



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

# *Town of Brookline*

## *Massachusetts*

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. 2014-0044  
BRIAN HIRSCHFELD & MARY AMES

Petitioners, Brian Hirschfeld and Mary Ames, applied to the Building Commissioner for permission to construct a second story addition. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 21, 2014 at 7:15 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for 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 July 31, 2014 and August 7, 2014 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**300 DUDLEY ST – SECOND STORY ADDITION in an S-40, Single-Family, residential district, on August 21, 2014, at 7:15 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: HIRSCHFELD BRIAN J AMES MARY I; Owner: HIRSCHFELD BRIAN J AMES MARY I)**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 5.09.2.j; Design Review**
- 2. Section 5.22.b.3.1.b; Exceptions To Floor Area Ratio for Residential Units**
- 3. Section 8.02.2; Extension and Alteration**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*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 Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneirson@brooklinema.gov](mailto:rsneirson@brooklinema.gov).***

**Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey**

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Christopher Hussey and Jonathan Book. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Brian Hirschfeld, owner of the property, and Brigid Williams, the Petitioners’ architect.

Zoning Board of Appeals Chairman Jesse Geller called the hearing to order at 7:15 p.m. Attorney Allen stated that the Petitioners propose to finish the attic and construct a 1,022 square foot second story addition with a gable roof.

Attorney Allen presented to the Board a background of the Petitioners and the property, stating the following: 300 Dudley Street is a single-family ranch home that was built in 1975 on a 41,500

square foot lot in the S-40 District. Attorney Allen stated that the Petitioners purchased the property in 2009 with the plan to raise their family in Brookline. Attorney Allen stated that the Petitioners have five children and the addition is a necessary improvement because the family would like to live more comfortably. Attorney Allen stated that currently there are only three bedrooms and two and half bathrooms. Attorney Allen stated that the addition will provide Petitioners with two additional bedrooms, two bathrooms, and a homework room.

Attorney Allen next discussed the zoning relief required from the Board. Attorney Allen stated that the relief requested will allow the Petitioners to create livable floor area in the attic, construct a gable roof on the north side of the home, and construct a 1,022 square foot addition. Attorney Allen stated that design review is mandated under **Section 5.09.2.j** of the Zoning By-Law. In this regard, the addition: (i) will be consistent with the rest of the home and is not expected to cause any shadows on neighboring properties, and (ii) the second story addition will ensure that the property is more consistent with the existing streetscape, which is comprised of predominantly two-story homes.

Attorney Allen stated that the existing floor area is 5,851 square feet, which is well below the allowed 6,225 square feet in the S-40 District. Attorney Allen stated that the proposed increase will bring the floor area to 6,873 square feet which is an increase of 17%. Attorney Allen stated that under **Section 5.22.3.b.1.b** of the Zoning By-Law, the Board of Appeals may grant by special permit an increase in the floor area above the permitted gross floor area for an exterior addition that is less than or equal to 20% of the permitted floor area.

Attorney Allen then discussed relief under **Section 8.02.2** of the Zoning By-Law whereby a special permit is required under **Section 9.05** of the Zoning By-Law to alter and/or extend this non-conforming structure.

As for Section 9.05, Mr. Allen noted: (1) the specific site is an appropriate location where in the instant case the modest increase in floor area will significantly improve the Petitioners' quality of life and the use will remain as a single-family dwelling; (2) there will be no adverse effect on the neighborhood because the footprint will remain the same and the increase in floor area is similar to other two-story homes on Dudley Street; (3) no nuisance or serious hazard to vehicles or pedestrians will occur; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) the development will not have a significant adverse effect on the supply on housing available for low and moderate income people

Attorney Allen stated that the Planning Board voted unanimously in support of this proposal and stated that the proposal would enhance the neighborhood and had minimal impact on the streetscape.

Zoning Board of Appeals Chairman Geller asked Tim Richard, of the Planning Department, why the Petitioners were cited for a rear yard violation requiring relief under Sections 5.43 and 5.70 of the Zoning By-Law. Mr. Richard stated that there was no rear yard non-conformity. Mike Yanovitch, Chief Building Inspector, stated that Sections 5.43 and 5.70 of the Zoning By-Law were likely cited after issuance of the denial letter as a precaution. Mr. Yanovitch stated that it does not take into account rear yard averaging; therefore no relief is required under Sections 5.43 and 5.70 of the Zoning By-Law.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in favor of this application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to the application.

Tim Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

**Section 5.09.2.j – Design Review:** Any addition to a structure for which a special permit is requested pursuant to Section 5.22, requires a special permit under Section 5.09.

*Relation of Buildings to Environment:* The addition is consistent with the rest of the building’s massing, and is not expected to cause any shadows on neighboring properties.

*Relation of Buildings to the Form of the Streetscape and Neighborhood:* The addition will not cause a significant change to the streetscape.

**Section 5.22.3.b.1.b – Exceptions to Floor Area Ratio (FAR) for Residential Units**

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.70 – Rear Yard Requirements**

<b>Dimensional Requirements</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Floor Area Ratio</b>	.15	.141	.165	Special Permit*
<b>FAR Percentage</b>	100%	94%	111%	
<b>Floor Area (sf)</b>	6,225	5,851	6,873	

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

**Section 8.02.2: Alteration or Extension** – Special permit required to alter or extend a nonconforming use or structure.

Mr. Richard stated that the Planning Board is supportive of this proposal to finish the attic and construct an addition. Mr. Richard stated that the proposal will allow the owners to better utilize the living space. Mr. Richard agreed that there is no relief needed under **Section 5.70** of the Zoning By-Law and that the addition is expected to fit in with the dwelling. Mr. Richard stated that the Planning Board is supportive of this proposal, and feels that the granting of a special permit will not have a negative impact to the neighborhood. Therefore, the Planning Board recommends approval of the plans by Hickox Williams Architects, dated 3/5/14, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations 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 to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a 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 that the Board of Appeals decision has been recorded at the Registry of Deeds.

Zoning Board of Appeals Chairman Jesse Geller next called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch, stated that the Building Department had no objections to the relief sought under this application where the proposal is well designed and fits within the streetscape on Dudley Street.

Zoning Board of Appeals Member Jonathan Book stated that he was in support of the relief requested. Mr. Book stated that the scale of the addition was modest and the increase in livable floor area was appropriate for the size of the neighborhood. Zoning Board of Appeals Member Chris Hussey concurred. Zoning Board of Appeals Chairman Jesse Geller agreed and stated that the proposal clearly met the special permit requirements under Section 9.05 of the Zoning By-Law.

The Board then determined, by unanimous vote that the requirements for relief by special permit from Sections 5.09.2.j, 5.22.3.b.1.b, and Section 8.02.2 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said 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.

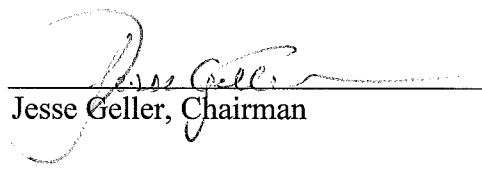
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations 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 to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a 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 that the Board of**

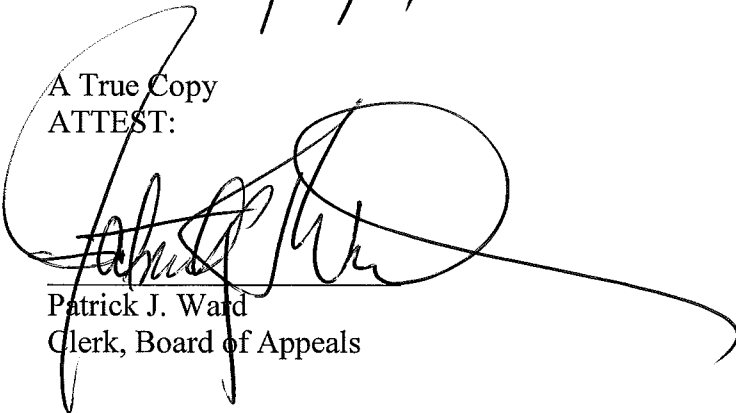
**Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of  
The Board of Appeals

Filing Date: 9/24/14

  
\_\_\_\_\_  
Jesse Geller, Chairman

A True Copy  
ATTEST:

  
\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
2014 SEP 24 P 2:10