

Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2002-0033
246 DUDLEY STREET/
292 WARREN STREET

Petitioner, Marjie Kargman, applied to the Building Commissioner for a building permit to construct a second floor to a portion of the building between the existing residence and the existing garage at 246 Dudley Street/292 Warren 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 August 18, 2016 at 7:00 p.m., in the Selectmen's Hearing Room 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 August 4, 2016 and August 11, 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:

C/O BOSTON LAND CO 151 TREMONT ST- in an S40 Residential T-6, (Two-Family and Attached Single Family) residential district, on

August 18, 2016, at 07:00p in the 6th Floor Selectmen's Hearing Room (Petitioner: KARGMAN MARJIE B; Owner: KARGMAN MARJIE B)

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

- 1. Section 5.55: Conversions**
- 2. Section 5.43: Exceptions to yard and setback regulations**
- 3. Section 8.02: 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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@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 Jesse Geller, and Board Members Steve Chiumenti and Kate Poverman. Ashley Clark was present on behalf of the Planning and Building Departments. The case was presented by the Petitioner's attorney, Wayne Dennison (One Financial Center, Boston, MA). Mr. Dennison waived a reading of the notice and presented the case for the petitioner.

Mr. Dennison reviewed the prior relief obtained by the petitioner from the Board of Appeals related to 246 Dudley Street and relevant to this request. Mr. Dennison stated

there was a previous determination by the Building Department regarding the portion of the addition between the existing garage and main structure of the house, which is approximately a 600 square feet, and which the Building Department determined was within the rear yard setback. Mr. Dennison described a previous challenge to this determination. Mr. Dennison stated while in pursuit of an Administrative Appeal of the Building Department's determination of a non-conformity with the rear yard setback requirements, the Zoning Board Members attending the prior hearing urged the petitioner instead to seek a modification of the existing special permit.

That existing special permit permitted the modification of the garage which allows the structure to sit roughly four feet from the property line. Mr. Dennison stated the current proposal under review does not further encroach into the setback and that this is a second floor addition over an existing first floor. Mr. Dennison further described the conditions of the proposal and its relationship to neighboring structures. Mr. Dennison continued that the closest the addition will be to the lot line on the other side of the garage is 40 feet from and 103 feet from the closest abutter's structure.

Mr. Dennison reiterated to the board it is in accordance with the suggestion of the Board of Appeals they are pursuing a modification of the previously granted special permit. Mr. Dennison described the Planning Board's quick approval of this addition and stated the proposal is very modest. Mr. Dennison stated this second floor addition is intended to permit the homeowners to age in place as it provides access to an elevator and a caretaker bedroom and noted the addition is perfectly consistent with this purpose. Mr. Dennison stated the prior Board Members expressed fairly significant support for this proposal.

Board Chairman Geller confirmed with Mr. Dennison there was a discrepancy between what was presented in the submitted Planning Board report description of relief sought and the actual relief sought by the petitioner. After a discussion between the Board Members, the Planning Department representative, Ms. Clark, and Mr. Dennison, the specific addition area for which relief was being requested was established to be the shaded gray area on a plan submitted to the Zoning Board of Appeals with the application. Mr. Geller confirmed the grey shaded area on the plan supplied to the Zoning Board of Appeals with the application is the only area requiring relief and is interpreted by the Building Department as encroaching into the rear lot setback (and the limitation of the request for relief by the petitioner this evening is for the shaded grey second story addition and nothing else).

Mr. Dennison stated there is an existing special permit that allowed a previous proposal to construct a garage within four feet from the property line and that the petitioner would like to add bedroom space and elevator access above the existing first floor walkway. He noted that the only portion within the setback is the grey shaded area.

The Chairman asked if anyone wanted to speak in favor of, or in opposition to, the petitioner's request. There was no public comment.

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

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.50 – Front Yard Requirements

Section 5.55 – Front Yard for Rear Lot

Because this property is a rear lot with a long driveway leading to Dudley Street, Section 5.55 applies for the front yard setback. This makes the requirement 50 feet, rather than 30 feet.

	<u>Required</u>	<u>Required</u> <u>by Section</u> <u>5.50</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Front Yard Setback	30'	50'	50'	40'	<u>s.p./varian</u> <u>ce</u>

Under Section 5.43, a special permit may be granted to waive setback requirements if counterbalancing amenities are provided. In 1987, there was a landscaping plan submitted and approved by the Planning Department.

*The Applicant has prior approval by special permit relief to build to the 50' set back line.

Modification, Case # 2845, March 4, 1987. The Board of Appeals, in this case, allowed the extension of the petitioner's garage only. The current proposal will not extend but will continue a similar non-conformity.

Ms. Clark stated the Planning Board supports this proposal for a second floor addition to a portion of the building between the existing residence and the existing garage at 246 Dudley Street. The new construction will be designed in such a way as to complement the existing home and finished in matching color stucco. Therefore, the Planning Board recommended approval of the requested relief, subject to the following conditions:

1. **Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all dimensions and materials subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **A revised landscaping plan shall be submitted, depicting new plantings along the northeastern side of the home, subject to the approval of the Director of Planning and Community Development.**
3. **All construction vehicles shall be parked on site.**

The Chairman then called upon Ms. Clark to deliver the comments from the Building Department. Ms. Clark stated this proposal is for a modification of a previous decision. The relief for front yard rear lot was granted in 1987. The Board can choose to issue a new

special permit or modify the previous decision to include the new addition. There is currently a building permit for various renovations. Should the requested relief be granted, the Building Department will work with the petitioner to ensure compliance.

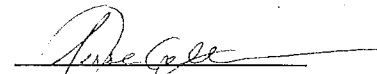
Ms. Poverman and Mr. Chiumenti supported a modification of the previous special permit for the limited purpose as requested by the petitioner. Mr. Geller was also in support of granting a modification to the previously granted special permit (Case No. 2845) as explained and corrected by the petitioner's legal counsel and within the limitations of the request, which is the grey shaded portion on the second floor which comes no closer to the property. Mr. Geller, Ms. Poverman and Mr. Chiumenti voted in favor of granting the modification as requested, subject to the following amended conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all dimensions and materials subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. All construction vehicles shall be parked on site.**

Unanimous grant of the modification as requested subject to the conditions as revised.

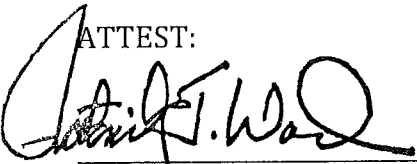
Unanimous Decision of
The Board of Appeals

Filing Date: 11/3/16



Jesse Geller, Chairman

A True Copy

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals