



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0035
MATTHEW GIFFORD & ERIN GATELY
12 CLEARWATER ROAD, BROOKLINE, MA

Petitioner, Matthew Gifford and Erin Gately, applied to the Building Commissioner for permission to convert the garage into living space and construct an addition at the rear. 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 July 7, 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 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 July 23, 2016 & July 30, 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: **12 CLEARWATER RD – ADD LIVING SPACE IN ATTACHED GARAGE, in an S-7, Single-Family, residential district, on**

July 7, 2016, at 7:15 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: GIFFORD MATTHEW GATELY ERIN K) Precinct 16

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 5.20: Floor Area Ratio**
- 3. Section 5.43: Exceptions to Yard and Setback Regulations**
- 4. Section 5.60: Side Yard Requirements**
- 5. Section 5.70: Rear Yard Requirements**
- 6. Section 6.04.5.c.1: Design of All Off-Street Parking Facilities**
- 7. Section 8.02.2: Extension or Alteration**
- 8. 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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Christopher Hussey and Mark Zuroff. Ashley Clark was present on behalf of the Planning Department and Michael Yanovich was present on behalf of the Building Department. 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 Petitioners, Matthew Gifford and Erin Gately. Mr. Allen stated that Matthew Gifford is also the project architect.

Zoning Board of Appeals Chairman Geller 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 reside at 12 Clearwater Road. Attorney Allen stated the subject property is located in the S-7 District which generally consists of 5,000 sf. lots or greater. He stated that the subject lot is 4,266 sf, making it the smallest lot in the S-7 District. He stated that the direct abutter at the rear of the property is Bournemouth Hospital

Mr. Allen stated that the proposal is to convert an existing garage into habitable space. Attorney Allen noted that the small dimensions of the existing garage result in it being used by the Petitioners for storage only because it cannot accommodate a modern vehicle. He stated that the Petitioners also request to construct a shed in the rear portion. Attorney Allen noted that due to the size of the subject lot, any changes on the property would require some form of relief. He noted that the proposal includes widening the driveway to accommodate two vehicles, as required under the Zoning By-Law.

Matthew Gifford presented the proposed plans to the Board. He stated that the subject property is tapered at the corner of South Street and Clearwater Road. Mr. Gifford stated their proposal is the only option to feasibly add livable space to the house, due to the lot shape and size. Mr. Gifford detailed that he considered finishing the attic and the basement in his home as an alternative to the proposal. However, he stated the basement has water issues rendering it uninhabitable. He also stated that the attic does not provide sufficient headspace for use.

He reiterated that the garage has been used by the petitioners for storage and not for parking. Therefore, to accommodate for the loss of storage, the Petitioners propose a shed at the back of the house. Mr. Gifford stated, the proposal also includes a driveway expansion to reasonably accommodate a second vehicle.

Mr. Gifford provided contextual photographs of the surrounding neighborhood. He noted that several homes along Clearwater Road and the neighboring South Street and VFW Parkway have driveways that encroach into the front yard setback. Many of the homes shown also have pavement extending to the rear yard.

Chairman Geller, in reviewed each of the houses depicted in Mr. Gifford's presentation, noted that most of the other properties have driveways which extend fully into the rear yard.

Board Member Hussey inquired about the current dimensions of the driveway, as well as the proposed dimensions. Mr. Gifford explained the size of the driveway, where it runs, and the current curb cut conditions. He stated that the proposal would add paved area to accommodate a second vehicle. Mr. Hussey then asked Mr. Gifford to clarify whether the submitted FAR calculations include the square footage of the mudroom. Mr. Gifford confirmed that the floor area of the mudroom was counted in the FAR.

Attorney Allen stated that relief could be granted by a Special Permit. He commented that the total increase in floor area is less than 350 s.f. and under the 150% of allowed FAR. He reiterated that the garage is too small for parking vehicles and that therefore, the owner is unable to use the garage for that purpose and, as such, the proposal does not displace vehicles from the garage. He stated that the rear shed addition is reasonably sized, will be used for storage, and will not be visible from the street. Mr. Allen noted that the proposal allows the owner to expand the home's living area on an undersized lot with only minor changes to the building and parking. He also stated that the Petitioner will provide a modest landscaping plan for review by planning staff.

Attorney Allen noted that the Planning Board appreciated that the proposal does not change the streetscape even though the owner could potentially tear down the garage and build a new one.

Mr. Allen then described relief from the application of the provision of **Section 5.22.1.e** of the Zoning By-Law by special permit pursuant to **Section 5.43** and under **Section 9.05**: (1) the specific site is an appropriate location for the proposed use where the proposed FAR increase is not unique to Clearwater Road, noting that a number of neighboring homes on Clearwater Road and VFW Parkway have similarly increased living space, including 11 Clearwater Road, 18 Clearwater Road, and 397 VFW Parkway; (2) the use will not adversely affect the neighborhood because the proposed changes to the exterior are minimal and is supported by 12 neighboring residents; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because the proposal does not increase parking requirements and the slight widening of the driveway will ensure vehicles do not impede access to the sidewalk and ease an existing condition; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply on housing available for low and moderate income people.

Mr. Allen then stated that he believed, in lieu of a special permit, **MGL c. 40A Section 10** which allows for relief from application of zoning by-laws by variance where certain conditions are met, is applicable.

Attorney Allen stated that the lot is unique because it is significantly smaller than the surrounding properties and Petitioners suffer a hardship by virtue of their inability to build without seeking relief. Additionally, the placement of the house on the lot, combined with the angled rear lot line, prevents any ability to build a compliant rear addition. He stated that any

rear addition would take away from the useable open space requirement. The undersized nature and odd shape of the lot prevent the Petitioner from making any sort of expansion to the home to allow for family and life changes. He stated that although the Petitioners could have exercised the option to demolish the garage and rebuild, the cost associated with this prevent the Petitioners from pursuing this route. He noted that demolishing the garage would change the streetscape whereas this proposal maintains the status quo. Attorney Allen stated that relief from the FAR requirements may be granted without derogating from the intent or purpose of the By-Law and allows for the most appropriate use of the land, conservation of the value of the land and buildings, and adequate light and air.

Board Chairman Geller called for public comment in favor of, or in opposition to, the Petitioners' proposal. There was no public comment.

Ashley Clark, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

Section 5.09.2.j – Design Review

Section 5.20 – Floor Area Ratio

Section 5.43- Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities

Section 8.02.2- Extension or Alteration

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Floor Area Ratio	.35	.405	.45	Special Permit/Variance*
Floor Area	1,493s.f.	1,730s.f.	1,930s.f.	
Front Yard Setback (parking)	20'	13'(+)	Pre-existing/non-conforming	Special Permit
Side Yard Setback (conversion of garage)	7.5'	7.4'	Pre-existing/non-conforming	Special Permit

Rear Yard (shed)	30'	15'-20'	8'-11'	Special Permit/Variance**
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+) The applicant states cars are not parked in the garage and are instead parked in the front yard setback; therefore it is a pre-existing condition

* If the Board of Appeals finds that the general regulations under 5.22.1.e have been met, a special permit may be issued under section 5.22.3.c to increase the floor area of up to 350 square feet provided that the resulting gross floor area of the building(s) is not more than 150% of the permitted gross floor area. (See Planning Board comment section.)

** Under Section 5.43, the Board of Appeals may waive dimensional requirements in lieu of other dimensions if the applicant provides counterbalancing amenities. In this case, the applicant is proposing a landscaping plan to serve as the counterbalancing amenity.

Ms. Clark stated that the Planning Board is not opposed to the Petitioners' proposal to convert garage space into habitable space and construct a shed at the rear of 12 Clearwater Road. She stated that the Planning Board felt that the design of the proposal is consistent with the streetscape of the neighborhood. The Planning Board considered the general provisions of **Section 5.22.1.e** of the Zoning By-Law, which lists the general provisions for granting a special permit for FAR, and reads: "The interior conversion shall not result in the displacement of interior storage of equipment, vehicles, or materials to a location which is now exterior to the house." She stated that the Planning Board felt that Attorney Allen made a convincing argument that because of the small size of the garage, the owners have not been able to use the garage for vehicles, thus it would not compound the parking situation. The Planning Board suggested the applicant install landscaping in the front yard to satisfy the counter balancing amenity requirement under **Section 5.43** of the Zoning By-Law.

Therefore, the Planning Board recommended approval of the site plan submitted by Stephen P. Desroche dated 3/15/2016, and architectural renderings submitted by Matthew Gifford and dated 5/2/2016, subject to the following conditions:

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

Mr. Yanovich stated that the Building Department has no objections to this proposal. Mr. Yanovich felt the relief is very minor and stated that should the Board grant relief, the Building Department will work with the Petitioners to ensure compliance.

The Board then deliberated on the merits of special permit relief as requested. Board Member Hussey commented that the garage is functionally unusable due to its size. Therefore, he expressed his support of the grant for special permit as requested.

Board Member Zuroff indicated that he was concerned that allowing parking in the front yard setback would result in cars encroaching into the sidewalk and becoming an obstacle to pedestrians. Mr. Zuroff felt the relief requested is minimal and felt the temporary storage shed was appropriate and more desirable than the Petitioners' by-right option which would allow them to build a temporary storage shed in the rear yard.

Chairman Geller felt **Section 5.22.1.e** of the Zoning By-Law is clear that it does not allow for the conversion of garages that result in the displacement of cars to the exterior, in this case to the front yard setback. Mr. Geller commented that the By-Law does not make an exception for diminished functionality as is the case with small garages or even circumstances where an owner abandons use. Mr. Geller did note, however, that the proposal was otherwise worthy of relief and

felt the Petitioners had adequately made an argument for relief by issuance of a variance given the size and irregular shape of the lot.

Mr. Zuroff felt granting relief through a variance, is more desirable and is not inconsistent with **Section 5.22.1.e** of the Zoning By-Law.

Board Member Hussey was in support of relief by either a variance or a special permit.

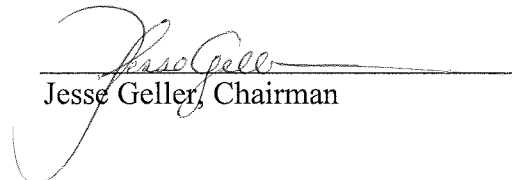
The Board then determined, by unanimous vote that the requirements for a variance were met.

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 a final site plan, elevations, and floor plans subject to the review and approval of 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 the review and approval of the Assistant Director for 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 floor plans and elevations stamped and signed by a registered architect 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

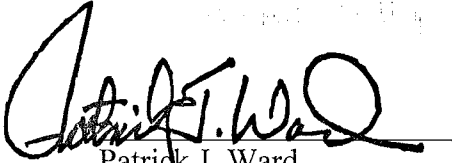
Filing Date: 8/2/16



Jesse Geller, Chairman

A True Copy

ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a distinct "W".

Patrick J. Ward

Clerk, Board of Appeals