



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st 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. 2014-0059
DAVID SHEENA

Petitioner, David Sheena, applied to the Building Commissioner for permission to construct a single story addition off the first floor dining room. 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 November 13, 2014 at 7:30p.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 October 23, 2014 and October 30, 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:

**200 FISHER AVE – SINGLE STORY ADDITION in an S-25, Single-Family residential district,
on**

November 13, 2014, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: SHEENA DAVID; Owner: SHEENA DAVID) – Precinct 14

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.c; Exceptions to Floor Area Ratio for Residential Units**
- 3. Section 5.43; Exceptions to Yard and Setback Regulations**
- 4. Section 5.50; Front Yard Requirements**
- 5. 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.

*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
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 Jesse Geller and Board Members Christopher Hussey and Mark Zuroff. 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 were David and Marlene Sheena and architect Barney Berliner, 265 Saint Paul Street, Brookline, MA 02446.

Chairman Jesse Geller called the hearing to order at 7:15 p.m. Attorney Allen stated that the Petitioner proposes to construct a modest 289 s.f. single story addition to the first floor dining room.

Attorney Allen presented to the Board a background of the Petitioner and the proposal, stating the following: 200 Fisher Avenue was built in 1949 with frontage on Buckminster Road and Fisher

Avenue in the S-25 District; the living room is technically located in the front yard setback, adjacent to the driveway entrance on Buckminster Road; the purpose of the proposal is to make the dining room functional and proportionate to the first floor living areas; and the clapboard addition will have a flat annexed roof and false balcony similar to additions to neighboring homes in the immediate area. Attorney Allen noted that the addition will be predominantly visible from Buckminster Road.

Mr. Allen stated that the Planning Board voted unanimously in support of the proposal. Mr. Allen noted that the Planning Board approved the building materials and did not expect the addition to have any shadow impact on neighboring properties.

Attorney Allen stated the allowed floor area is 4,548 s.f., existing floor area 4,732 s.f., and proposed floor area 5,021 s.f. He observed that the 6% increase in floor area is modest and will increase the total floor area ratio to 111%. Attorney Allen stated that under **Section 5.22.3.c** of the Zoning By-Law, the Board of Appeals may grant special permit relief if the increase in floor area is less than 350 s.f. and the resulting gross floor area of the structure is not more than 150% of the allowed gross floor area. Mr. Allen commented that the proposal satisfied both requirements.

Mr. Allen stated that the existing front yard setback is preexisting non-conforming (the allowed front yard setback is 30 ft., existing front yard setback 29.5 ft., and proposed front yard setback 12.5 ft.) and the proposal will increase the non-conformity by reducing the setback 17 ft. but under **Section 5.43** of the Zoning By-Law, the Board of Appeals may waive the front yard setback requirement if counterbalancing amenities are provided. Mr. Allen stated that the Petitioner is prepared to landscape the property by planting shrubs along the property line on Buckminster Road to screen the addition as the proposed counterbalancing amenities under **Section 5.43** of the Zoning By-Law.

Finally, Mr. Allen noted that relief is required pursuant to **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 a

non-conforming structure. Mr. Allen then commented that the proposed relief meets the requirements of said **Section 9.05** as follows: (1) the specific site is an appropriate location where there are similar additions with a flat roof and false balcony located at 42, 169, 255, and 266 Fisher Avenue; (2) there will be no adverse effect on the neighborhood where eleven abutters signed letters in support of the Petitioner’s proposal; (3) there will be no nuisance or serious hazard to vehicles or pedestrians; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) the development will have no effect on the supply on housing available for low and moderate income people.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. Mordecai Danesh, 156 Dean Road, Brookline, MA 02445, spoke in favor of the proposal.

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

John Rosa, Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

1. **Section 5.09.2.j – Design Review:** Any exterior addition for which a special permit is requested pursuant to *Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations)* requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:
 - b. Relation of Buildings to Environment – The proposed addition is not expected to have significant shadow impacts on neighboring properties.
 - c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed addition has different materials used for siding than the dwelling. The dwelling has brick siding and the proposed addition will have clapboard siding, which is a common and complementary style.
2. **Section 5.22.3.c – Exceptions to Floor Area Ratio for Residential Units**

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	0.20 100%	0.21 105%	0.22 111%	Special Permit*
Floor Area (s.f.)	4,548	4,732	5,021	

*Under *Section 5.22.3.c*, the Board of Appeals may allow by special permit increases in gross floor area of up to 350 square feet, provided that the resulting gross floor area is not more than 150% of the allowed gross floor area.

3. Section 5.43 – Exceptions to Yard and Setback Regulations

4. Section 5.50 – Front Yard Requirements

	Required	Existing	Proposed	Finding
Front Yard Setback	30'	29.5'	12.5'	Special Permit*

*Under *Section 5.43*, the Board of Appeals may allow by special permit alternate dimensions for setback and yard requirements if counterbalancing amenities are provided.

5. Section 5.43 – Exceptions to Yard and Setback Regulations

6. Section 5.50 – Front Yard Requirements

7. Section 8.02.2 – Alteration or Extension

A special permit is required to alter a non-conforming structure.

Mr. Rosa stated that the Planning Board is supportive of the proposal to construct a single story addition in the front yard setback of the dwelling along Buckminster Road. Mr. Rosa further stated that the Planning Board felt the design of the addition would look attractive because the clapboard style would complement the colonial brick home and that the proposal will be screened from the streetscape by the existing vegetation in the front of the property. Mr. Rosa added that the Planning Board would like the applicant to install additional landscaping as a counterbalancing amenity, which is required for the requested special permit relief. Therefore, the Planning Board recommended approval of the plans by Barnett B. Berliner, dated 11/06/14, subject to the following conditions:

1. Prior to issuance of a building permit, final plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, a final landscaping plan shall be submitted, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to 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 floor plans and 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.

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. Mr. Yanovitch stated that if the Board grants special permit relief, he will work with the Petitioner to ensure the proposal is built in accordance with the Building Code.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Zoning Board of Appeals Member Christopher Hussey stated that he was in support of the relief requested. Mr. Hussey stated that the proposed addition is simple and attractive. Zoning Board of Appeals Member Mark Zuroff echoed support for the relief requested. Zoning Board of Appeals Chairman Jesse Geller stated that the proposed landscaping design meets the requirements of **Section 5.43** of the Zoning By-Law. Chairman Geller stated support where the proposal meets the 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 the application of the provisions of **Sections 5.09.2.j, 5.20, 5.50** of the Zoning By-Law pursuant to **Sections 5.43, 5.22.3.c, 8.02.2** and **9.05** 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 revised conditions:

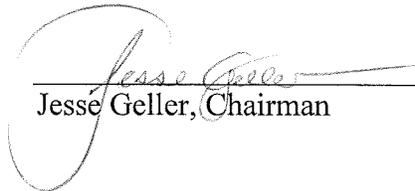
1. Prior to issuance of a building permit, final plans and elevations shall be submitted, subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to issuance of a building permit, a final landscaping plan shall be submitted indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.

3. Prior to 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 floor plans and 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.

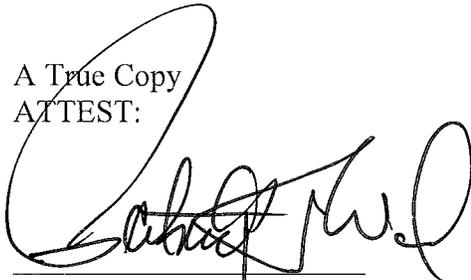
Unanimous Decision of
The Board of Appeals

Filing Date: 12/9/14



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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TOWN OF BROOKLINE
TOWN CLERK
2014 DEC - 9 A 9:22