



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0040
BRETT BENTSON & EMILY CASE
171 HIGH STREET, BROOKLINE, MA

Petitioners, Brett Bentson and Emily Case, applied to the Building Commissioner for permission to construct a two-story rear addition. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed December 17, 2015 at 7:00 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 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 December 3, 2015 & December 10, 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:

171 HIGH ST – CONSTRUCT A TWO-STORY REAR ADDITION in an M-1.0, Apartment House, zoning district, on December 17, 2015, at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: BRETT BENTSON and EMILY CASE) *Precinct 5*

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

- 1. Section 5.01: Table of Use Regulations, Footnote 2**
- 2. Section 5.10: Minimum Lot Size (Pre-Existing)**
- 3. Section 5.13: Minimum Lot Width (Pre-Existing)**
- 4. Section 5.43: Exceptions to Yard and Setback Regulations**
- 5. Section 5.60: Side Yard Requirements**
- 6. 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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Jonathan Book and Kate Poverman. Zoning Coordinator Jay Rosa was present on behalf of the Planning and Building Departments. 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 were the Petitioners, Brett Bentson and Emily Case. Mr. Allen stated that Brett Bentson is also the architect.

Chairman Zuroff called the hearing to order at 7:00 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the Petitioners recently purchased the subject property because they were attracted to the neighborhood, area schools, and available public space. Mr. Allen stated that the Petitioners have a young family and they wish to expand the living area provided by the current structure. Mr. Allen also stated that the attached single-family home is in extreme disrepair due to interior water damage and that a full interior gut-renovation is required.

Attorney Allen further stated that the Petitioners propose to construct a two-story rear addition that will create 391 s.f. of gross floor area. He stated that the living room/kitchen will be extended and a new master bedroom will be located on the second floor. Mr. Allen noted that this is a modest floor area increase that will result in more usable living space. Attorney Allen recognized that the subject lot and surrounding neighborhood is dense before noting that the current proposal is a "bare bones" intended to mitigate the impact on the adjacent abutters as much as possible. Attorney Allen stated that the Petitioners have reached out to abutting residents regarding the proposed addition on several occasions. Mr. Allen stated that the Planning Board unanimously supported the current plans.

Brett Bentson reiterated the fact that his family was attracted to this property because of its affordability and access to Brookline amenities. Mr. Bentson stated that water damage has rendered the property uninhabitable. Mr. Bentson stated that he considered a variety of options to expand living space and incorporated recommendations from abutting residents as well as the Planning Board. Mr. Bentson felt that the location of the addition at the rear of the existing home is consistent with adjacent structures. Additionally, Mr. Bentson stated that he preferred an addition rather than dormers because he wanted to avoid placing additional strain on an old structure that may already be experiencing load bearing issues. Mr. Bentson stated a preference to maintain the bedrooms on the second floor as opposed to using attic space for the master bedroom so that he could be on the

same floor as the childrens' bedrooms.. He noted that the proposal includes expanded storage areas and new skylights.

Mr. Bentson specifically noted design changes based on initial Planning Board feedback. Mr. Bentson stated that the footprint of the addition is approximately 12 ft. x 13 ft. He stated that the height of the addition was reduced by 3 ft. Additionally, he noted that the height of the privacy screening surrounding the exterior rear porch was reduced on the northeast side. Mr. Bentson presented a shadow study that highlighted the effect that the proposed addition will have on the abutting property at 165-167 High Street. Mr. Bentson produced this study in response to abutter concern regarding the loss of natural light that may occur if the addition is constructed. Mr. Bentson explained that very little additional shading will occur during summer months. He stated that shadows during the fall, winter, and spring will change, but the additional shading will be short in duration and not significantly more impactful than existing shadows produced by area trees and abutting structures.

Board Member Kate Poverman questioned whether the Petitioners intend to convert the basement into living space. Mr. Bentson stated that this is not permitted under the building code because the headroom is less than 7 ft. and has limited functionality. Furthermore, he noted that there is a propensity for continued water damage.

Board Member Book inquired about the side yard setback requirements and questioned if the footprint of the proposed addition could be moved in an effort to minimize visual/shading impact. Attorney Allen stated that the required side yard setback along the shared lot line with 173 High Street is 0 ft. and the required setback along the shared lot line with 165-167 High Street is 10 ft. Attorney Allen stated that due to the preexisting non-conforming conditions of the lot, the 10 ft. setback cannot be achieved. Mr. Allen stated that, in theory, the addition could take more

advantage of the 0 ft. setback requirements, but the Petitioners would like to maintain a green-space buffer for the abutters at 173 High Street.

Chairman Zuroff and Board Member Poverman requested additional detail regarding proposed building materials and landscaped screening. Mr. Bentson stated that the façade facing 173 High Street will be constructed of a translucent polycarbonate material. He stated that this material is intended to maintain a bright area between the two attached properties, provide an aesthetically appealing façade, and incorporate more natural cooling techniques. Mr. Bentson stated that all other portions of the addition will be constructed of HardiePanel siding. He stated that a large rear-facing window will provide the majority of natural light for the addition and low-level windows are proposed to allow for natural light while also maintaining privacy and a cross-breeze. Mr. Bentson concluded by discussing proposed landscaping features in the front and rear yards, including 4 paperbark maple trees, ornamental annuals, a permeable paver patio, and tall grasses.

Chairman Zuroff requested that the Petitioner describe the size of the addition compared to the single-family dwelling located at 173 High Street. Mr. Benston stated that the structure and property at 173 High Street are slightly wider than the 171 High Street. He stated that a single-story sunroom on the abutting property extends approximately 7 ft. into the rear yard and by comparison, the proposed addition will extend approximately 14 ft. into the rear yard.

Attorney Allen restated that the Planning Board unanimously supported the current design of the rear addition. Attorney Allen stated that the rear addition triggers relief under Zoning By-Law Sections 5.10 and 5.13 because the structure is built on an undersized lot, Section 5.60 because the required right side yard setback is 10 ft., existing is 1.2 ft., and proposed is 1.2 ft., and Section 8.02.2 because the addition will alter and/or extend a preexisting, non-conforming structure.

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 M-1.0 District immediately abutting an attached single-family dwelling, the addition will be located entirely in the rear yard on an undersized lot similar to those on High Street (161, 163, 165, 167, 173, 175, 179, 181, 183) and High Street Place (3, 5, 7, 9), many of which have structures extending well into the rear yard of a narrow lot (157-159, 161-163, 165-167, 175 High Street); (2) there will be no adverse effect on the neighborhood where the use will remain a single-family home and the structure will be brought up to building code; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the Petitioners agree to put together a construction management plan and there will be no departure from the existing parking scheme; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will preserve affordable housing within this area of Brookline.

Finally, Mr. Allen discussed relief under Section 5.43 of the Zoning By-Law, which allows the Board of Appeals to waive the side yard setback requirement if a counterbalancing amenity is provided. Attorney Allen confirmed that the landscape features described by Mr. Benson are intended to serve as counterbalancing amenities. Furthermore, he stated that the Petitioners initially proposed a trash enclosure located in the front yard as a counterbalancing amenity; however, following Planning Board comment, the Petitioners elected to remove this enclosure, thereby eliminating relief from Section 5.50 of the Zoning By-Law.

Chairman Zuroff requested the Petitioners discuss their decision to construct a two-story addition rather than capturing attic and/or basement space. Mr. Bentson reiterated that he is concerned about the amount of significant structural work to the dwelling. In addition, he added that

a large shed dormer would be required to expand attic head height and would most likely trigger demolition review through the Preservation Commission.

Board Member Poverman questioned how the Petitioners intend to handle trash and recycling if the front enclosure is no longer proposed. Mr. Bentson stated that existing trash and recycling storage will remain located in the front yard.

Mr. Zuroff called for public comment in favor of, or in opposition to the Petitioner's proposal. No one spoke in favor of the proposal.

Attorney Jacob Walters, 27 Harvard Street, Brookline, MA, stated that he represents the owners at 165-167 High Street. Mr. Walters confirmed that the owners are not opposed to the Petitioners' right to expand living space, but they prefer a proposal that incorporates a single-story addition with expanded attic space. Mr. Walters believed that although this option is more expensive, it is feasible. Attorney Walters stated that clear adverse impact is placed on his client's property because residents, particularly those living at the basement level, will see a building façade that is approximately 6 ft. away. He submitted a photo depicting the current rear yard condition (Exhibit 1). Attorney Walters acknowledge that the requested relief is not extensive but suggested that the standards for the grant of a special permit under Section 9.05 of the Zoning By-Law are not satisfied. Attorney Walters specifically believed that Section 9.05.a-b of the Zoning By-Law applied because due to the narrow nature of the lot, the location of an addition this size will have a direct adverse impact. Mr. Walters requested that the Board consider a modified special permit condition that specifically addresses heavy construction equipment, the construction of the new foundation, stormwater management. Attorney Walters concluded his comments by acknowledging that the Petitioners have "scaled back" the size of the proposed addition, but not in a particularly significant manner.

Chairman Zuroff questioned when the abutting property at 165-167 High Street was renovated, if basement bedrooms are legal, and how construction at 171 High Street might impact the foundation.

Attorney Walters responded by stating that 165-167 High Street was renovated within the last five years and was appropriately permitted. He stated that presumably the basement level bedrooms are legal. Attorney Walters did not provide definitive proof that new construction would adversely impact the structural integrity of the 165-167 High Street.

Attorney Scott Gladstone, 1244 Boylston Street, Chestnut Hill, MA stated that he represents the owners of 173 High Street. Attorney Gladstone stated that the difficulty with this proposal is the undersized nature of the subject lot, in particular the fact that the lot narrows to 14 ft. at the rear of the property. He stated that any large-scale rear addition will create an "alleyway" effect for his client's property in which her home will be surrounded on all sides by larger structures. Mr. Gladstone agreed that the width of the proposed addition could be reduced to mitigate the adverse impact on abutting residents. Attorney Gladstone noted that portions of the 14-17 ft. wall abutting his client's property are decorative and therefore could be reduced in height. In Attorney Gladstone's opinion, a significant impact is placed on his client and the rear portions of her property.

Attorney Gladstone supported Attorney Walters' claim that the standards for the grant of a special permit are not satisfied. He stated that a rear addition of this size could result in environmental damage to the 173 High Street property including increased water, mold, and snow related damage. Attorney Gladstone stated that a single-story rear addition is more comparable to the single-story sunroom located at 173 High Street and is a more appropriate design than what is currently proposed.

Attorney Gladstone stated that under Section 9.05 of the Zoning By-Law, the Board may impose conditions that limit the overall size of the addition and or/increase setback requirements. Mr. Gladstone submitted revised special permit conditions to the Board and requested that the Board exercise authority if relief is granted (Exhibit 2). He summarized that the requested conditions address the massing, design related impact mitigation, construction management, and construction vehicle access points.

Beth Chapman, 173 High Street stated that she supports new residents moving into the neighborhood and is sympathetic to the repairs required to renovate the existing dwelling on the undersized lot itself. She detailed repairs completed on her own home. Ms. Chapman noted that she routinely rents her property to families with multiple children. She acknowledged that the subject property and structure are tight for a growing family, but the Petitioners chose to buy the property understanding these limitations. Ms. Chapman stated that the Petitioners' proposal creates undue impact on abutting residents. She concluded by stating that 171 High Street property was historically used for worker housing and it is not appropriate to assume that this historic design should be extended in a manner that is inconsistent with the immediate area. Ms. Chapman submitted photos to the Board illustrating the proximity of her home to the addition (Exhibit 3).

Francis Morris, 105 Oakland Road Extension, stated that renovations to 165-167 High Street were completed in 2014-2015. He stated that the bedrooms in the basement were included in these renovations, which required excavation and a new concrete foundation.

Mr. Rosa delivered the findings for the Planning Board:

FINDINGS:

1. Section 5.01 – Table of Use Regulations, Footnote 2 - At the end of each row or block of one-family attached dwellings, a yard shall be provided along the street lot line or side lot line of at least ten feet plus one foot for each dwelling unit in excess of two (10 ft. required side yard setback in this case)

2. Section 5.10 – Minimum Lot Size (Pre-Existing)
3. Section 5.13 – Minimum Lot Width (Pre-Existing)
4. Section 5.43 – Exceptions to Yard and Setback Regulations
5. Section 5.60 – Side Yard Requirements
6. Section 9.92 – Usable Open Space

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Minimum Lot Size	2,250 s.f.	1,626 s.f.	1,626 s.f.	Pre-Existing
Minimum Lot Width	20'	14'	14'	Pre-Existing
Side Yard Setback (east)	10'	1.2'	1.2'	Special Permit*
Floor Area Ratio	2,113.8 1.3	1,249 s.f. .77	1,640 s.f. 1.01	Complies
Usable Open Space	328 s.f. 20%	810.55 s.f. 65%	329 s.f. 20%	Complies

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

7. Section 8.02.2 – Alteration of Extension - A special permit is required to alter or extend a nonconforming structure.

Mr. Rosa stated that the Planning Board unanimously supported the current rear addition after two public meetings. He stated that Planning Board members initially requested that the overall scale of the addition be reduced to lessen the impact on abutting residents and the Board feels that current plans have satisfied the request. He stated that the Board noted that the resulting floor area ratio (FAR) complies with the requirements for the M-1.0 District and requested setback relief represents an extension of a preexisting non-conforming condition. Mr. Rosa stated that the Planning Board did not support the proposed trash enclosure located within the front yard setback, but appreciated the robust landscaping plan. Therefore, the Planning Board recommended approval of plans submitted by Brett Bentson, dated 12/3/2015, and the site plan submitted by Andrew Browne, dated 5/29/2015. If the Board of Appeals finds that the standards for special permit relief are met, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans, and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan, specifically detailing construction equipment access to the rear yard and impact mitigation strategies for abutting properties, subject to the review and approval of the Building Commissioner.
4. 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 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.

Mr. Rosa further stated that the Building Department has no objection to the relief requested. Mr. Rosa confirmed that the Zoning By-Law clearly states that an attached single-family dwelling is permitted to have a 0 ft. setback along the shared lot line, therefore the requested setback relief is only for the side lot line shared with 165-167 High Street. Mr. Rosa stated that if the Board finds that the standards for special permit relief are met, the Building Department will work with the Petitioner to ensure compliance with the State Building Code and the Zoning By-Law.

In deliberation, Ms. Poverman stated that she is sympathetic to the Petitioners' desire to expand living space in a manner that will maintain privacy for abutting property owners. Ms. Poverman noted the importance of rear yard open space for abutting residents, but stated that 171 High Street is much shorter than the majority of surrounding properties. She stated that the design of the proposed addition is consistent with the scale of existing residential uses in the immediate neighborhood and the 391 square ft. expansion is relatively modest in comparison to abutting

properties. For these reasons, Ms. Poverman stated that the requested relief is reasonable and that she was supportive of the grant of special permit relief.

Mr. Book stated that he does not agree that the requested setback relief is minimal. Mr. Book stated that a 1.2 ft. setback is problematic in this instance even if it does represent an extension of a preexisting non-conforming condition. He stated that the intensity of the non-conformity is clearly increased. Mr. Book agreed with abutting residents regarding the adverse impact and specifically cited the inappropriateness of locating an addition of this size on an undersized lot that is in close proximity to adjacent structures. Mr. Book believed that further consideration of design options should be explored in an effort to minimize abutter impact, particularly the option to expand vertically as opposed to locating the new massing at the rear of the existing structure. Mr. Book noted that a 391 square ft. addition is often "modest" but in this instance it results in a 30% increase in the size of the overall structure.

Chairman Zuroff stated that the Board generally supports petitioners who desire to reach the highest and best use for their particular property; however, abutter impact must always be weighed against this desire to enhance property use. Mr. Zuroff was sympathetic to the argument that an expansion of a residential use is confined by the property's surroundings. Mr. Zuroff conceded that there is a general character that exists in this particular neighborhood. Mr. Zuroff stated that although setback relief of this type is generally supported by the Board, here the exacerbation directly impacts abutters. Mr. Zuroff stated that the recommended conditions reviewed by Attorney Gladstone are reasonable, albeit a restatement of standard Building Department evaluation procedures. Mr. Zuroff concluded by stating that the requested setback relief is moderate, but floor area expansion of this type may not be the most appropriate for the subject property. Mr. Zuroff

stated that the Petitioners should consider the option of a case continuance in order to modify the proposal.

Mr. Book restated that he remains troubled by the shadow impact generated by the proposed addition and the unwillingness of the Petitioners to capture floor area within the attic.

Ms. Poverman restated that the Petitioners are seeking an affordable way to enhance the livability of this modest single-family home. Ms. Poverman stated that the scope of the addition is not inappropriate for the neighborhood and is an effective way to expand the overall floor area.

Attorney Allen consulted with the Petitioners and requested that the Board continue the hearing. The Board granted Attorney Allen's request for a continuance to February 18, 2016. The Board also confirmed that public hearing notice procedures will be followed in accordance with M.G.L. c. 40A if this hearing date is to be modified. The hearing was continued to February 23, 2016 and noticed in accordance with M.G.L. c. 40A and Section 9.08 of the Zoning By-Law.

At the continued hearing, Zoning Board of Appeals Chairman Mark G. Zuroff motioned to re-open the hearing for the limited purpose of allowing the attorney for the Petitioners, Robert L. Allen, Jr. to present revisions to the design of the addition. The motion was adopted and the hearing re-opened.

Attorney Allen reminded the Board that the Petitioners wish to renovate and move into 171 High Street prior to September 2016 so that they can enroll their son in the Brookline School District. Attorney Allen stated that interior renovation and an exterior rear addition are proposed to improve the interior living space. He stated that at the prior hearing, abutting residents expressed concern about the overall size of the proposed rear addition on the undersized lot as well as visual, drainage, shading, and construction related impacts that may result if constructed. Following this

initial hearing, Attorney Allen stated that the Petitioners consulted adjacent property owners to modify plans in an effort to alleviate the stated concerns.

Brett Bentson reviewed proposed modifications to the rear addition including the length of the addition, which was reduced from 15.9 ft. to 7.5 ft. Mr. Bentson stated that the cantilever privacy wall designs were eliminated and a rear staircase providing access to a ground level patio was reduced in order to minimally comply with the building code. Mr. Bentson stated that the footprint of the revised addition is pulled away from the shared lot line with 165-167 High Street to provide further separation. Mr. Bentson concluded by discussing revised shadow impacts.

Attorney Allen stated that the Petitioners made clear concessions with the project design to address the concerns of abutting residents. Attorney Allen stated that a narrower addition that extends along the southwestern side lot line may be permitted as of right but the Petitioners believe the revised proposal is a better use of the land. Mr. Allen conceded that the location of the structure creates some difficulty because efforts to reduce impact on one side may shift the impact to the other immediate abutter.

Board Member Poverman requested that the Petitioners describe potential building materials and the issue of locating trash facilities in the front yard.

Mr. Bentson stated that the exterior side walls will consist of panelized painted siding, but the rear facing wall may be more decorative, perhaps a translucent polycarbonate material. Mr. Bentson stated that trash will remain located in the front yard. Mr. Bentson stated that an enclosed structure intended to screen the trash would require additional zoning relief, therefore he is proposing fencing or shrubs to screen this portion of the front yard.

Board Member Poverman questioned whether the Petitioners considered the conversion of basement space to expand finished floor area. Mr. Bentson stated that the headroom in the basement does not meet the building code.

Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioners' proposal.

Attorney Scott Gladstone, 1244 Boylston Street, Chestnut Hill, MA, stated that he represents the owners of 173 High Street. Attorney Gladstone stated that his client appreciated efforts made by Mr. Bentson to reduce the size of the rear addition. Attorney Gladstone stated that concerns still remain regarding site access during construction, water runoff, the location and sound associated with air conditioning equipment, and the location of any new or repaired fencing. As such, he introduced Condition 1(a-c) into the record. Mr. Allen stated that the Petitioners agree to the revised condition.

Attorney Jake Walters, 27 Harvard Street, Brookline, MA, stated that he represents the owners of 165-167 High Street who remain opposed to the proposal. Mr. Walters stated that while his clients appreciate that the proposal was "scaled back" and that modifications were made in an attempt to soften the impact on neighboring residents, the owners cannot support the proposal without the assurance that the Petitioners (a) do not plan to enclose the rear porch or landing, (b) do not anticipate expanding the footprint of the property, (c) there will be a construction management plan, and (d) the stair will be relocated 6 ft. from the fence and the landing 4 ft. from the existing fence separating the properties. Mr. Walters reiterated the owner's request for a condition requiring a construction management plan and stressed that water runoff should be considered during and after construction. Mr. Allen stated that the Petitioners agree to submit a construction management plan subject to the approval of the Building Commissioner prior to issuance of a building permit.

Thomas Veely, 175 High Street, stated that the rear yard of 171 High Street is only accessible if construction vehicles cross private property. Mr. Veely suggested that the Petitioners' solution to this challenge be addressed publicly prior to Board approval.

Attorney Allen stated that the scale of the construction project is not large and therefore frequent construction vehicle access should not be a problem. He stated that the foundation will be dug by hand and materials will be carried through the home to the rear yard.

Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board and the Building Department. Mr. Rosa stated that the Planning Board reviewed and recommended approval of the previous design of the rear addition. He stated that because the current proposal was reduced and requires identical zoning relief, revised plans were not submitted to the Planning Board for approval. Mr. Rosa stated that both the Planning and Building Department support the modified rear addition. The Petitioners directly incorporated design recommendations from abutting residents in order to reduce the potential impact of the addition. Mr. Rosa commended area residents for reaching a compromise on the design and massing.

Mr. Rosa further stated that the Building Department is not opposed to the recommended condition that a construction management plan be submitted. Mr. Rosa stated that any restrictions regarding private access to the rear of the lot or future additions to the property are beyond the scope of review for the Building Department.

In deliberation, Board Member Jonathan Book agreed that the reduction in size of the rear addition is a more appropriate design for the undersized lot. Mr. Book was in favor of granting the requested relief subject to the conditions agreed to by the Petitioners. Mr. Book did not support development restrictions for the site as a potential imposed condition if relief is granted by the Board.

Board Member Poverman concurred with Mr. Books comments. Ms. Poverman further stated that she was satisfied that the standards for the grant of a special permit are met in accordance with **Sections 5.43** and **9.05** of the Zoning By-Law.

Chairman Zuroff commended the parties involved for reaching an agreement on several design aspects. Mr. Zuroff believed that requested zoning relief for the side yard setback in question is modest and appreciated the fact that the Petitioners reached a design for the undersized lot. Mr. Zuroff was not in favor of a restriction on future construction to the property, but supported the requirement that a construction management plan be submitted.

The Board then determined, by unanimous vote that the requirements for a special permit for **Sections 5.01, Footnote 2, 5.10, 5.13, and 5.60** of the Zoning By-Law pursuant to **Sections 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 no 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.

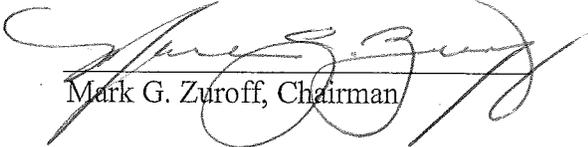
Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans, and elevations, subject to review and approval by the Assistant Director for Regulatory Planning depicting:

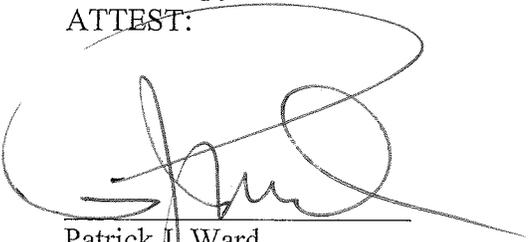
- a. Placement of any air conditioning condensers, which should be in the rear yard as much as possible;
 - b. Placement of any gutters and the outlets of any new or relocated downspouts, which should be placed at least 5 feet away from the foundation of 173 High Street with water flow at the outlet directed away from 173 High Street; and
 - c. Placement of new fencing, showing its placement on applicant's property, which on the side abutting 173 High Street shall be of construction and design that will permit the passage of natural light and air and will not otherwise impact the ability of the resident of 173 High Street to maintain a vegetable garden adjacent to that fence line.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
 3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan, specifically detailing construction equipment access to the rear yard and impact mitigation strategies for abutting properties, subject to the review and approval of the Building Commissioner.
 4. 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 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: 3/21/16


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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