



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0081
149 BONAD ROAD

Petitioners, Karl Klaussen and Leslie Gruhn, applied to the Building Commissioner for a building permit to perform major renovations to the single family home at 149 Bonad Road, including the addition of a second floor and a partial third floor. 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 December 29, 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 Petitioners, 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 December 15, 2016 and December 22, 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:

149 Bonad Road – Remove roof and construct second story addition in a S-7 (Single-Family) Residence District, on DECEMBER 29, 2016 at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: Karl Klaussen & Leslie Gruhn) 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 and n: Design Review**
- 2. Section 5.22.3.b.1.b: Exceptions to Floor Area Ratio (FAR) for Residential Units**
- 3. Section 8.02.2: Alteration or Extension**
- 4. 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, this Board held a public hearing.

Present at the hearing was Chairman Mark G. Zuroff, and Board Members Christopher Hussey and Lark Palermo. The case was presented by Attorney Kenneth M. Goldstein, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467 along with the project architect Greg Rochlin. Chairman Mark G. Zuroff called the hearing to order at 7:00 p.m.

Attorney Goldstein waived the reading of public notice and presented to the Board a background of the property, stating as follows: 149 Bonad Road ranch style home with a

basement garage located on a 5,000 sq. ft. lot in an S-7 Zone in South Brookline. Attorney Goldstein stated that the existing home is atypical of the style of home that is commonly found in this neighborhood of predominantly two-story colonials.

Attorney Goldstein described the current structure, as shown in the Zoning Analysis on Page SP1.0 of the Plans submitted with the application, has a Gross Floor Area of 1,760 sq. ft. (1,750 sq. ft. is the maximum allowed by right) and has a rear yard setback of 28.8 feet (30 feet is the minimum required by right). Attorney Goldstein noted the current structure complies with all other dimensional requirements including, minimum lot size, minimum lot width, maximum height, front yard setback, side yard setback, rear yard set back, useable open space and landscaped open space.

Attorney Goldstein explained that the proposed renovation would result in a new structure with 2,088 sq. ft. of Gross Floor Area on two and one-half floors (utilizing the 20% Floor Area Ratio bonus available under §5.22.3.b.1.b of the Brookline Zoning By-law) and would have a rear yard setback of 38.6 feet (thereby eliminating the currently non-conforming rear yard setback.)

Attorney Goldstein next discussed the zoning relief required from the Board of Appeals, saying as follows:

Floor Area Ratio Requirement:

Under §5.22.3.b.1.b a special permit may be granted for an increase above the permitted gross floor area in an S District for an exterior addition that is less than or equal to 20% of the permitted gross floor area. Under §5.22.1.b the additional floor area allowed must be located and designed so as to minimize adverse impact on abutting properties and ways. Under §5.09.2j

exterior additions requiring a special permit under §5.22 require a special permit subject to the community and environmental impact and design review procedures and standards specified in §5.09. Most significantly, the standard required by §5.09.4.c is that the proposed development shall be consistent with the use, scale, yard setbacks and architecture of existing buildings and overall streetscape of the surrounding area.

Attorney Goldstein stated that the proposed exterior addition is less than 20% of what is permitted and adverse impact on abutting properties and ways has been minimized. Attorney Goldstein explained that in fact, the abutter at 14 Ashville Road had been critical of the original proposal that had a side entrance and as a result, to minimize impact on this abutter, the main entrance was relocated to the front façade. Attorney Goldstein argued that the proposed development will be more consistent with the use, scale, yard setbacks and architecture of existing buildings and overall streetscape of the surrounding area. Further, Mr. Goldstein stated that most homes in this neighborhood are two or two and one-half stories.

Attorney Goldstein described the subject property and surrounding homes. He stated that 145 Bonad Road, the abutter to the south, has 2,175 sq. ft. of floor area and the proposed structure will have 2,091 sq. ft. of floor area. Attorney Goldstein stated that 14 Ashville Road, the abutter to the north, has a Floor Area Ratio of .45 and the proposed structure will have a Floor Area Ratio of .42. Attorney Goldstein explained that 265 Russett Road and its abutters was cited as an example of structures in the neighborhood, built on identical 5,000 sq. ft. lots, with larger scale and massing and 165 Bonad Road was cited as an example of a structure in the neighborhood with a contemporary style of architecture. Attorney Goldstein added that the non-conforming rear yard setback would be brought into compliance by the proposed structure and

that the proposed rear yard setback would be consistent with what is common in the surrounding area.

Convertible Unfinished Space:

Attorney Goldstein explained that at Brookline's Special Town Meeting convened on November 15, 2016, Warrant Article 22 was passed by the requisite two-thirds majority. Mr. Goldstein added, while the Article has not yet been approved by the Attorney General of the Commonwealth and is not yet officially enacted, its provisions arguably apply to the Petition.

Attorney Goldstein stated that the Article, if enacted, will add §5.09.2.n to the Town's Zoning By-law, requiring a Special Permit where...

any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.

Attorney Goldstein argued that §5.09.2.n is inapplicable to the Petition because any space which was not already calculated in Gross Floor Area could not be modified to substantially meet habitability requirements since they are needed utility and garage spaces integral to the operation of the property. In the alternative, Attorney Goldstein argued that, even if §5.09.2.n applies, all of the criteria for granting the Special Permit have been met (See prior discussion of

§5.09 design and environmental impact standards and discussion to follow relative to §§9.03 to 9.05.) Attorney Goldstein stated that it should be additionally noted that the footprint of the proposed development is somewhat larger than the average in the surrounding area due to the basement garage. Attorney Goldstein noted that is offset by the absence of a separate garage structure.

General Approval Criteria:

Attorney Goldstein described the general criteria for approval of Special Permits as provided in §§9.03 to 9.05. He stated that the proposal is an appropriate location for the structure; will not adversely affect the neighborhood, and presents no nuisance to passage and adequate facilities have been provided for the proper operation of the property and the proposal has not adverse impact on affordable housing.

Attorney Goldstein presented two letters (e-mails) of support from neighbors.

Attorney Goldstein next introduced Greg Rochlin who reviewed the floor plans and dimensions for the Board.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in favor of the application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to the application.

Zoning Board of Appeals Chairman Zuroff asked if the Board had any questions. The Board Members asked only clarifying questions and expressed general support for the application.

Zoning Board of Appeals Chairman Zuroff called upon Karen Martin, Planner for the Planning and Community Development Department of the Town of Brookline, to deliver the findings of the Planning Board. Ms. Martin responded that the Planning Board was supportive of granting the Petitioners' requests and believed that the standards for the required Special Permits had been met. Ms. Martin stated the Planning Board noted that the house was the smallest on the block, that the addition would be in character with other houses in the neighborhood and that the neighbors are generally in support. She stated that consequently, the Planning Board unanimously recommended that the requested relief be granted, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations showing a revised door location and a stamped survey, 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 final landscaping plan, subject to the review and approval of the Assistant Director of 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 an engineer or land surveyor, 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon acting Deputy Building Commissioner, Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch expressed the Building Department's support for the application but noted a different basis on which relief could be granted. Mr. Yanovitch reasoned that the excess floor area in the proposed structure would be an extension of an existing non-conformity. Mr. Yanovitch stated that applying the rule announced in *Deadrick v. Zoning Bd. Of Appeals of Chatham*, 85 Mass.App.Ct. 539 (2014), the

Special Permit should be approved as long as the proposed structure is not “substantially more detrimental to the neighborhood.” Mr. Yanovitch stated the Building Department did not find that the proposed structure would be a detriment to the neighborhood.

The Board of Appeals then determined by unanimous vote that the requirements for Special Permits under §5.22.3.b.1.b, §5.09.2.n (if enacted), §5.09.2.j and §8.02.2 had been satisfied and granted such Special Permits. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site in an appropriate location for such a use, structure, or condition.
- b. The use as developed will not 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. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Board of Appeals also determined by unanimous vote that the proposal is not substantially more detrimental to the neighborhood and granted a Special Permit for extension of non-conforming floor area.

Accordingly, the Board of Appeals 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 site plans, floor plans and elevations showing a revised door location and a stamped survey, 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 final landscaping plan, subject to the review and approval of the Assistant Director of 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 an engineer or land surveyor, 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

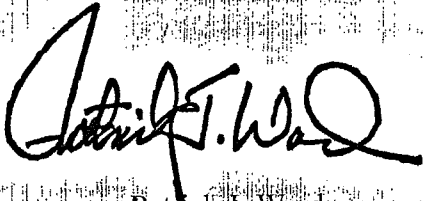
Unanimous Decision of
The Board of Appeals

Filing Date: 1/19/17


Mark G. Zuroff, Chairman

A True Copy

ATTEST



Patrick J. Ward

Clerk, Board of Appeals