



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. 2014-0078
OWNER: MARK & SUSAN IRVINGS

Petitioners, Mark and Susan Irvings, applied to the Building Commissioner for permission to legalize an existing uncovered deck requiring side-yard setback relief at 24 Elba Street. The legalization request was taken to this Board for deliberation.

The Board administratively determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed March 5, 2015 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the legalization request. Notice of the hearing was mailed to the Petitioner, 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 February 12, 2015 and February 19, 2015 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:

24 ELBA ST – LEGALIZE EXISTING DECK IN VIOLATION OF SIDE-YARD SETBACK REQUIREMENTS in an S-7, Single-Family, residential district, on **March 5, 2015, at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: IRVINGS, TRS MARK L & SUSAN P; Owner: IRVINGS, TRS MARK L & SUSAN P) Precinct 8**

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

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.60: Side Yard Requirements**

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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@brooklinema.gov.*

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: February 12, 2015 & February 19, 2015

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Board Chairman Jesse Geller, and Board Members Jonathan Book and Christopher Hussey. Property owner Mark Irvings presented details of the legalization request to the Board.

Mr. Irvings stated that he and his wife have lived at 24 Elba Street since 1977. In 2013, Mr. Irvings applied for, and was granted, a building permit to extend a side-yard deck that has existed for approximately 30 years. The deck was extended to the south, and did not result in

any reduction of the existing side-yard setback. The submission of an as-built site plan following construction was established as a condition of this building permit. The certified site plan revealed that the existing uncovered deck is located 5.2 feet from the property line. This distance does not comply with the side-yard setback requirement of six feet, and requires retroactive special permit relief.

Mr. Irvings stated that the deck is nine inches beyond setback compliance, the abutting property owner at 50 Crowninshield Road supports this retroactive relief, and existing arborvitae between these properties serves as a screening measure to maintain privacy. Additionally, Mr. Irvings determined that this retroactive special permit relief is preferable to him than incurring the cost of moving the deck.

Board Member Jonathan Book requested that the applicant describe counterbalancing amenities that will be provided in seeking this retroactive relief. Mr. Irvings stated that there is minimal space to install new landscaping along the property line in question, but he will work with the abutting property owner to provide appropriate landscaped screening as a counterbalancing amenity.

Board Chairman Jesse Geller called for any public comment in favor of, or in opposition to, the applicant’s proposal. No members of the public wished to comment.

Mr. Geller requested that Zoning Coordinator Jay Rosa deliver the opinions of the Planning Board and Building Department:

Findings

Section 5.43: Exceptions to Yard and Setback Regulations

Section 5.60: Side-Yard Requirements

Dimensional Requirements	Required	Existing	Proposed	Finding
Side-Yard Setback (Uncovered Porch)	6’	5.2’	5.2’	Special Permit *

** Under Section 5.43, the Board of Appeals may waive dimensional requirements in lieu of other dimensions if the applicant provides counterbalancing amenities.*

Mr. Rosa stated that the Planning Board unanimously supported this request to legalize the existing deck. The deck design is appropriate for this location and neighbors are largely supportive. Additionally, the applicant self-reported this non-compliance and has worked responsibly with both the Building Department and Planning Department to comply with zoning regulations.

Therefore, the Planning Board recommended approval of the site plan submitted by Everett M. Brooks Co., dated 10/27/2014, subject to the following conditions:

1. The applicant shall submit final site and landscaping plans, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. The applicant shall submit to the Building Commissioner to ensure compliance to the Board of Appeals Decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa, reporting on behalf of the Building Department, noted that the Building Department has no objection to the applicant's request, and suggested that this retroactive special permit relief is the most appropriate strategy to legalize the existing deck.

The Board deliberated on the merits of special permit relief as requested. Board Members were satisfied that appropriate counterbalancing amenities are proposed. Board Member Christopher Hussey requested that subsection 1 of Condition #2 be removed because the applicant already submitted a certified site plan to the Building Commissioner upon completion of the deck extension. Mr. Geller requested that standard language regarding counterbalancing amenities be included in Condition #1.

The then Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 5.43** and **9.05** of the Zoning By-law, granting relief from application of the provisions of **Section 5.60** of the Zoning By-Law. The Board made the following specific findings pursuant to the aforementioned **Section 9.05** of the Zoning By-law:

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- 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. The applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. The applicant shall submit to the Building Commissioner for review and approval to ensure compliance to the Board of Appeals Decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous decision of the

Board of Appeals

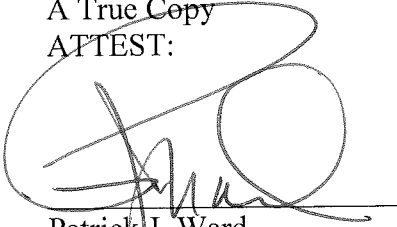
Filing Date:

2/31/15



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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