



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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. 2016-0067
MARY CLARE DECKER
100 BEVERLY ROAD, BROOKLINE, MA

Petitioners, Mary Clare Decker, applied to the Building Commissioner for permission to construct a two-story side 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 November 10, 2016, at 7:20 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 October 27, 2016 & November 3, 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:

100 Beverly Road to Construct a two story side yard addition in a S-15 (Single-Family) Residence District, on November 10, 2016 at 7:20 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Kate and Greg Gamwell) 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 Regulation**
4. **Section 5.60: Side Yard Requirements**
5. **Section 8.02.2: Alteration or Extension**
6. **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.

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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jonathan Book and Board Members Christopher Hussey and Steve Chiumenti. 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 Petitioner, Mary Clare Decker and her daughter and son-in-law Kate and Greg Gamwell.

Chairman Book called the hearing to order at 7:20 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that 100 Beverly Road is located in an S-15 District and that Marie Claire Decker, is the current homeowner. Attorney Allen stated that the subject property was the childhood home of Kate Gamwell and that she and her husband are returning to be with Ms. Decker and raise their family in Brookline. Attorney Allen stated that the proposal is to construct a side addition and extend the garage to make room for an additional laundry room, bedroom and bathroom.

Attorney Allen stated that the Planning Board expressed concerns regarding the proposal, and the Petitioners have made some changes in the design to respond to those concerns. Julian Jalbert of Sousa Design Architects reviewed the proposal and its changes, focusing on the revised side yard setback for the addition.

Attorney Allen reviewed the zoning relief needed for the proposal, stating that the Petitioners were cited under **Section 5.09.2.j** of the Zoning Bylaw. Attorney Allen said that the proposed addition has been designed to be consistent with the style of the existing dwelling. Mr. Allen said 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.

Attorney Allen stated that the Petitioners are also cited for side yard setback under **Section 5.60** 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 said the home's existing FAR is .29 and the allowable FAR is .25. Attorney Allen stated that the proposal seeks to increase the FAR to .38, which may be granted by special permit under M.G.L. ch. 40A section 6 if the Board finds that the increase in the FAR created by the addition is not substantially more detrimental than the existing non-conformity to the neighborhood. Deadrick v. Zoning Board of Appeals of Chatham, 85 Mass.App. Ct. 539.

Attorney Allen commented that the relief requested will increase an existing non-conformity, without creating any new non-conformities, and will not create any substantial detriment to the neighborhood.

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 the home will maintain the colonial style that is common on Beverly Road, and the existing home, as well as a number of other homes on Beverly Road, have similar second-story floor area; (2) there will be no adverse effect on the neighborhood because the floor area change is modest and will have minimal impact to the neighborhood. Furthermore, many neighbors have expressed support for the proposal.; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because the proposal will not result in an increase in traffic; (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.

Board Member Chiumenti asked whether there was currently a walkway on the side of the lot where the addition would be located. Attorney Allen said no, that area is landscaped, and also reviewed the property of the closest abutter to the proposed addition at 92 Beverly Road, which is a newly constructed home. Attorney Allen reviewed the general development pattern of the immediate neighborhood, noting the steep slope in the rear yards as well as the orientation of the homes and lot lines to the street. Attorney Allen reviewed the Town-owned right of way that was never constructed and abuts the subject property.

Chairman Book asked about the parameters of M.G.L. ch. 40A Section 6. Attorney Allen reviewed current case law in Massachusetts regarding M.G.L. ch. 40A Section 6, which requires a finding of no substantial detriment. Attorney Allen stated that the Zoning Board of Appeals examines the totality of the circumstances and determines when there is a detriment to the

overall neighborhood. Attorney Allen stated that the neighborhood will not be negatively impacted as evidenced by the 15 neighbors who attended the Planning Board meeting in support of this proposal. Attorney Allen stated that if the entire neighborhood is in support of the proposal and the proposal meets the requirements for a special permit, and is appropriate for a Section 6 finding of no substantial detriment.

Chairman Book said the Zoning By-law has been adopted by Town Meeting and sets a standard for FAR, and although state law takes precedence over the local by-law, this proposal does not stay within the building's existing footprint and is an entirely new addition.

Attorney Allen said the home does have an attic but it cannot be built out without expensive alterations to the front of the home. Under the current Zoning Bylaw, the home could go up to 150 percent with an attic conversion if very large dormers were installed. Attorney Allen said the current proposal forgoes the attic conversion opportunity, and instead is proposing an addition less intrusive to the neighborhood. Attorney Allen said the Town of Brookline Zoning Bylaw already promotes reasonable expansions of homes, and this side addition does not derogate from the intent of the local Zoning By-law.

Board Member Chiumenti asked about the Planning Board's opinion regarding the side yard setback, and what setback would be considered sufficient. Attorney Allen reviewed the discussion at the Planning Board meeting regarding the setback and the garage.

Chairman Book asked whether anyone would like to speak in favor of or in opposition to the proposal, or had a general comment. Attorney Allen said that a number of letters have been submitted in support of the proposal.

Francis Cobb, 50 Bellingham Road, said his neighbor constructed a similar project, and that he was supportive. Mr. Cobb stated that his neighbor's project increased the property value,

and he believes the same will happen here. He stated that the proposed addition will be a positive outcome for the neighborhood.

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-l)*. 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.
- 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

Floor Area	Allowed	Existing	Allowed by Special Permit	Proposed	Finding
Floor Area Ratio (% of allowed)	0.25 100%	0.29 118%	.3 120%	.38 153.5%	Special Permit/ *Variance
Floor Area (s.f.)	2,526.5	2,976	3,031.8	3,879	

** Under Deadrick, the Board of Appeals may allow an extension of an existing non-conformity if it finds there is no substantial detriment to the neighborhood.*

Section 5.43 – Exceptions to Yard and Setback Requirements:

Section 5.60 – Side Yard Requirements

Setback Requirements	Required	Existing	Proposed	Finding
Side Yard	15'	9.5'	2.5'	Special Permit*

** Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.*

Section 8.02.2 – Alteration or Extension

A special permit is required to extend this non-conforming use and alter this non-conforming structure.

Mrs. Clark stated that the Planning Board is supportive of the proposed two-story addition. The Planning Board felt that the addition is in proportion with the home and will add needed livable space for the owner. The Board commented that the addition will not be out of character and will increase the functionality of the home. Ms. Clark stated that the Planning Board did have concerns about the minimal side yard setback and requested that the applicant and architect reduce the proposed addition. Additionally, the Board noted that the applicant will add additional landscaping where the proposed addition is to minimize the impact on the abutter to the west. Therefore, the Planning Board recommended approval of the architectural plans by Sousa Design dated 6/14/2016 and 8/1/2016 and the site plan by Peter Nolan & Associates dated 7/20/2016, showing a revision to the setback dated 11/4/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations, showing an enlarged side yard setback at the southwest corner of a minimum 4.5 feet, subject to the review and approval of the Assistant Director of Regulatory Planning.
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 Book requested Ms. Clark deliver the findings of the Building Department. Ms. Clark stated that the Building Department has no objection to the relief as requested. The

Building Department will work with the Petitioners to ensure compliance should relief be granted.

Chairman Book asked about the home on the neighboring property to the west. Attorney Allen said the neighboring property was recently developed, and the owner is supportive of the proposal. Chairman Book asked how close the neighboring home is to the side lot line. Attorney Allen described the neighboring property, noting that there is a 12-foot-wide driveway along that side lot line. Board Member Hussey noted that the Assessor's Map doesn't accurately show the neighboring lot.

In deliberation, Chairman Book said that based on the lack of objection and the indication of support from the neighborhood, there appears to be a lack of substantial detriment to the neighborhood for this proposal, meeting the threshold for a Section 6 finding under M.G.L. Chapter 40A. Board Members Chiumenti and Board Member Hussey concurred, noting that the recommendations from the Planning Board regarding the proposal's design were incorporated, lessening the impact on the neighbor.

The Board then determined, by unanimous vote that the requirements for a special permit under **Sections 5.09.2.j and 5.60** of the Zoning By-Law pursuant to **Sections 5.43** and **9.05** of the Zoning By-Law were met. The Board specifically found that the additional FAR created by the addition is not substantially more detrimental than the existing non-conformity to the neighborhood. The Board also made the following specific findings pursuant to said **Section 9.05**:

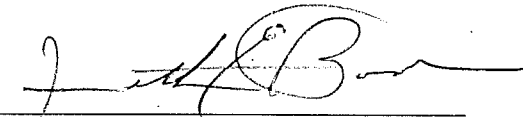
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

- 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:

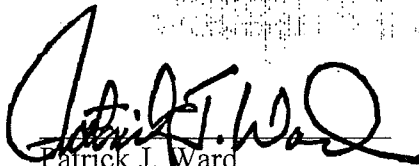
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Unanimous Decision of
The Board of Appeals


Jonathan Book, Chairman

Filing Date: 11/28/2016

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals