers on the front façade of the attic. The home has a stone porch in the front which is

partially covered and there is an open porch on the side of the home. The porch in the side yard is partially screened by a brick wall that extends along the side property line. The driveway is on the Clinton Road side of the property and is located behind the house. The surrounding neighborhood is primarily comprised of single family homes and the Runkle School.

Mr. Foley said that he and his wife are proposing to construct an 80 s.f. single story mudroom addition to the side of the house where the existing open air deck is currently located. The mudroom will be clad in clapboard and the roof elevation will be aligned with the roof elevation of the pantry. The roof will be reframed for positive drainage, and will have two skylights installed. There will be a new stair installed that will connect the mudroom to an existing patio.

Board Member Allen commented that the plans prepared by Sami Kassis, registered professional engineer, did not appear to accurately reflect the picture of the façade provided by planning staff.

Chairman Geller inquired about the counterbalancing amenities that the petitioners were providing as required under Section 5.43 of the Zoning By-Law. Mr. Foley responded that the preservation and moving of mature rose bushes and lilac trees will be their counterbalancing amenity.

Chairman Geller asked whether anyone in attendance wished to speak either in favor or against the proposal. No one rose to speak.

Courtney Synowiec delivered the findings of the Planning Department Staff.

Section 5.09.2.d – Design Review: A special permit is required for any exterior addition for which a special permit is requested pursuant to *Section 5.22* (Residential Exceptions to FAR). The applicant has not submitted a Community and Environmental Impact Statement, however the most applicable standards are described as follows:

a. *Preservation of Trees and Landscape:*

The property has extensive landscaping and several large trees. There will be some rose bushes and lilac trees that will be disturbed by the building of the addition that the

applicant has indicated will be relocated to another part of the yard (as part of the applicant's counterbalancing amenity).

b. *Relation of Buildings to Environment:*

The 80 s.f. addition is a single story addition on a 2.5 story home and is not on a street-facing façade. It is not anticipated the addition will create shadows on neighboring properties or create a disharmonious appearance between the building and the landscape.

c. *Relation of Buildings to the Form of the Streetscape and Neighborhood:*

The proposed addition is modest in size and consistent with the existing house in terms of materials and scale. There are skylights on the main roof, and the transom windows will allow for natural light to enter the mudroom while preserving interior storage space.

d. *Open Space:*

While the addition will replace an existing open air deck, the loss of 80 s.f. to accommodate the mud room should be relatively insignificant.

Section 5.20 – Floor Area Ratio

Section 5.70 – Rear Yard Requirements

	<u>Allowed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Final</u>
Floor Area Ratio (% of allowed)	.35 100%	.38 110%	.39 112%	Special permit*/ Variance
Floor Area (s.f.)	3,072	3,370	3,450	
Rear Yard setback	10'	9'7"	9'7"	Special Permit**/ Variance

* Under Section 5.22.3.b.1.b, the Board of Appeals may grant a special permit in S districts for an increase in floor area, so long as the addition does not exceed 20% of the permitted gross floor area.

** Under Section 5.43, the Board of Appeals may by special permit waive yard and setback requirements if counterbalancing amenities are provided. The applicant has indicated the preservation and moving of mature rose bushes and lilac trees will be their counterbalancing amenity.

Section 8.02.1.a – Alteration or Extension: A special permit is required to alter and enlarge this non-conforming building.

Ms. Synowiec said that the Planning Board was supportive of this proposal. The proposed addition is modest in size and located outside of the side yard setback. However, the Planning Board had concerns about the roof and would like more details provided on the final plan and also felt the design of the transom windows should be revised to relate better to the door and window of the new mudroom. Since the addition is very modest in scale, the Planning Board feels the

preservation of focal plantings and new landscaping in the yard is a sufficient counterbalancing amenity. Therefore, the Planning Board recommended approval of the plans by Sami Kassis, dated 5/20/09, subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit final elevations, including details of the roof framing and transom windows, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit landscaping plans indicating the preservation of the rose bushes, lilac trees, and any other counterbalancing amenities.
- 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 building elevations stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. Mr. Shepard stated that the home was extremely well maintained and that the landscaping was very complementary to the home and appeared thoughtfully designed. He said that the proposed addition fit well in the overall design of the home and would certainly not detract from its appearance. Mr. Shepard said that the Building Department was supportive of the relief as well as the conditions proposed by the Planning Board.

Board Member Allen again expressed concern that the drawings prepared by Mr. Kassis did not accurately represent what were actual conditions on the home. He cited the window fenestration as one example and he referred to the Planning Board's concern about the roof and lack of detail involving the transom windows and their relation to the door and window in the mudroom. The Board Members and the applicant discussed at length how plans could be prepared to satisfy the concerns of Mr. Allen. Mr. Allen opined that the plans looked as if they were prepared by a structural engineer and not an architect. He said that since the neighbors were

obviously not opposed to the proposal, accurately prepared plans should be provided to better protect their interests as well as those of the petitioners. He cited the Planning Board's requirement for final building elevations stamped and signed by a registered architect. The petitioner stated that he was concerned not only about the considerable time the preparation of new plans would add to the project but also to the considerable cost for a somewhat diminutive addition. Mr. Book opined that perhaps someone in the employ of the engineer could prepare accurate elevations and it should be a small and relatively inexpensive undertaking.

Sensing that Mr. Allen had considerable reservations about the accuracy of the drawings, Chairman Geller reminded the petitioner that since the Board of Appeals consisted of three sitting members, a positive vote for the requested relief had to be unanimous.

Mr. and Mrs. Foley after considering their options, agreed to hire a professional to more accurately portray existing conditions as well as the integration of the roof lines and correlation of the transom windows with the new door and window on the addition.

The Board Members unanimously agreed that subject to satisfactory conditions, the relief sought by the petitioners met the requirements for the requested relief. Mr. Allen said that he would be in favor of the proposal if the conditions reflected the requirement that the right side elevation showing the mudroom be prepared in accordance with professional architectural standards. The Board then determined, by unanimous vote, that the requirements necessary for granting the Special Permit relief requested under the affected sections of the Zoning By-Law, being **Section 5.09.2.d** (design review when relief is requested pursuant to Section 5.22), **Section 5.22.3.b.1.b** (increase in floor area that does not exceed 20% of the permitted gross floor area), **Section 5.43** (to waive the requested setback requirements if appropriate counterbalancing amenities are provided) and **Section 8.02.1.a** (to alter a pre-existing, non-conforming structure)

were met. The Board made the following 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, the applicant shall submit accurate final drawings, including elevations of the right side elevation showing the mudroom, which right side elevations shall be prepared in accordance with professional architectural conventions and standards, including details of the roof framing and transom windows, all of which drawings shall be subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2) **Prior to the issuance of a building permit, the applicant shall submit landscaping plans indicating the preservation of the rose bushes, lilac trees, and any other counterbalancing amenities.**
- 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 building elevations stamped and signed by a registered architect or engineer; and 3) evidence the decision has been recorded at the Registry of Deeds.**

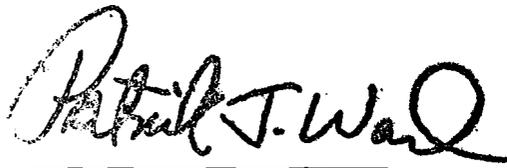
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Final Decision of
The Board of Appeals


 Jesse Geller, Chairman

Filing Date: November 13, 2009

A True Copy
ATTEST:

A handwritten signature in black ink that reads "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a stylized "W".

Patrick J. Ward
Clerk, Board of Appeals