



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0039
**OWNER: MOSHE & VALERIE
HASSAN**

Petitioners, Moshe and Valerie Hassan, applied to the Building Commissioner for prospective relief prior to subdividing his property at **78-80 Bonad Road** into two equal 5000 square foot lots which, if relief were not granted, would result in his current residence becoming non-conforming with respect to the lot size and F.A.R. allowed on the newly formed lot. 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 of the City of Boston and fixed August 14, 2014 at 7:15 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioners, to their attorney 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 24, 2014 and July 31, 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:

80 BONAD RD AND 0 BONAD RD – LEGALIZE LOT AS TWO SEPARATE LOTS, ONE LOT RETAINING THE EXISTING HOUSE AND THE OTHER FOR A NEW HOUSE in an S-7, Single-Family, residential district, on August 14, 2014, at 7:15 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: Scott C. Gladstone; Owner: HASSON MOSHE & VALERIE)

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

- 1. Section 5.01: Lot Area and Yards Required**
- 2. Section 5.10: Minimum Lot Size**
- 3. Section 5.13: Lot Width**
- 4. Section 5.15: Exceptions to Minimum Lot Size and Lot Width Requirements**
- 5. Section 5.20: Floor Area Ratio**
- 6. Section 5.70: Rear Yard Requirements**
- 7. Section 8.02.2: Alteration or Extension**

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.

*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.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing.

Present at the hearing was Chairman Jesse Geller, and Board Members Mark Zuroff and Avi Liss. The case was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200,

Chestnut Hill, Massachusetts 02467. Chairman Jesse Geller called the hearing to order at 7:15 p.m.

At the end of the hearing, at the request of the Petitioners, the Board continued the hearing to November 6, 2014 at 7:00pm in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. In the interim, the Petitioners filed an additional memorandum asserting the application of additional applicable zoning by-laws supporting the relief being requested.

The Building Department issued an amended denial letter.

Notice of the continued hearing was mailed to the Petitioners, to their attorney 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 16, 2014 and October 23, 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:

80 BONAD RD AND 0 BONAD RD – LEGALIZE LOT AS TWO SEPARATE LOTS, ONE LOT RETAINING THE EXISTING HOUSE AND THE OTHER FOR A NEW HOUSE in an S-7, Single-Family, residential district, on November 6, 2014, at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: Scott C. Gladstone; Owner: HASSON MOSHE & VALERIE)

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

- 1. Section 5.10: Minimum Lot Size**
- 2. Section 5.13: Lot Width**
- 3. Section 5.20: Floor Area Ratio**
- 4. Section 5.22: Exceptions to Gross Floor Area (FAR) for Residential Units**
- 5. Section 8.02.2: Alteration or Extension**

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.

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*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing.

Present at the continued hearing was Chairman Jesse Geller, and Board Members Mark Zuroff and Avi Liss. The case was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467. Chairman Jesse Geller called the continued hearing to order at 7:00 p.m.

Attorney Gladstone presented to the Board a background of the property, stating as follows: Historically, the lot at 80-78 Bonad Road had been two separate 5,000 sq. ft. lots, which is reflected in the Assessor's records. Nonetheless, the lots are contiguous and are currently held in the same ownership, thus the lots have merged for purposes of zoning. The Petitioners seek zoning relief in anticipation of sub-dividing the 10,000 square foot lot into two 5,000 sq. ft. lots. The resulting lots would be less than the 7,000 sq. ft. minimum lot size required for the S-7 district, so a special permit is required to allow the undersized lots. The existing home sits on what would become the 80 Bonad Rd side of the proposed subdivided lots. The other lot, which will be known as 78 Bonad, is undeveloped and has a small portion lying within the City of Boston.

Mr. Gladstone explained that, once divided, the existing house, which is sited on the proposed 80 Bonad Road lot, would then becoming non-conforming by virtue of having exceeded the F.A.R. limit (on the current combined lot the house is in compliance with F.A.R. requirements). Mr. Gladstone explained that, as part of this proposal, the Petitioners intend to remove the existing garage on 80 Bonad Road. Other than that, there are to be no changes to the existing home.

Mr. Gladstone stated as follows:

Under Table 5.01, lots in an S-7 zone are required to have a minimum lot size of 7,000 square feet and a minimum width of 65 feet. The proposed lots at 78 and 80 Bonad each will have 5,000 square feet (including the Boston area of 78 Bonad) and will be 50 feet wide. Re-platting the combined 10,000 square foot lot into conforming lots is not possible but the 5,000 square foot lots may be permitted by Special Permit pursuant to **Section 5.15.2** of the Zoning By-Law provided the following conditions are met:

- a. The yard requirements are observed; and
- b. The lot size or width is not less than three-fourths of the requirement specified in Table 5.01 unless more than half of the frontage on the same side of the same street in the same block is already built up with such lesser lot sizes or lot widths.

Mr. Gladstone stated that the subdivided parcels will conform to the requirements for open and landscaped open space and there was no other denial on the basis of any other requirements of **Table 5.01** of the Zoning By-Law. He further stated that the 5,000 square feet lots are less than 3/4 of the required lot size in Table 5.01 , but exceed 3/4 of the required lot width in **Table 5.01** of the Zoning By-Law

Mr. Gladstone also explained that the two proposed lots satisfy the alternative requirement of **Section 5.15.2.b** of the Zoning By-Law in that more than half of the frontage on

the same side of the same street in the same block is already built up with such lesser lot sizes and lot widths. In fact all of the houses on the block on the same side of the street are on lots of 5,000 square foot or less and with lot widths of 50 feet or less: 436 VFW Parkway – 4990 sq. ft. and having a lot width of 38.48 ft.; 88 Bond Road – 5000 sq. ft. and having a lot width of 50 ft.; and 84 Bonad Road – 5000 sq. ft. and having a lot width of 50 ft.

With respect to F.A.R., Mr. Gladstone explained the issue as follows:

In an S-7 District, the Floor Are Ratio requirement is .35. The proposed 5,000 sq. ft. lot, thus, has a maximum F.A.R. 1,750 sq. ft. The existing home at 80 Bonad Road (not including the garage (which will be demolished as part of the sub-division plan) has a gross floor area of 2,208 (see Plan by Alpha Omega Engineering, Inc. dated May 8, 2014 (“Plan”)).

Mr. Gladstone argued that relief from the requirements of **Section 5.20** of the Zoning By-Law is available by Special Permit pursuant to **Section 5.22.3.** of the Zoning By-Law noting as follows: An F.A.R. of 35%, on the 5000 sq. ft. lot, yields allowed gross floor area of 1750 sq. ft. The current house is 2208 sq. ft. (see Plan). There was an addition in 1990 that converted a pre-existing bump-out and extended it, resulting in an expansion of 153 square feet of living area. Mr. Gladstone argued that Special Permit Relief is available under both **Section 5.22.3.b.1.a** of the Zoning By-Law and **Section 5.22.3.c** of the Zoning By-Law.

Mr. Gladstone went on to explain that the proposal satisfied all of the Special Permit standards under **Section 9.05** of the Zoning By-Law as follows:

- a. The site is an appropriate location for such a use, structure, or condition: The pre-existing home will remain on a lot consistent in size with the other lots on the street.
- b. For the reason set forth above, the proposed use will not adversely affect the neighborhood. Moreover, by permitting the subdivision, which triggers the need for the special permits, the Petitioners would be able to afford to stay in their home by selling the other lot as a buildable or improved lot, avoiding the

threat of a developer purchasing the current combined lot and building a large home out of scale with the rest of the neighborhood as of right.

- c. There will be no nuisance or serious hazard to vehicles or pedestrians since the use of the current house is not changing or becoming more intense as a result of this change.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. There will be no change to the current use. If a new single family home is built on 78 Bonad Road, it will be new construction built in accordance with all applicable standards of the Building Code and Town regulations.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people as this is not a change or intensification of a current use.

Special Permit relief under Section 5.22 of the Zoning By-Law necessitates design review under Section 5.09 of the Zoning By-Law. To that end, Mr. Gladstone presented the Board with photo-shopped pictures of the proposed lots with the existing garage taken down.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in favor of the 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.

At the first hearing, the abutter on the Boston side of the proposed 78 Bonad Road lot expressed concern that any new construction should respect the setback from his property line.

Zoning Board of Appeals Chairman Geller called upon Timothy Richard, Planner for the Town of Brookline, to deliver the findings of the Planning Board. Mr. Richard responded that the Planning Board was supportive of granting the Petitioners' requests if it is found that the standards for special permit relief has been met. Mr. Richard continued

that the Planning Board recommended approval of the plans by Alpha Omega Engineering, Inc., dated 5/8/2014, subject to the following conditions:

1. Prior to the issuance of a building permit for a new house at 78 Bonad Road, the applicant shall submit a final site and landscaping plan for the lot subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit for a new house at 78 Bonad Road, the applicant shall submit final elevations and floor plans, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit for a new house at 78 Bonad Road, 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, and 2) final elevations and floor plans stamped by a registered architect and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Mr. Richard to deliver the comments of the Building Department. Mr. Richard reported that Chief Building Inspector Michael Yanovitch was supportive of the proposal and stated that he, or his office, would work with the Petitioners to ensure that the house to be built on the proposed 78 Bonad Road lot would be in compliance with the Zoning By-Law and the Building Code.

In deliberations, Board Chairman Geller asked Attorney Gladstone if the lot had yet been legally subdivided and Mr. Gladstone responded that it had not, specifically because this relief was being sought as a pre-requisite to subdividing the lot. Zoning Board of Appeals Chairman Jesse Geller expressed his belief that while the proposal did not meet the requirements for a variance, he believed that the requested relief was available by Special Permit.

Member Mark Zuroff noted that, since the combined lot had not yet been subdivided, the Petitioners were seeking prospective relief in order to avoid creating a non-conformity as a result of the sub-division. Board Member Zuroff suggested that it be a condition that no building permit for any new construction be granted until the Petitioners demonstrate legal subdivision of the lot. He further suggested that no building permit be issued until the garage is torn down.

The Board of Appeals then determined by unanimous vote that the requirements for a Special Permit from application of the provisions of **Sections 5.10; 5.09; 5.13; 5.20; and 8.02.2** pursuant to **Sections 5.22** and **9.05** of the Zoning By-Law have been met. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site in 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 of Appeals voted unanimously to grant the requested relief subject to the following conditions:

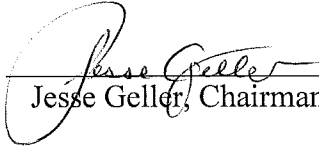
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Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor, and 2) final elevations and floor plans stamped by a registered architect and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

4. Prior to the issuance of a building permit for the new house at 78 Bonad Road, the applicant shall submit to the Building Commissioner the Planning Board's Approval of an Approval Not Required subdivision plan.
5. Prior to the issuance of a building permit for the new house at 78 Bonad Road, the applicant shall obtain a demolition permit and then show proof of removal of the garage attached to the current building at 80 Bonad Road.

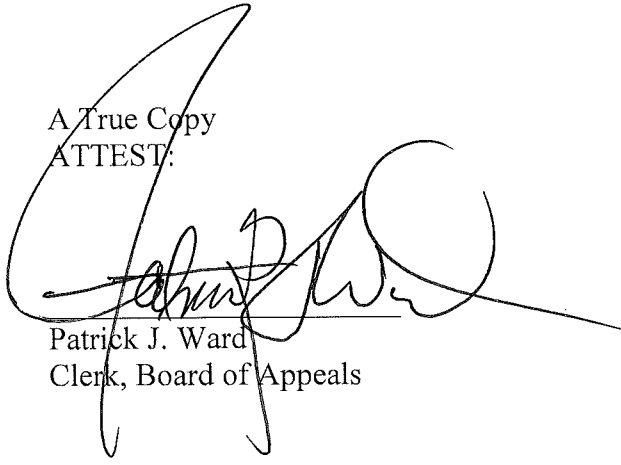
Unanimous Decision of
The Board of Appeals

Filing Date: 12/2/14



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

2014 DEC -2 P 4:02

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