



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. 080044

Petitioner, Deborah Moses, applied to the Building Commissioner for permission to construct an addition to the existing main residence, construct a new accessory garage and an accessory pool house to her home at 74 Clyde Street. The application was denied and an appeal was taken to this Board.

On October 16, 2008 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 November 13, 2008 at 7:00 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its 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 October 23 and 30, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL

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: **MOSES, DEBORAH W**
Location of Premises: **74 CLYDE ST BRKL**
Date of Hearing: **11/13/2008**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Main Library, 2nd. floor**

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

- 1) **5.09.2. J, Design Review, Special Permit Required.**
- 2) **5.20, Floor Area Ratio, Variance Required.**
- 3) **5.22.3. b.1.b, Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units. Special Permit Required.**
- 4) **5.43, Exceptions to Yard and Setback Regulations, Special Permit Required.**
- 5) **5.60, Side Yard Requirements, Variance Required.**
(Proposed Garage violates required setback).
(Proposed Pool House violates required setbacks).
- 6) **5.63, Accessory Buildings or Structures in Side Yards, Variance Required.**
(Proposed Garage violates one-half setback requirement and violates 15 foot height limit).
(Proposed Pool House violates one-half setback requirement and violates 15 foot height limit),
- 7) **8.02.2; Alteration or Extension,**
(The non-conforming lot size and non-conforming lot width are changed by constructing new buildings and structures on the lot).
Special permit required of the Zoning By-Law to construct additions and renovations per plans at **74 CLYDE ST BRKL.**

Said Premise located in an **S- 40** 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 Chair, Enid Starr and Board Members, Rob DeVries and Jonathan Book. The petitioner, Deborah Moses was present and the proposal was presented by her architect, Richard Shepard of S/Q Design Associates Inc., 300 Horseneck Road, South Dartmouth, MA 02748.

Mr. Shepard described the residence at 74 Clyde Street as a 2.5 story colonial home built in 1910. The home currently has a driveway that leads to a paved slab in the rear yard and an attached garage below grade. The property is a through lot with frontage on both Clyde Street and Lee Street. The lot is well screened from neighboring houses and Lee Street by dense vegetation. The lot slopes downward approximately 10 feet from Clyde Street to Lee Street. The property is fairly similar to neighboring properties, which are primarily large homes on moderately undersized lots. He said that the homeowner is proposing to demolish part of the rear of the main house and construct an addition, as well as two new accessory buildings in the rear yard. The proposed addition to the main house will be two stories, and extend the kitchen on the first floor and bedrooms on the second floor. In order to construct the addition, the existing portico will be removed from the back of the house as well as a side entryway and a number of windows. The addition to the main house will extend beyond the house by 6', and will be 216 square feet on each floor for a total of 432 new square feet on the main house. The materials used for the proposed addition will be consistent with the existing materials on the dwelling. The proposed 864 square foot three car garage will be located 10' from the side lot and behind the main house. The garage will be 15' tall (as measured from the mean natural grade). The garage will be constructed with a wood frame clad in clapboard siding, painted to match the main house. The garage doors will be wood paneled and painted to

match. The main house and the contour of the driveway should completely screen the proposed garage from view from Clyde Street, but not Lee Street. The proposed 900 square foot pool house will be set back 83' from the lot line on Lee Street and 10' from the side property line. The proposed pool house will also be 15' tall (as measured from mean natural grade). The pool house will encompass space for a bathroom, a kitchen, sauna, and storage space. The pool house will also be constructed with a wood frame clad in clapboard siding. Mr. Shepard submitted a site plan dated November 3, 2008 by John R. Hamel, a registered land surveyor, as well as building plans dated September 16, 2008 entitled "modifications to existing dwelling, 74 Clyde Street". Mr. Shepard said he believed that his client needed relief from Sections 5.09, Design Review, 5.20, Floor Area Ratio and 8.02 Alteration or Extension of a pre-existing, non-conforming condition.

The Chair asked whether anyone wished to speak in favor or against the proposal. Ms. Dorothy Edinburgh of 315 Lee Street asked about the amount of frontage on Lee Street, Mr. Shepard responded 140'. She asked how the construction would proceed and urged the Board to deny the application because she thought construction was ill advised, given the economic times. Enid Starr explained that the "state of the economic times" was not within the jurisdiction of the Board. Ms. Edinburgh stated that she was very concerned about the additional construction off Lee Street given that a great deal of construction was underway in her neighborhood. The architect responded that at this point it has not been determined whether the site would be accessed off Lee Street but he opined that this would likely be the case. Attorney Kenneth Hoffman of 10 St. James Avenue, Boston MA said he was representing the abutting neighbors and said that they had no objection to the proposal providing the required set-back was maintained from the side lot lines. Michael Shepard, Building Commissioner responded that he would insure that the setbacks are maintained as represented on the site plan of record dated November 3, 2008.

Courtney Starling, Planner delivered the findings of the Planning Department.

Section 5.09 – 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-l)*. The conditions have been met, and the most relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape

The rear yard is mostly open with most of the vegetation serving as screening on the property lines. There are several small bushes immediately behind the house which may need to be removed. The applicant will be doing landscaping around the proposed new accessory buildings and pool.

b. Relation of Buildings to Environment

The buildings on the adjacent lots do not sit near the lot lines, however it is uncertain whether or not there will be adequate screening when the trees lose their leaves. The neighbors on both sides of 74 Clyde Street have some concerns, and strongly prefer the garage and pool house to be constructed at least 10' from the lot line.

c. Open Space

The installation of a pool and spa will encourage usage of the rear yard. Over 8,000 square feet abutting Clyde Street will remain undisturbed.

d. Stormwater Drainage

The addition and accessory buildings are not anticipated to have an impact on stormwater drainage. There is an ample amount of pervious surface as well as vegetation on the property that will likely absorb most of the additional run off created by the proposed buildings.

Section 5.20 – Floor Area Ratio:

Floor Area	Allowed	Allowed by Special Permit	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.15 100%	.18 120%	.13 86 %	.17 113 %	Special permit*/ Variance
Floor Area (s.f.)	5,179 s.f.	6,215 s.f.	4,300 s.f.	5,776 s.f.	

* Under Section 5.22.3.b.1.b, the Board of Appeals may grant a special permit for an exterior addition that is less than or equal to 20% of the permitted gross floor area.

Section 5.43 – Exceptions to Yard and Setback Regulations:

Section 5.60 – Side Yard Requirements:

Side Yard Setbacks	Required	Existing	Proposed	Finding
Garage	10'	n/a	10'	Complies*
Pool House	10'	n/a	10'	Complies*

*The applicants have altered their plans to meet side yard setback requirements.

Section 8.02.2 – Alteration or Extension: A special permit is required to alter the non-conforming structure at 74 Clyde Street.

Ms. Starling reported that the Planning Board was supportive of this application, provided the plans are altered so the accessory buildings meet the side yard setbacks. The Planning Board felt that because these are new structures and the yard has an ample amount of space, the plans can be massaged to accommodate a 10' setback without compromising the quality or appearance of the proposed pool house and garage. The Planning Board feels that moving the accessory structures to meet the required the required setbacks and landscaping will minimize the impact on abutting properties. She said that the Planning Board voted to recommend approval of revised plans subject to the following conditions:

- 1. The proposal shall be redesigned to conform to side yard setbacks for the garage and pool house.**
- 2. Prior to the issuance of a building permit, final elevations of the addition and new accessory buildings and a final landscaping plan 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 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 Chair called upon Michael Shepard, Building Commissioner, to deliver the Building Department report. Mr. Shepard stated that in a meeting prior to the Planning Board hearing, planning staff and he met with the homeowner and her architect. As a result the homeowner modified the plan to meet setback and height requirements of the by-law. He explained for the benefit of the public in attendance that the petitioner is only seeking special permit relief as provided in the by-law and no variances are requested. He said that the Building Department is in

support of the project as well as the conditions proposed by the Planning Board. Mr. Shepard reassured those in attendance that the structures will be built in accordance with the plan presented to the Board.

The Chair asked whether the petitioner had any additional testimony and Ms. Moses responded that they had lived in the home for thirteen years and very little had been done to it the over that time. She said they were very excited to do the work to make the home better to accommodate the needs of her family.

Rob DeVries asked for clarity regarding the parking and the Building Commissioner responded that the plan before the Board conforms to the parking regulations. Mr. Shepard added that the excess square footage in the garage was included in the computation of FAR as required by the by-law.

Chairman Starr asked about the fencing and screening along the sides and rear of the property. Mr. Shepard, the architect, responded that a fence is located along the property lines and the petitioner will be providing additional landscaping to help screen the proposed additions from the abutting properties including plantings within the site.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant special permits in accordance with **Sections 5.09.2.i, 5.22.3.b.1.b** and **8.02.2** of the Zoning By-law and made the following findings pursuant to **Section 9.05**:

- 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 the issuance of a building permit, final elevations of the addition and new accessory buildings shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit a landscaping plan including plant buffers along the side and rear lot lines 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 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; 3) a construction management plan; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

08 DEC -4 AM 8:09

Filing Date: December 4, 2008

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Enid Starr