



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0060
GERRY AND JOHANNA DWYER
118 YORK TERRACE, BROOKLINE, MA

Petitioners, Gerry and Johanna Dwyer, applied to the Building Commissioner for permission to construct a 165 s.f. second-story addition above the sunroom. 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 January 28, 2016 at 7:05 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 Petitioners, 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 January 14, 2016 and January 21, 2016 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:

118 YORK TER – CONSTRUCT SECOND STORY ADDITION ABOVE SUNROOM in an SC-7, Single-Family and Converted for Two-Family, residential district, on

January 28, 2016, at 7:05 PM in 6th Floor Selectmen's Hearing Room (Petitioner/Owner: DWYER GERALD & JOHANNA) Precinct 11

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.09.2.j: Design Review**
- 2. Section 5.43: Exceptions to Yard and Setback Regulations**
- 3. Section 5.50: Front Yard Requirements**
- 4. Section 5.22.3.b.1.b: Exceptions to Maximum Floor Area Ratio (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.

*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 Christopher Hussey and Johanna Schneider. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the Petitioner Gerry Dwyer and the Petitioners architect, Stephen Sousa, Sousa Design Architects, 81 Boylston St, Brookline, MA 02445.

Chairman Geller called the hearing to order at 7:05 p.m. Attorney Allen stated that the property at 118 York Terrace includes a two-and-a-half story single-family dwelling located in a moderately dense residential neighborhood. Mr. Allen stated that the structure is located on a corner lot at the intersection of York Terrace and Lancaster Terrace. He noted that the configuration of the lot creates

two front yards, but the primary entrance faces York Terrace. Attorney Allen confirmed that a detached two-car garage is located on the southeast portion of the lot facing Lancaster Terrace.

Stephen Sousa, Sousa Design Architects, stated that the Petitioners propose to reconstruct the existing single-story sunroom and construct a new 165 s.f. second-story addition. Mr. Sousa stated that the new addition will not alter the existing footprint of the structure.

Chairman Geller noted discrepancies between the Petitioners' submitted gross floor area calculation and calculations included in the submitted Planning Board report. Mr. Sousa confirmed that the gross floor area will increase from 2,516 s.f. to 2,681 s.f., with a floor area ratio increase from 0.37 to 0.39.

Attorney Allen stated that the Petitioners request relief from **Section 5.22.3.b.1.b** to increase the floor area from 2,516 s.f. (FAR 106%) to 2,681 s.f. (113%), **Section 5.09.2.j** for design review of the exterior addition, **Section 5.50** for the pre-existing non-conforming front yard setbacks on York Terrace and Lancaster Terrace, and **Section 8.02.2** of the Zoning By-Law to extend the existing non-conforming front yard setbacks.

Attorney Allen stated that the Planning Board voted unanimously in support of this proposal. He stated that the Board of Appeals may grant special permit relief for an exterior addition up to 120% of the maximum FAR requirement if design review standards are satisfied. Mr. Allen stated that the Planning Board was supportive of the design and reiterated that the Petitioners seek relief for a modest 165 s.f. addition.

Attorney Allen discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location in the SC-7 District and the footprint of the building will remain unchanged; (2) there will be no adverse effect on the neighborhood where more than 8 immediate abutters have signed letters of support and the floor area is well under the special permit maximum of 120%; (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 proposed use; and (5) the development will have no effect on the supply on housing available for low and moderate income people.

Finally, Mr. Allen discussed relief under **Section 5.43** of the Zoning By-Law, where the Board of Appeals may waive the front-yard setback requirement if a counterbalancing amenity is provided. He stated that the Petitioners agree to provide landscaping in the manner shown on a landscaping plan submitted to the Assistant Director of Regulatory Planning for approval.

Zoning Board of Appeals Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner’s proposal. No members of the public commented.

Jay Rosa, Zoning 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:
 - a. Preservation of Trees and Landscape – Since the addition is within the building’s existing footprint, no landscaping will be removed.
 - c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The addition will have a consistent appearance throughout and is attractively designed, and should look appropriate from the street.

2. **Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio**

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 100%	.37 106%	.39 113%	Special Permit*
Floor Area (s.f.)	2,375 s.f.	2,516 s.f.	2,681	

* Under *Section 5.22.3.b.1.b*, the Board of Appeals may grant a special permit to allow an addition up to 120% of the maximum FAR requirement. This proposal is below that limit.

3. **Section 5.50 – Front Yard Setback**

Front Yard	Required	Existing	Proposed	Relief
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York Terrace	20'	10.7'	10.7'	Special Permit*
Lancaster Terrace	20'	13.4'	13.4'	

*Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

4. **Section 8.02.2 – Alteration or Extension:** A special permit is required to alter a pre-existing non-conforming structure or use.

Mr. Rosa stated that the Planning Board unanimously supported the proposed side addition above the existing sunroom. He stated that the footprint of the structure will not be altered and requested FAR relief represents a modest extension of the pre-existing nonconforming floor area. He stated that the Planning Board supported the design of the addition but noted that proposed front and side elevations were inconsistent in terms of the window alignment. He noted that the Planning Board suggested that the Petitioner consider reducing the size of addition and sunroom windows to better match the existing home. Mr. Rosa confirmed that the Board also requested that the applicant come back before the Planning Board to review the suggested modifications. Therefore, the Planning Board recommended approval of the plans by Sousa Design, dated 11/03/2015 and revised 11/16/2015, and the site plan by David Dwyer, dated 12/7/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and corrected elevations subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
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 building elevations and floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Geller requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department has no

objection to the relief as requested. He stated that under **Section 5.22**, the Zoning By-Law specifically allows for projects of this nature and agreed that the Petitioners are not maximizing the FAR flexibility that is provided by this By-Law. Mr. Yanovitch stated support for the design of the exterior addition and confirmed that the Building Department will work with the Petitioners to ensure compliance with all imposed conditions and building codes if necessary relief is granted by the Board.

Board Member Hussey supported the Petitioners' request for special permit relief. Mr. Hussey stated that the proposed addition is minor and creates an attractive study area. Mr. Hussey also supported the Planning Board's design review findings.

Board Member Schneider concurred with these comments and stated that the modest addition appropriately satisfies the standards for special permit relief under **Section 9.05** of the Zoning By-Law.

Chairman Geller concurred and supported the Petitioners' proposal and the relief as requested. Mr. Geller reiterated that the Petitioners should submit a revised zoning table to the Building Department detailing final existing and proposed floor area calculations.

The Board then determined, by unanimous vote that the requirements for a special permit for **Sections 5.09.2.j, 5.22.3.b.1.b, and 5.50** of the Zoning By-Law pursuant to **Sections 5.22, 5.43, 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.
- e. Development will not have any effect on the supply of housing available for low and moderate income people.

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

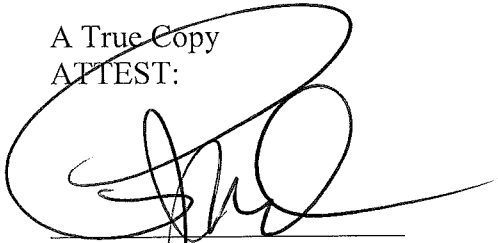
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3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans 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: 3/8/16


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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