



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2002-0033
189 ELIOT STREET
Modification Case #2794

Petitioner, Mel Shuman, applied to the Building Commissioner for a building permit to construct a rear addition at 189 Eliot Street. 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 September 22, 2016 at 7:00, in room 111 on the 1st floor of Town Hall, 333 Washington Street as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 September 8, 2016 and September 15, 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:

189 ELIOT ST- Construct a rear addition in an S-10 (Single-Family) Residential district on, September 22 2016 at 7:00 PM in Room 111 1st Floor Town Hall 333 Washington Street (Petitioner: MELVIN R & ROBIN SHUMAN; Owner: MELVIN R & ROBIN)

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 5.20: Floor Area Ratio**
- 2. Any additional relief the Board deems 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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@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 Mark Zuroff, and Board Members Chris Hussey and Jonathan Book. Ashley Clark was present on behalf of the Planning Department and Mike Yanovitch was present on behalf of the Building Department. The case was presented by the applicant, Mel Shuman.

Mr. Shuman presented the application to construct a rear addition at 189 Eliot Street. Mr. Shuman described the 136 square foot addition they are proposing. The addition will expand their kitchen and to provide a laundry room. Mr. Shuman stated that

the addition is not visible from the street. Additionally, Mr. Shuman stated that the neighbors are in support of this proposal. Mr. Shuman described a previous grant of zoning relief in the form of a special permit in 1986 for a 160 square foot addition. Mr. Shuman described why this disqualifies him from seeking a new special permit for FAR relief under **§5.22** in the Town's By-law. Mr. Shuman stated that the By-law does allow for a modification of the previous Decision for a special permit.

Mr. Shuman then described why he believes the proposal meets the statutory requirements for a variance, citing the small size of the lot and house. Mr. Shuman stated that the proposal to create a small addition is intended to alleviate the constraints of a small kitchen. The addition would expand the kitchen and provide for a laundry room. Mr. Shuman stated that there is a hardship because there are houses all over being renovated and taking advantage of **§5.22** but they cannot take advantage of making it difficult in terms of resale. Mr. Shuman concluded his remarks by asking the Board to consider a grant of zoning relief under a variance or consider amending the previous special permit relief.

Mr. Book asked Mr. Shuman to present his findings on why the Board should amend the previous special permit. Mr. Shuman explained that **§ 5.22.3.c** acts as a failsafe to inhibit people from repeatedly seeking FAR relief. Mr. Shuman stated the intention is to allow a homeowner to be able to receive up to 350 additional square feet if they do not meet the standards set forth in **§§ 5.22.3.a and b**. Mr. Shuman stated that by allowing a modification of the previous special permit to include the proposed addition, the maximum 350 square foot limit will not be exceeded.

Board Chairman Zuroff stated a variance relates to the topography and uniqueness of the lot. Mr. Zuroff stated the requirements that need to be demonstrated to meet a

variance are stricter than due to just the size of the lot and house. Mr. Shuman did not agree with Mr. Zuroff and believed the parameters for a variance had been met and the proposal is worthy of relief. Mr. Shuman stated the Board has discretionary powers to grant relief. Mr. Shuman stated due to the fact that the proposal will not cause any harm to anyone in the neighborhood, neighbors are in support and the proposal is not visible from the street, the Board should find it worthy of relief.

Board Chairman Zuroff requested the public speak in favor of, or in opposition to, the Petitioner’s proposal. There was no public comment.

Board Chairman Zuroff called upon Zoning Coordinator Ashley Clark from the Planning Department to review the Planning Board Report.

FINDINGS

Section 5.20 – Floor Area Ratio

	Permitted	Existing	Proposed	Relief
Floor Area Ratio (FAR)	2,825.4 s.f. 100%	3,729.2 s.f. 131.9%	3,865.6 s.f. 136.8%	Special Permit*/Variance†

** Under Section 5.22.3.c, the Board of Appeals may grant by special permit an exterior addition that is less than or equal to 350 square feet, provided that the resulting gross floor area is not more than 150% of the permitted gross floor area.*

† In this case, the proposed 136.6 s.f. increase is below both the 350 s.f. and 150% limits. However, The prior grant of additional gross floor area as of right or by special permit under Section 5.22 or any prior version of Section 5.22 shall preclude a subsequent grant of a special permit under this paragraph 3, subparagraph c (Section 5.22.3.c) .

Section 5.09.2.j – Design Review: Any exterior addition for which a special permit is required pursuant to §5.22 is subject to design review standards listed under Section 5.09.4 (a-m). All design review standards have been met, with the most relevant design review sections described below:

- a. Preservation of Trees and Landscape – The proposed rear addition will have no adverse impact on existing trees located on the subject property, nor does it significantly alter existing landscaped features or open space. Despite the undersized nature of the lot, there is a sizable rear yard area and a variety of large-scale plantings along the perimeter of the lot.

- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Single-family dwellings along the eastern side of Eliot Street, between Dean Road and Clinton Road, produce a consistent streetscape by incorporating attractive brick facades, front entry walkways, street trees, and ground level garages that are not easily visible from the public way. The proposed rear addition for 189 Eliot Street effectively maintains this streetscape, as well as the Colonial Revival style design that is characteristic of the immediate neighborhood.
- d. Circulation – The existing driveway, ground level garage, and pedestrian walkways will not be altered as a result of this rear addition.

Section 8.02.2 – Alteration or Extension: A special permit is required to expand the pre-existing non-conforming structure (FAR).

Ms. Clark stated the Planning Board unanimously supported this single-story rear addition. The proposed floor area increase is modest and all exterior modifications are not easily visible from surrounding properties. Wood clapboard additions of this nature are common amongst brick single-family dwellings located throughout surrounding Fisher Hill and Chestnut Hill Neighborhoods. The Board is not convinced that special permit relief under By-Law §5.22.3.c may be applied to this addition based on the grant of prior zoning relief. Ms. Clark noted the Planning Board did consider the applicability of M.G.L. c.40B, §6 provisions as they relate to the alteration of a pre-existing nonconforming single-family structure but ultimately defer to the Board of Appeals' ruling on that matter.

Should the Board of Appeals find that the statutory requirements for a variance are met the Planning Board recommends approval of floor plans and elevations by Michael J. Huller, dated 11/20/2016, and the site plan by Bruce Bradford, dated 12/1/2015, subject to the following conditions:

1. **Prior to the issuance of a building permit, the applicant shall submit final 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 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.

Board Chairman Zuroff called upon Deputy Building Commissioner, Mike Yanovitch, to deliver the opinion of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to this request. Mr. Yanovitch stated that this project is a casualty of layered zoning over the years. Mr. Yanovitch explained though it is up to the Board for interpretation, he understands Mr. Shuman's proposal for a modification of the previous special permit decision. Mr. Yanovitch stated the intention was to allow max out of FAR to 150% as long as it was a small addition. Mr. Yanovitch noted this proposal is small and does not max out 350 or 150% so it doesn't qualify for the 120% or 130% or subparagraph c. Mr. Yanovitch stated there may be an issue with uniform districts as well, as there are differences in what the neighbor can do with their structure and what can be done next door. Mr. Yanovitch stated he agreed with the applicant that it is possible to modify the previous special permit but also recognizes the argument for a variance. Mr. Yanovitch stated there are some hardships that may have been caused by layered zoning. Mr. Yanovitch stated if the Board does find the applicant meets the criteria for the grant of a special permit or modification the Building Department will work with the application to ensure compliance.

The Board then deliberated on the merits of a special permit as requested. Board Chairman Zuroff stated that he was not opposed to the proposal and felt the By-law was clear in allowing an additional 350 square feet. Board Chairman Zuroff noted it was not considered when the By-law was written that someone may want to return for additional relief under § 5.22.3.c. Mr. Zuroff stated he was not convinced the argument for a variance

considered when the By-law was written that someone may want to return for additional relief under § 5.22.3.c. Mr. Zuroff stated he was not convinced the argument for a variance had been made, though would vote in favor of a modification of the previous grant of relief. Mr. Hussey concurred with Board Chairman Zuroff and noted the addition is needed. Mr. Hussey stated these small kitchens are typical of an earlier time and need a large space to make a family room, which is what kitchens are used for now. Mr. Book agreed with Board Chairman Zuroff and Mr. Hussey and stated he did not think a variance was warranted because he did not feel the statutory requirements were fully met. Mr. Book stated that a good argument had been made for the modification of the existing special permit. Mr. Book stated that for all the aforementioned reasons and in particular the proposal's compliance with § 9.05 he felt the proposal was worthy of relief.

Accordingly, the Board voted unanimously to grant the requested modification of special permit case #2794 July 14, 1986 under § 5.22.3.c, subject to the following conditions:

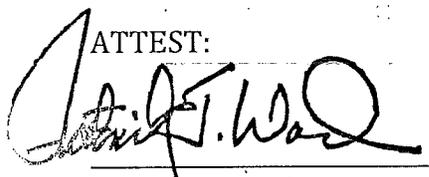
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- 2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or 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: 10/21/16


Mark G. Zuroff, Chairman

A True Copy

ATTEST:

Patrick J. Ward
Clerk, Board of Appeals