



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
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0073
JAY & SHIRA RUDERMAN
164 DEAN ROAD, BROOKLINE, MA

Petitioners, Jay and Shira Ruderman, applied to the Building Commissioner for permission to raise the roof of the rear bay from 6 ft. to 9 ft. in order to extend their kitchen into the mudroom. 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 February 25, 2016 at 7:30 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 February 11, 2016 & February 18, 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:

164 DEAN RD – RAISE ROOF OF REAR BAY in an S-25, Single-Family, residential district, on February 25, 2016, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: RUDERMAN JAY & SHIRA) *Precinct 14*

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 4.43: Exceptions to Yard and Setback Relief**
2. **Section 5.70: Rear Yard Requirements**
3. **Section 8.02.2: Alteration or Extension**
4. **Any Additional Relief the Board May Find 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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Christopher Hussey and Jonathan Book. Zoning Coordinator John Rosa was also present. 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 was the Petitioner, Jay Ruderman, along with project architect Bruce Miller, Bruce Miller Architecture & Interiors, 46 Waltham Street, #215, Boston, MA 02118.

Chairman Schneider called the hearing to order at 7:30 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the Petitioners purchased the subject property in May 2014. He stated that the Petitioners would like raise the roof of the rear mud room from 6 ft. to 9 ft. as part

of their kitchen renovation. He stated that the footprint of the mudroom will remain the same, but the rear elevation will be modified. Mr. Allen stated that this proposal triggered relief based on a preexisting, non-conforming rear yard setback.

Attorney Allen stated that the Petitioners seek approval for Sections 5.70 of the Zoning By-Law where the required rear yard setback is 50 feet, existing rear yard setback is 33.1 feet and the proposed rear yard setback is 33.1 feet. Relief is necessary under Section 8.02.2 of the Zoning By-Law because the increase in height will increase the preexisting non-conforming rear yard setback.

Attorney Allen discussed special permit relief under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location for the addition because it will help create functional space for the family and will be shielded from neighbors by existing fences in the side and rear yards, (2) there will be no adverse effect on the neighborhood and the Petitioners have submitted letters of support from neighbors residing at 156 and 172 Dean Road and 345 Buckminster Road; (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, which allows the Board of Appeals to waive side and rear yard setback requirements if a counterbalancing amenity is provided. He stated that the Petitioners agreed to submit a landscaping plan.

Board Member Christopher Hussey inquired about the minimum rear yard setback. Mr. Allen stated that the Petitioners request relief for the rear yard setback measuring 33.1 feet on the survey by David Lukens dated 12/09/2015.

Chairman Schneider then called for public comment in favor of, or in opposition to the Petitioners’ proposal. No one spoke in favor or in opposition.

Chairman Schneider called upon John Rosa, zoning coordinator to deliver the findings of the Planning Board and Building Department:

FINDINGS:

1. Section 5.70 – Accessory Buildings or Structures in the Rear Yard

Dimensional Requirements	Required	Existing	Proposed	Relief
Rear Yard Setback	50 feet	33.1 feet	33.1 feet	Special Permit*

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

Mr. Rosa stated that the Planning Board is supportive of the request. He stated that the project is well designed and more compatible with the style of the dwelling. Mr. Rosa noted that the relief is minimal and the modest-size project would not be visible to most abutters. He stated that the Planning Board recommends that the Petitioners introduce new plantings as a counterbalancing amenity. Therefore, the Planning Board recommends approval of the site plan by professional land surveyor David Lukens dated 12/09/15 and architectural plans by Bruce Miller, dated 12/09/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final elevations and floor plans subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final site plan, including landscaping, 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 building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds

Furthermore, Mr. Rosa stated that the Building Department had no objection to the relief as requested and concluded that the Building Department would work with the Petitioners to ensure compliance with all imposed conditions if the Board finds that the standards for the grant of a special permit are satisfied.

In deliberation, Board Member Hussey stated that relief is slight and the proposal meets the standards of relief under **Section 9.05** of the Zoning By-Law. He requested that the Planning Board report be updated to include the setback in conformance with the surveyed site plan. Chairman Schneider and Board Member Book concurred.

The Board then determined, by unanimous vote that the requirements for a special permit for **Section 5.70** 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 conditions:

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

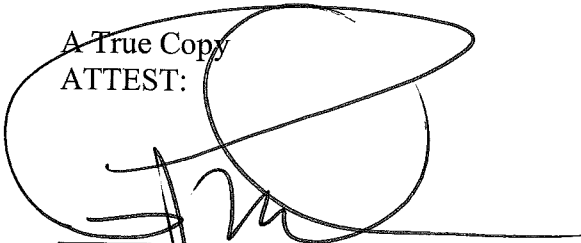
Unanimous Decision of
The Board of Appeals

Filing Date:

4/7/16


Johanna Schneider, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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