



# Town of Brookline

## Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-0056  
MUKESH AND VANDANA DIALANI  
70 PRINCETON ROAD, BROOKLINE, MA

Petitioners, Mukesh and Vandana Dialani, applied to the Building Commissioner for permission to construct a second story addition. 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 October 20, 2016 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 October 6, 2016 & October 13, 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: **70 PRINCETON ROAD – CONSTRUCT A SECOND STORY ADDITION in AN A S-15 (SINGLE-FAMILY) RESIDENCE DISTRICT, on OCTOBER 20, 2016 at 7:10 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner/Owner: Makesh and Vandana Dialani) *Precinct 15***

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 5.22.3.b.1.b: Exceptions to Floor Area Ratio (FAR) Regulations For Residential Units**
3. **Section 5.43: Exceptions to Yard and Setback Regulations**
4. **Section 5.70: Rear Yard Requirements**
5. **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](http://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](mailto:llgellineau@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 Mark G. Zuroff and Board Members Christopher Hussey and Jonathan Book. Planner and Zoning Coordinator, Ashley Clark was also present at the hearing. 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, Mukesh and Vandana Dialani.

Chairman Zuroff called the hearing to order at 7:10 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that 70 Princeton Road is located in the S-15 District and is located at the intersection of Princeton Road and LaGrange Street. Attorney Allen stated that there have

been recent additions and newly constructed homes, a number of which have second stories on Princeton Road.

Attorney Allen stated that the Petitioners were cognizant of the option to demolish the home to achieve more livable area. Attorney Allen stated that the Petitioners wanted to devise a building plan that would increase the efficiency in the home, but would allow them to maintain the ranch style structure.

Attorney Allen stated that the Petitioners were cited under Section 5.09.2.j of the Zoning Bylaw. He stated that the Planning Board discussed the design in great depth, thought the increase in FAR was reasonable, and granted unanimous support.

Attorney Allen further discussed Section 5.09.2.j of the Zoning Bylaw stating that the proposed addition has been designed to be consistent with the style of the existing dwelling. Mr. Allen stated that the size of the addition is in proportion to that of the existing home and the scale of the finished space correlates to that of the surrounding homes. The existing FAR is .22 and the allowable FAR is .25. Attorney Allen stated that the proposal seeks to increase the FAR to .29 which may be granted by special permit.

Attorney Allen stated that under Section 5.22.3.b.1 a special permit may be granted for an exterior addition that is less than or equal to 20% of the permitted gross floor area. He stated that the Petitioners' proposal falls below the 20% permitted under Section 5.22.3.b.1 of the Zoning Bylaw. Attorney Allen stated that the Petitioners are also cited under Section 5.70 of the Zoning Bylaw which requires that counterbalancing amenities be provided. Attorney Allen stated that the Petitioners will submit a landscaping plan subject to the review and approval of the Assistant Director of Regulatory Planning.

Attorney Allen then discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location because a number of homes on Princeton Road have added similar as well as larger additions; (2) there will be no adverse effect on the neighborhood because the footprint of the home will not change. Furthermore, significant open space on the property will be maintained.; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because the second story addition will not result in an increase in occupancy; (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.

Chairman Zuroff asked whether the triangular shape of the lot affected the noncompliant side yard setback. Attorney Allen stated that the condition was preexisting nonconforming and that the shape of the lot necessitates relief.

Chairman Zuroff asked whether anyone would like to speak in favor of, or in opposition to the proposal. There was no public comment.

Ms. Clark then delivered the findings for the Planning Board:

### **FINDINGS**

**Section 5.09.2.j – Design Review:** Any exterior addition for which a special permit is requested pursuant to *Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations)* requires a special permit subject to the design review standards listed under *Section 5.09.4(a-1)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – The proposal does not require the removal of any trees or substantial landscaping, as the addition does not extend significantly away from the existing building. Only the existing deck and grass would need to be removed.
- b. Relation of Buildings to Environment – The proposed addition is not expected to have shadow impacts on neighboring properties.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed addition has been designed to be consistent with the style of the existing dwelling. In

addition, the size of the addition is in proportion to that of the existing home and the scale of the finished space correlates to that of the surrounding homes.

**Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio (FAR) Regulations For Residential Units**

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Allowed by Special Permit</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	0.25 100%	0.22 90%	.30 120%	0.29 119%	Special Permit*
<b>Floor Area (s.f.)</b>	4,069	3,643	4,882	4,844	

\*Under *Section 5.22.3.b.1.b* a special permit may be granted for an exterior addition that is less than or equal to 20% of the permitted gross floor area.

**Section 5.43 – Exceptions to Yard and Setback Requirements:**

**Section 5.70 – Rear Yard Requirements:** As stated, the footprint will not change and the existing porch which is within rear yard setback; however setback relief is required due to because it is being converted to livable space.

<b>Dimensional Requirements</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Rear Yard Setback</b>	40 feet	37.5 feet	37.5 feet	Special Permit/ Variance*

\*The dwelling has a pre-existing non-conforming rear setback that is not being altered with this proposal. Under Section 5.43, the Board of Appeals may waive setback requirements if a counterbalancing amenity is provided.

Ms. Clark stated that the Planning Board is supportive of the proposed addition for this single-family dwelling. The addition is in proportion with the home and will add needed livable space for the owners. Similar (as well as much larger and imposing) additions have been added to homes of similar style across the street and nearby. The addition will not be out of character and will increase the functionality of the home.

**Therefore, the Planning Board recommends approval of the architectural plans by I.S. Hernandez Design Services, Inc. dated 9/15/2016 and the site plan by Antonino Land Surveyors, Inc. dated 12/24/2016, subject to the following conditions:**

- 1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations indicating all salient dimensions, windows, roof plan, and materials including modifications to the front façade subject to the review and**

**approval of the Assistant Director of Regulatory Planning and a final review of the Planning Board**

- 2. Prior to the issuance of a building permit, the applicant shall submit a landscape plan indicating all counterbalancing amenities.**
- 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 or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Chairman Zuroff requested that Ms. Clark deliver the findings of the Building Department. Ms. Clark stated that the Building Department has no objection to the relief as requested and felt that the relief requested is minimal and falls below the allowable Section 5.22 special permit bonus. The Building Department therefore will work with the Petitioners to ensure compliance should relief be granted.

The Board then determined, by unanimous vote that the requirements for a special permit under Sections 5.09.2.j, 5.22.3.b.1.b, and 5.70 of the Zoning By-Law pursuant to Sections 5.43 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 floor plans and elevations indicating all salient dimensions, windows, roof plan, and materials including modifications to the front façade subject to the review and approval of the Assistant Director of Regulatory Planning and a final review of the Planning Board
2. Prior to the issuance of a building permit, the applicant shall submit a landscape plan indicating all counterbalancing amenities.
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 or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

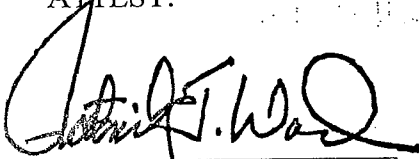
Unanimous Decision of  
The Board of Appeals

Filing Date: 11/10/16

  
Mark G. Zurhoff, Chairman

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals " "