



BOARD OF APPEALS
Jesse Geller, Chair
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0056

Petitioner, James Kelliher applied to the Building Commissioner for permission to reconfigure the first floor and basement of the three family dwelling at 25 Alton Court, converting existing storage space to habitable living space while converting existing living space to a storage area. The reconfiguration results in an increase in the gross floor area of 199 square feet. The application was denied and an appeal was taken to this Board.

On November 19, 2015 the Board administratively determined that the properties affected were those shown on a schedule certified by the Board Assessors of the Town of Brookline and fixed January 14, 2016, at 7:00 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 31st, 2015 and January 7, 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **JAMES KELLIHER**

Owner: JAMES KELLIHER

Location of Premises: **25 Alton Court**

Date of Hearing: **January 14, 2016**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

A public hearing will be held for a variance and/or special permit from:

1. **Section 5.22.3.b.2; Exceptions to Maximum Floor Area Ratio for Residential Units, Special Permit required,**
2. **Section 5.90 Minimum Usable Open Space, Variance required,**
3. **Section 8.02.2 Alteration or Extension, Special Permit required.**

of the Zoning By-Law to **CONSTRUCT ADDITION REQUIRING BOA RELIEF** at 25 Alton Court.

Said premise located in an **M-1 (apartment house)** district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Mark G. Zuroff, and Board Members Christopher Hussey and Kate

Poverman. The case was presented by the attorney for the petitioner, Jacob Walters of Walters, Shannon & Jensen located at 27 Harvard Street, Brookline, MA 02445. After hearing from Mr. Walters, John Rosa of the Planning Board and Michael Yanovitch of the Building Department, Mr. Walters requested that the matter be continued. The hearing was then continued until March 31st at 7:00 a.m. in the Selectmen's hearing room on the 6th floor of Brookline Town Hall.

At the resumption of the hearing Attorney Walters described the proposed work, the reconfiguration of the apartment located on the first floor and basement level, consisting of the conversion of storage space at the rear of the premises into additional living space. The result was an additional 199 square feet, resulting in a floor area ratio greater than 1.0 and a required increase in minimum usable open space equal to 20% of the additional new floor area or 19.9 square feet.

Mr Walters stated that all the relief could be granted by three Special Permits, one under **Section 5.22.3.b.2** of the Zoning By-Law, one pursuant to **Section 5.43** of the Zoning By-Law and the third pursuant to **Section 8.02.2** of said By-Law. Mr. Walters stated that Floor Area Ratio relief pursuant to **Section 5.22.3.b.2** was warranted as the addition was less than 20% of the permitted gross floor area (the property being in an M-1 District), and added that the modest addition would result in a gross floor area of 1.15% of the permitted gross floor area.

Addressing the minimum usable open space violation, Mr. Walters stated that because the proposed deck counts for 10 of the needed 19.9 open space, the violation amounts to just under 10 square feet. Mr. Walters stated that relief can be granted by Variance or by Special Permit pursuant to **Section 5.43** of the Zoning By-law. Speaking to the Special Permit, Mr. Walters explained that this Board may permit, in lieu of other requirements for yards or setbacks, the

substitution of such other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the By-Law. Mr. Walters went on to say that the applicant cannot provide a 15' x 15' parcel of open space, due to the topography of the rear yard, which slopes significantly. Mr. Walters stated that the rear yard has more than enough land to otherwise comply with the open space requirements, but the grade of the slope is so severe it cannot be counted as open space as per the By-Law regulations. Mr. Walters added that the rear yard was approximately 7.5 feet deep and over 30' in width, and suggested that if the Board substituted 7.5' x 20' the required minimum open space would be easily achieved. Mr. Walters stated that as a counterbalancing amenity, the applicant proposed to construct a patio consisting of bluestone at the rear of the dwelling, which would be bordered at the rear by decorative wooden flower planters.

As to the issue of a variance, Mr. Walters stated that due to the topography of the subject lot, a condition that affected the applicant's lot but not the general zoning district, a literal enforcement of the By-Law would create a hardship, specifically the inability to convert an interior room which does not conform the current Building Code into a code compliant portion of the unit, and also the inability to utilize the room at the rear of the premises which has more than adequate size and natural light.

Mr. Walters stated that one final Special Permit was needed, this pursuant to **Section 8.02.2** of the By-Law since the pre-existing non conformity was being altered.

Mr. Walters stated further that since the addition was located at the rear of the dwelling it would have no impact on the abutters or the neighborhood. He added that all of the neighbors had been shown the plans for the proposed addition, and the applicant was unaware of any opposition.

Mr. Walters concluded by stating that there were grounds to issue the requested Special Permits

under **Section 9.05** of the Zoning By-Law since the site was an appropriate location for the addition, the use of the property will not adversely affect the neighborhood and no nuisance or hazard to vehicles or pedestrians would be created by the proposed addition.

Chairmen Zuroff asked whether anyone in attendance wished to speak in favor of or against the proposal. No one spoke in support or opposition to the application.

John Rosa a member of the Planning Staff delivered the findings of the Planning Board.

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	6,104 sq. ft 1.0	6,875 1.13	7,074 sq. ft 1.15	Special permit*
Minimum usable Open Space	38.9 sq. ft.	0	19.9 sq. ft.	

* Under **Section 5.22**, the Board of Appeals may grant a special permit for up to an additional 20% of the gross floor area.

Mr. Rosa reported that the Planning Board supported the proposed addition and recommended the installation of a patio at the rear of the dwelling. Mr. Rosa added that the floor area increase is minimal and the applicant has improved the property by the exterior and interior renovations. Mr. Rosa noted that the Planning Board recommends approval of the relief requested as per the plans by Guy N. Grassi, dated 3/6/16, and the site plan submitted by Guy N. Grassi, dated 11/30/2014, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans including gross floor area calculations and roof deck dimensions, subject to approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan stamped and signed by a registered land surveyor; 2) final 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.

The Chairman then called upon Michael Yanovitch Chief Building Inspector, for the report from the Building Department. Mr. Yanovitch stated that the Building Department had no objections to the proposed additions. Mr. Yanovitch added that the addition is small but that the Building Department would, pending approval of the Zoning Board of Appeals, work with the applicant to assure compliance with the law.

The Board, having deliberated on this matter and having considered the foregoing testimony concluded that it was desirable to grant a Special Permit for usable open Space rather than a Variance but approved the other relief required by the Special Permit. The Board granted relief pursuant to **Section 5.43, Section 5.22.3.b.2, Section 8.02.2 and Section 9.05** of The Brookline Zoning By-Law. The Board also made the following specific findings pursuant to **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.

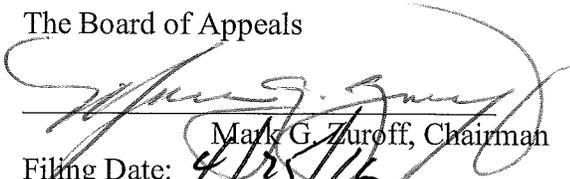
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans including gross floor area calculations and roof deck dimensions, subject to approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan stamped and signed by a registered land surveyor; 2) final 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.

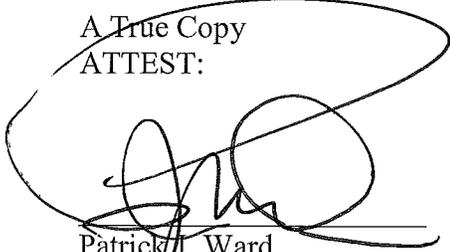
Unanimous Decision of
The Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2016 APR 25 A 11: 51


Mark G. Zuroff, Chairman
Filing Date: 4/25/16

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals