



**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. 2014-0045  
134 SALISBURY LLC

Petitioner, 134 Salisbury, LLC, applied to the Building Commissioner for permission to construct dormers and finish the basement and attic. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 21, 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 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:

**134 SALISBURY RD – CONSTRUCT DORMERS AND FINISH BASEMENT AND ATTIC in a T-6, Two-Family and Attached Single-Family, residential district, on August 21, 2014, at 7:30 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: 134 SALISBURY LLC; Owner: 134 SALISBURY LLC)**

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 5.22.3.b.1.c: Exceptions to Floor Area Ration for Residential Units**
- 3. Section 5.43: Exceptions to Yard and Setback Regulations**
- 4. Section 5.60: Side Yard Requirements**
- 5. Section 5.70: Rear Yard Requirements**
- 6. Section 8.02.2; Extension or 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, Chair  
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 Scott Shuster, the developer for 134 Salisbury LLC. Attorney Allen stated that the Petitioner’s architect Niles Sutphin, was unable to be present but was present at the Planning Board hearing on August 7, 2014.

Zoning Board of Appeals Chairman Jesse Geller called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner proposes to construct dormers on the front of the dwelling, replace three rear doghouse dormers with shed dormers, replace all existing windows, and add floor area by finishing the attic and basement.

Attorney Allen presented to the Board a background of the Petitioner and the property, stating the following: 134 Salisbury Road is a two-family dwelling that was built in 1895. Attorney Allen stated that the property is located at the corner of Salisbury Road and Corey Road, north of Beacon Street. Attorney Allen stated that this proposal will not expand the dwelling beyond the existing footprint. Attorney Allen stated that the Petitioner proposes to remove three existing doghouse dormers located at the rear of the property and replace them with shed dormers. Attorney Allen stated that the Petitioner plans to make the house energy efficient by replacing the existing windows with Anderson 400 series windows. Furthermore, Attorney Allen stated that the Petitioner plans to remove the existing staircase on the rear side of the dwelling in order to construct a second floor deck off of the bedroom.

Board Member Hussey asked Attorney Allen to clarify the gross square footage of the house. Michael Yanovitch, Chief Building Inspector, stated that the gross square footage of the house is 9,817 square feet. Board Member Hussey inquired why the gross square footage did not correspond with the findings by the Planning Board Report. Mr. Yanovitch stated that there was a discrepancy between the actual gross floor area and the finished gross floor area by the Petitioner's architect. Mr. Yanovitch stated that the calculations by the Petitioner's architect did not include the enclosed porch.

Mr. Yanovitch stated that both the denial letter and the legal notice cite relief under **Section 5.22.3.b.1.c** of the Zoning By-Law. Board Member Hussey stated that **Section 5.22.3.b.1.c** is not applicable to this property because it is located in the T-district. As a result, Chairman Geller stated that

the Petitioner is unable to secure floor area relief under Section 5.22.3.b.1.c for the attic and basement where the legal notice was facially incorrect.

In the alternative, Attorney Allen withdrew request to increase the floor area in the attic and basement and requested relief for the shed dormers and the enclosed porch only. Attorney Allen stated that excluding Section 5.22.3.b.1, the Petitioner remains eligible for relief under Sections 5.09, 5.43, 5.60, 5.70, and 8.02.2 of the Zoning By-Law.

Mr. Yanovitch asked how much the square footage of the proposed enclosed porch will be. Attorney Allen stated that the porch will be approximately 60 square feet.

Board Member Book asked if the dormers are an exterior or interior addition. Mr. Yanovitch stated that the dormers are an exterior modification, where the relief can be sought under Section 5.43. Chairman Geller confirmed with Mr. Allen that the Petitioner is now only looking for side yard and rear yard relief for the dormers and enclosed porch.

Attorney Allen stated that under Section 5.43, the Board of Appeals may grant a special permit to waive the required setback if a counterbalancing amenity is provided, and noted that the Planning Board was amenable to the landscape plan that was submitted for review. Attorney Allen stated that the Petitioner made efforts to meet with neighbors and received signatures of abutting neighbors who support the proposal.

Finally, Attorney Allen discussed relief under Section 8.02.2 of the Zoning By-Law where a special permit is required under Section 9.05 of the Zoning By-Law to alter and/or extend this non-conforming structure. With respect to the specific requirements of Section 9.05, Mr. Allen commented that, (1) the specific site is an appropriate location because the proposed use will remain a two-family dwelling, which is consistent with other properties in the T-6 District and the proposed dormers will be consistent with other homes in the neighborhood; (2) there will be no adverse effect on the

neighborhood because the dormers will enhance the visual appeal of the dwelling, the dormers' attractive design will improve the existing streetscape, the neighbors support the removal of the exterior fire escapes, and there will be no change in the existing footprint; (3) no nuisance or serious hazard to vehicles or pedestrians exists; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) development will not have a significant adverse effect on the supply of housing available for low and moderate income people.

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 this 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 this application.

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

**FINDINGS:**

**Section 5.09.2.j – Design Review**

All of the design standards have been met. The dormers are consistent with others in the neighborhood and there will be no negative impact on the streetscape.

**Section 5.22.3.b.2 – Exceptions to Floor Area Ratio (FAR) For Residential Units**

**Section 5.43 – Exceptions to Floor Area Ratio for Residential Units**

**Section 5.60 – Side Yard Requirements**

**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>	.75	.66	.88	Special Permit*
<b>FAR Percentage</b>	100%	88%	117%	
<b>Floor Area (sf)</b>	7,543	6,656	8,918	
<b>Side Yard Setback</b>	10'	4'	4'	Special Permit**
<b>Rear Yard Setback</b>	30'	8'	8'	Special Permit**

\* Under **Section 5.22.3.b.2**, the Board of Appeals may grant a special permit for an addition that is less than or equal to 20% above the allowed floor area.

\*\* Under *Section 5.43*, the Board of Appeals may grant a special permit to waive the required setback if a counterbalancing amenity is provided.

**Section 8.02.2 – Alteration or Extension**

A special permit is required for alterations to a dimensionally nonconforming structure.

Mr. Richard stated that the Planning Board was supportive of the proposal to increase the floor area of the dwelling by constructing dormers and finishing the basement area, which is shown in the findings, however the requested relief to finish the basement and attic area is no longer necessary. So, Mr. Richard stated that the Planning Board is supportive of the proposal of the newly revised requested relief to construct the dormers. Mr. Richard stated that the Board feels that this proposal will improve the visual appeal of the dwelling. Mr. Richard stated that the proposal is attractively designed and is not expected to detract from the existing streetscape. Mr. Richard stated that the Planning Board recommends that the applicant install additional landscaping as a counterbalancing amenity. Therefore, the Planning Board recommends approval of the plans by Sutphin Architects, dated 08/21/14, and the site plan by Boston Survey, dated 09/16/13 subject to the following conditions:

1. Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval, after input from the Planning Board.
2. Prior to the issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, including without limitation, the removal of the fire escape, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered 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.

Mr. Richard recommended that the first Condition be amended by deleting the last part providing for input from the Planning Board, because it is no longer applicable.

Zoning Board of Appeals Chairman Geller 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 and will make sure to work with the Petitioner to make sure that the construction complies with Section 9.05.

In deliberation, Zoning Board of Appeals Member Hussey stated that he wanted the record to show that exterior fire escape will be removed, demonstrating part of a counterbalancing amenity. Board Member Hussey also stated that he was in support of the relief requested.

Zoning Board of Appeals Member Book stated support for the relief requested for the enclosed porch and dormers.

Zoning Board of Appeals Chairman Geller stated that he supported the revised request for side yard and rear yard relief from application of Sections 5.60, and 5.70 of the Zoning By-Law pursuant to Sections 5.43 and 9.05. Chairman Geller also clarified once again that the applicant withdrew request for relief under FAR requirements.

The Board then determined, by unanimous vote that the requirements for a special permit from application of the provisions of Sections 5.60, 5.70 and 8.02 pursuant to Sections 5.43, 8.02.2 and 9.05 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, including Mr. Richard's modification to Condition One:

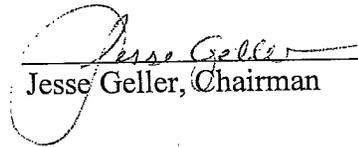
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- 2. Prior to the issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, including without limitation the removal of the fire escape,**

shall be submitted to the Assistant Director of Regulatory Planning for review and approval.

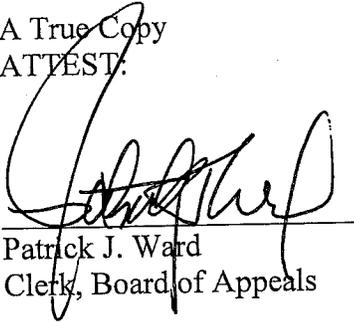
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Unanimous Decision of  
The Board of Appeals

Filing Date: 10/6/14

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:

  
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Patrick J. Ward  
Clerk, Board of Appeals

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