



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

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0022  
ERIKA & SHAWN RANGEL

Petitioner, Erika Rangel, applied to the Building Commissioner for permission to construct a nine to ten foot high retaining wall at the rear of the property. 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 June 12, 2014 at 7:30 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 June 5, 2014 and June 12, 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **ERIKA RANGEL**  
Owner: **SHAWN & ERIKA RANGEL**  
Location of Premises: **55 SHAW ROAD**  
Date of Hearing: **JUNE 12, 2014**  
Time of Hearing: **7:30 PM**  
Place of Hearing: **SELECTMEN'S 6<sup>TH</sup> FLOOR CONFERENCE ROOM**

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

1. **Section 5.43: Exceptions to Yard and Setback Regulations**
2. **Section 5.60 Side Yard Requirements**
3. **Section 5.62: Fences and Terraces in the Side Yard**
4. **Section 5.70 Rear Yard Requirements**
5. **Section 5.74: Fences and Terraces in the Rear Yard**

of the Zoning By-Law to **CONSTRUCT A RETAINING WALL APPROXIMATELY NINE FEET HIGH WITHIN THE REAR AND SIDEYARD SETBACK at 55 SHAW ROAD.** Said Premises is located in a **S-10 (Single-Family) Residence 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 Office of the Town Clerk at 617-730-2007 or check the 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 programs and services of the Town of Brookline are invited to 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  
Jonathan Book  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Mark G. Zuroff, and Board Members Christopher Hussey and Johanna Schneider. 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 Erika Rangel, the petitioner and owner of the property located at 55 Shaw Road, and Ian Gleason, the Petitioner's contractor.

Zoning Board of Appeals Chairman Mark G. Zuroff called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner proposes to construct a nine to ten foot high retaining wall at the rear of the property.

Attorney Allen presented to the Board a background of the Petitioner and the property, stating the following: 55 Shaw Road is a single family home built in 1930, located in South Brookline in an area that consists solely of single-family dwellings. Attorney Allen stated that the Petitioner wants to construct the retaining wall because there is a significant slope in the backyard and it will allow her young children to utilize the backyard for recreational purposes. Attorney Allen stated that the proposal is consistent with other homes in the neighborhood that have constructed retaining walls for the same purpose. Attorney Allen stated that the neighbors are in support of the proposal and the rear abutter that will be directly affected is in support. Attorney Allen stated that an anticipated benefit of constructing the retaining wall means the storm water will not run down the backyard onto the rear abutter's property anymore.

Attorney Allen discussed relief under Section 5.43, Section 5.60, Section 5.62, Section 5.70, and Section 5.74 of the Zoning By-Laws where a special permit is required under Section 9.05 of the Zoning By-Law. As for Section 9.05, (1) the specific site is an appropriate location because the property has a rear yard that slopes down significantly and the retaining wall will prevent storm-water run off into the rear abutter's yard; (2) there will be no adverse effect on the neighborhood because the retaining wall will be located in the rear yard, have no effect on the streetscape, and there are five letters of support from immediate abutters; (3) no nuisance or serious hazard to vehicles or pedestrians exist; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) development will have no effect on the supply on housing available for low and moderate income people

Zoning Board of Appeals Member Christopher Hussey inquired if the retaining wall would fall within the Petitioner's property line. Attorney Allen stated that the wall will fall within the property line. Next, Board Member Hussey asked about the nature of the counterbalancing amenities proposed to offset Section 5.43 of the Zoning By-Laws. The Petitioner's contractor, Ian Gleeson, 112 Faneuil Street, Brighton, MA 02135, stated that a large pre-existing forsythia bush will serve as the counterbalancing amenity because it will screen the retaining wall from neighbors.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in favor of this application. Joseph Makalusky, 61 Shaw Road, spoke in support of the proposal.

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

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

**FINDINGS:**

1. Section 5.43 – Exceptions to Yard and Setback Regulations
2. Section 5.60 – Side Yard Requirements
3. Section 5.62 – Fences and Terraces in the Side Yard
4. Section 5.70 – Rear Yard Requirements
5. Section 5.72 – Fences and Terraces in the Rear Yard

Height Requirements	Required	Proposed	Relief
Side Yard Retaining Wall*	7'	9'-10'	Special Permit**
Rear Yard Retaining Wall*	7'	9'-10'	Special Permit**

\* The fence is over the allowed height of seven feet.

\*\* Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant is proposing to plant a row of evergreen trees as a counterbalancing amenity to screen the retaining wall from neighbors.

Mr. Richard stated that the Planning Board supports this proposal to construct a nine to ten foot high retaining wall within the side and rear yard. Mr. Richard stated that the retaining wall allows the property owner to have a usable rear yard. Mr. Richard stated that the nine foot high wall is necessary

due to the grade of the property in the rear. Mr. Richard stated that the Board recommends that the applicant install landscaping to screen the retaining wall to the greatest extent possible as a counterbalancing amenity required for a special permit. Therefore, the Planning Board recommends approval of the plans by Peter Nolan & Associates, LLC., dated 11/14/13, subject to the following conditions:

1. Prior to the issuance of a building permit, a final site plan and wall section details and materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director of 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 wall elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then 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.

In deliberation, Zoning Board of Appeals Member Johanna Schneider stated that she was in support of the relief requested. Zoning Board of Appeals Member Hussey stated support of the relief requested. Zoning Board of Appeals Chairman Zuroff stated that he was in support of the relief requested.

The Board then determined, by unanimous vote that the requirements for a special permit for **Sections 5.43; 5.60; 5.62; 5.70;** and **Section 5.74** of the Zoning By-Laws 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.

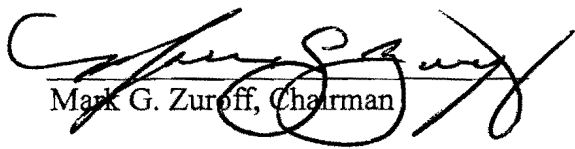
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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

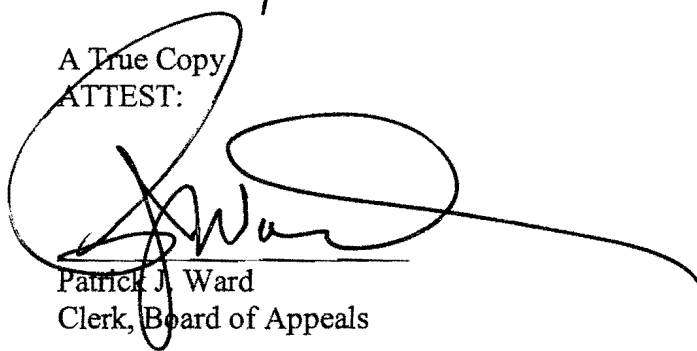
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Unanimous Decision of  
The Board of Appeals

Filing Date: 7/3/14

  
Mark G. Zurroff, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals