



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA060033

Petitioners, John and Paula Sinclair applied to the Building Commissioner for permission to extend the master bedroom on the second floor of their home at 59 Baxter Road adding an additional 103.75 square feet part of which would be located over an existing deck. The applicants also propose to remove an existing mud room at the rear of the dwelling and expanding the bathroom located in the basement by 9 square feet. The application was denied as the proposed addition violated the side yard setback provisions and the floor area ratio requirements of the By-Law. Applicants appealed the decision of the Building Department denying their request for a building permit.

On May 25th, 2006, 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. The Board then fixed the date of July 13th, 2006 at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of 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 June 29th and July 6th, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL

NOTICE OF HEARING

PETITIONER: John and Paula Sinclair

LOCATION OF PREMISES: 59 Baxter Road

DATE AND PLACE OF HEARING

Thursday July 13th, 2006

At 7:00 p.m. in the Selectman's Hearing Room on the sixth floor of Town Hall 333 Washington Street Brookline, Massachusetts.

A public hearing will be held for a variance from Section 5.20; Floor Area Ratio; Section 5.60 Side Yard Requirements, and a special permit under Section 5.43 Exceptions to Yard and Setback Regulations and Section 8.02.2 Alteration or Extension; to construct an addition as per plans at 59 Baxter Road.

Said premises are located in a S-15 (Single Family) Residential District.

The Town of Brookline does not discriminate on the basis of disability in admission to, or 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 Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Diane R. Gordon
Harry Miller
Bailey Silbert

At the time and place specified in the notice a public hearing was held by this Board. Present were Enid Starr, Chair, Bailey Silbert and Sarah Sheldon. Petitioners were represented by Attorney Jacob Walters of Goldenberg, Walters & Popkewitz of Seven Harvard Street in Brookline. Mr. Walters began by stating that all the required relief could be provided by three (3) Special Permits. Mr. Walters described the project which would expand the master bedroom, reconfigure the entrance by removing the mud room and adding just nine (9)

square feet to the basement bathroom. Mr. Walters stated that the issues before the Board were floor area ratio and the side yard setback. Mr. Walters stated that the side yard setback was 11.3 feet and was not being changed. Mr. Walters stated that relief could be granted pursuant to Section 5.43 of the By-Law, provided the petitioners provided a counterbalancing amenity. Mr. Walters indicated that the counterbalancing amenity would be additional landscaping at the side of the property where the proposed addition was to be constructed. .

Mr. Walters then addressed the floor area ratio issue and stated that pursuant to Section 5.22.3.a.2, a Special Permit may be granted in S districts for an increase in floor area less than 350 square feet so long as the addition does not exceed 150% of the permitted gross floor area. In this case, the maximum allowable square footage is 4,057.5 and the applicants' proposal is 4,028.75 square feet. Mr. Walters stated that a final Special Permit is required under Section 8.02.2, Alteration or Extension as the side yard violation is a preexisting condition. Mr. Walters provided letters of support from all the immediate neighbors and concluded by stating that the Planning Board had unanimously recommended approval of the applicants' proposal.

The Chair then called upon Timothy Greenhill of the Brookline Planning Department to present the Planning Board report. Mr. Greenhill stated that the Planning Board has no objection to the proposed addition and noted that all the required relief could be granted by Special Permit. The Planning Board felt the addition was attractive and was an improvement to the dwelling. Mr. Greenhill concluded by stating that the Planning Board supports the proposed addition, with the following conditions: (1) Prior to obtaining a building permit, the applicant shall submit to the Chief Planner, a final landscaping plan, for review and approval, (2) Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision, (a) a final site plan, stamped and signed by a registered engineer or land surveyor, (b) final building elevations, stamped and signed by a registered architect and (c) evidence that the Board of Appeals decision has been submitted to the Registry of Deeds. .

The Chair then called upon Frank Hitchcock of the Brookline Building Department. Mr. Hitchcock noted that the side yard setback violations were preexisting and also stated that the additional square footage could be granted under the bonus provisions of Section 5.22.3.a.2. Mr. Hitchcock further stated

that relief is required under Section 8.02.2 only because of the side yard being too close. Mr. Hitchcock concluded by saying the Building Department had no objection to the proposal.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously to grant special permits pursuant to Section 5.43, Section 5.22.3.a.2, and Section 8.02.2, subject to the following conditions:

1. Prior to obtaining a building permit, the applicant shall submit to the Chief Planner, a final landscaping plan, for review and approval,
2. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision, (a) a final site plan, stamped and signed by a registered engineer or land surveyor ,(b) final building elevations, stamped and signed by a registered architect and (c) evidence that the Board of Appeals decision has been submitted to the Registry of Deeds.

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2006 JUL 31 A 10:41

Unanimous decision of
the Board of Appeals


Enid Starr, Chair

Date of Filing: July 31, 2006

A TRUE COPY:
ATTEST:



Patrick J. Ward
Board of Appeals