



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

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0069
STEVE LUBY & KRISTINE KACZOR
40 NORFOLK ROAD, BROOKLINE, MA

Petitioners, Steve Luby and Kristine Kaczor, applied to the Building Commissioner for permission to move the existing carriage house and construct a two-story addition connecting the carriage house to the existing single-family dwelling. 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 February 11, 2016 at 7:15 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 28, 2016 and February 4, 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:

40 NORFOLK RD – MOVE EXISTING GARAGE AND CONSTRUCT AN ADDITION ATTACHING THE SINGLE-FAMILY DWELLING TO THE GARAGE, in an S-10, Single-Family, residential district, on February 11, 2016, at 7:15 PM in the 6th Floor Selectmen’s Hearing Room (Petitioners/Owner: LUBY STEVEN C KACZOR KRISTINE L) *Precinct 13*

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 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.70: Rear Yard Requirements**
- 3. Section 8.02.2: Alteration or Extension**
- 4. Any additional relief the Board finds necessary**

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 Avi Liss and Board Members Christopher Hussey and Kate Poverman. 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 Stephen Luby and the Petitioners’ architect, Kent Duckham, Duckham Architecture & Interiors, 53 Central Avenue, Needham, MA 02494.

Attorney Allen stated that the Petitioners purchased this double lot within the last year and worked with the Preservation Commission to redesign the carriage house and main house because the property is located within the Chestnut Hill North Local Historic District. Mr. Allen stated that these plans were approved by the Preservation Commission on December 8, 2015. These plans show the

proposed relocation of the carriage house away from southeastern lot line and the 1.5 story addition connecting the carriage house to the primary structure. Attorney Allen stated that the Preservation Commission often does not support attached carriage houses but the Commissioners appreciated the Petitioners' willingness to significantly renovate and restore the structure with a clear attention to historic detail.

Attorney Allen stated that the Building Department interprets the lot line in question to be a rear yard due to a private way that provides access to the rear of the property known as "Circuit Road Extension." Mr. Allen further stated that the relocation of the carriage house away from the lot line actually improves the non-conforming condition.

Project Architect Kent Duckham, 53 Central Street, Needham, MA, reviewed the existing condition of the property and highlighted how proposed alterations to both the carriage house and main house will impact rear and side yard setbacks. Mr. Duckham stated that the garage was constructed on piers and wooden floors sometime around 1905. He stated that the current condition of the foundation is poor and will be reinforced to better support vehicular storage. Mr. Duckham stated that the Preservation Commission strongly encouraged that any alterations maintain the spatial relationship between these two structures, thus requiring the span of the proposed addition in order to physically connect the single-family dwelling to the carriage house.

Chairman Liss questioned whether the carriage house would be considered an attached structure following proposed work. He also questioned if the rear portion of the carriage house was the only portion of the structure triggering the need for setback relief.

The Petitioners provided a rendering of the project to the Board. Mr. Luby confirmed that the proposal will create an attached carriage house and that only the rear portion of the carriage house requires rear yard setback relief.

Board Member Hussey questioned if second floor office space included on submitted floor plans will exclusively be used as a personal home office. Mr. Luby stated that the office is intended for personal use.

Attorney Allen stated that the Petitioners requests relief for the pre-existing, non-conforming rear-yard setback under **Section 5.70** of the Zoning By-Law. Mr. Allen stated that special permit relief may be granted pursuant to **Section 5.43** of the Zoning By-Law if a counterbalancing amenity is provided. He submitted a landscaping plan by Blair Hines Design Associates and specifically noted that existing trees along the rear lot line in question will be maintained and enhanced by modest new plantings. Mr. Allen highlighted the fact that the size of the double lot itself, along with vegetative screening, minimizes the impact of this project on abutting residents on Norfolk Road and Circuit Road Extension.

Attorney Allen discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location where the Preservation Commission approved this location and immediate abutters at 30 Norfolk Road and 52 Norfolk Road had similar proposals approved by Preservation; (2) there will be no adverse effect on the neighborhood where attached garages are common in the Chestnut Hill North Local Historic District (6, 37, 52, 55, 76 and 91 Norfolk Road have attached garages) and all immediate abutters support the proposal; (3) the Petitioners will eliminate the existing nuisance/ hazard to vehicles and pedestrians by rehabilitating the structure, reinforcing the rotted floors, re-pouring the foundation, and replacing the windows (in-kind) in order to bring this property up to building code; (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.

Chairman Liss called for public comment in favor of, or in opposition to the Petitioners' 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 5.43** – Exceptions to Yard and Setback Regulations
2. **Section 5.70** – Rear Yard Setback

Dimensional Requirements	Required	Existing	Proposed	Relief
Rear Yard Setback	30'	Garage: 4.4' Dwelling: 17.4'	10.5' to the addition	Special Permit*

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

3. **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 relocation of the carriage house. He stated that the Petitioners worked extensively with the Preservation Commission to design an addition that complemented the existing historic structure while also improving functionality for the property owner. He stated that the Planning Board recommended that existing trees along the rear lot line in question be preserved and enhanced by new landscaping features. Therefore, the Planning Board recommended approval of the site plan by Everett M. Brooks, dated 12/16/2015, and the plans by Duckham Architecture & Interiors, last dated 12/1/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations subject to the review and approval of the Preservation Commission staff and the Assistant Director of Regulatory Planning.
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 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-Liss~~ requested that Jay Rosa deliver the findings of the Building Department. Mr. Rosa stated that the requested setback relief represents an alteration to the pre-existing non-conforming rear yard setback under Section 8.02.2 of the Zoning By-Law. Mr. Rosa acknowledged that the subject property is somewhat unique because the southeastern lot line is partially interpreted to be a rear yard due to the private way accessing the property from Circuit Road thus requiring a 30 foot setback in this immediate area as opposed to a 10 foot side yard setback as required by the S-10 (Single-Family) District. Mr. Rosa confirmed that should the Board of Appeals find that the requirements for a special permit are met, the Building Department has no objection to the relief as requested and will work with the Petitioners to ensure compliance.

Board Member Poverman expressed concern that the attached carriage house and finished space could be converted to create an in-law apartment or separate dwelling unit. Ms. Poverman questioned why the new addition connecting the primary structure to the carriage house is two stories rather than one.

Attorney Allen stated that the Petitioners intends to use the addition and space above the garage for "casual space" and or a game room. He stated that any future conversion to an in-law apartment would require a variance from the Board of Appeals.

Mr. Luby further stated that the majority of the interior space of the existing home is historic and "formal." He stated that Living space above the garage is an opportunity to incorporate more recreation space for his family. Mr. Luby noted that much of the design of the addition was driven by Preservation Commission recommendations, specifically to maintain the spatial relationship between these structures and incorporate an addition that complements the character of the existing historic structure.

Board Member Poverman was satisfied that the scope of the proposed addition results from the goal to maintain the historic quality of the property as much as possible rather than potential use conversions that may not be permitted within a single-family district.

Board Member Hussey stated support for the Petitioners' proposal and believed that the standards for the grant of a special permit are met in accordance with Section 9.05 of the Zoning By-Law.

Chairman Liss concurred with these comments and recognized the Petitioners' collaboration with the Preservation Commission in reaching this design. Mr. Liss agreed that preservation related goals have dictated the proposed alteration and the resulting 10.5 feet rear yard setback is an improvement from the existing 4.4 foot setback from a zoning standpoint.

The Board then determined, by unanimous vote that the requirements for a special permit for Sections 5.70 of the Zoning By-Law pursuant to, 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:

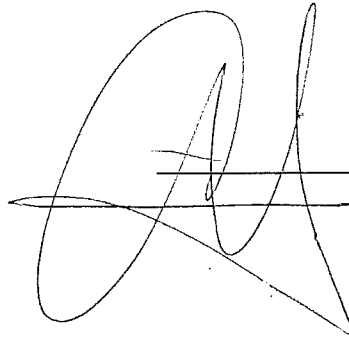
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TOWN CLERK

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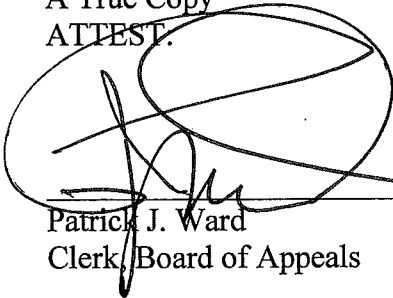
Unanimous Decision of
The Board of Appeals

Avi Liss, Chairman
Filing Date: 3/11/16



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A True Copy
ATTEST.



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Patrick J. Ward
Clerk, Board of Appeals