



Town of Brookline

Massachusetts

Board of Appeals
Jesse Geller, Chairman



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

Patrick J. Ward, Clerk

NOTICE OF DECISION

A public hearing was held on **February 16, 2017** on the appeal OF **MICHAEL MINKOFF** for a variance and/or special permit at **15 CHATHAM STREET TO ENCLOSE REAR PORCH**. Said property is located in a S-10 (Single-Family) Residence District.

The appeal was **GRANTED WITH CONDITIONS**.

This decision of the Board of Appeals is on file in the Office of the Town Clerk and a copy is posted on the Town of Brookline's website at www.brooklinema.gov.

Decisions of the Board of Appeals become final in twenty (20) days, after the decision has been filed with the Office of the Town Clerk, unless within that time an aggrieved person appeals to Norfolk Superior Court or Massachusetts Land Court pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and so notifies the Town Clerk by serving a copy of the complaint within said twenty (20) days.

The date of filing for this decision is **March 2, 2017**

For questions regarding this filing, contact the Planning Department 617-730-2130



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BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0091
MICHAEL MINKOFF
15 CHATHAM STREET, BROOKLINE, MA

Petitioner, Michael Minkoff, applied to the Building Commissioner for permission to enclose a rear porch. 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 February 16, 2017 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 February 2, 2017 & February 9, 2017 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: 15 Chatham Street to Enclose rear porch in a S-10 (Single Family) Residence District, on February 16, 2017 at 7:20 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Michael Minkoff) Precinct 1

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 5.20: Floor Are Ratio**
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.50: Front Yard Requirements**
4. **Section 8.02.2: Alteration or Extension**
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.

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 Mark G. Zuroff and Board Members Steve Chiumenti and Lark Palermo. Building Commissioner, Michael Yanovitch and Zoning Coordinator, Ashley Clark were 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. The Petitioner, Michael Minkoff, was also present.

Chairman Zuroff called the hearing to order at 7:50 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the property is located in the S-10 Zoning District. Attorney Allen stated that the Petitioner currently owns and lives behind the subject property at 10 Hawes Place, and is renovating the subject property to be his primary residence. Mr. Allen stated that 15

Chatham Street is a single-family dwelling that faces Longwood Mall, and the narrow private way Hawes Place is at the rear. Attorney Allen stated that the proposal is to fully enclose the already partially enclosed rear porch area on the first floor. He stated that the enclosure would add 61 square feet to the total floor area of the structure. Attorney Allen stated that the request would not alter the footprint or the setbacks of the porch area. Attorney Allen stated that the proposed rear porch enclosure would encompass an area that is already partially enclosed by lattice.

Attorney Allen stated that case law precedent has established that under **Chapter 40A, Section 6**, the owner of a nonconforming single-family or two-family house needs a variance for any reconstruction that creates a new nonconformity. Attorney Allen continued that case law (Deadrick v. Board of Appeals of Chatham, 85 MassApp Ct. 539) has further established that an owner can, however, expand an existing nonconformity via a special permit granted under Massachusetts General Laws **Chapter 40 A, Section 6**, provided there is a finding that such expansion causes no substantial detriment. Attorney Allen stated that the maximum allowable FAR in the S-10 District is .30 and noted that the Petitioner is currently at .567. He specified that the nonconforming FAR is pre-existing. 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 for such use because the proposed addition is an area of the house that is already partially enclosed with lattice and at the rear of the home. The enclosure is not very visible, and will improve the rear appearance of the building; (2) the use will not adversely affect the neighborhood because the proposal will not expand upon the

building's footprint or extend any further into the setback. The Petitioner has reviewed the plans with the immediate abutters, who are supportive; (3) there will be no nuisance or serious hazard to vehicles or pedestrians as there will be no change in the occupancy in the unit; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply on housing available for low and moderate income people.

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

FINDINGS

Section 5.20: Floor Area Ratio

	Required	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.30 (100%)	.567 (189%)	.568 (189%)	Special Permit/Variance*
Floor Area (s.f.)	5,753	10,851	10,912	

**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 5.50: Front Yard Requirements

	Required	Existing	Proposed	Finding
Front Yard Setback (Hawes Place)	20 ft.	11.3	11.3	Special Permit*

**Under Section 5.43, the Board of Appeals may waive dimensional requirements in lieu of other dimensions if the applicant provides counters balancing amenities.*

Section 8.02.2 – Alteration or Extension

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

Ms. Clark stated that the Planning Board is supportive of the proposal to enclose an existing porch. The Planning Board commented that the addition is small and will add 61 square feet to

the existing home which has a very minimal impact on the overall FAR. The Planning Board felt that the proposed brick material and reuse of existing windows will be an aesthetic improvement along Hawes Place and fits in with the character of the neighborhood. Therefore, the Planning Board recommends approval of the site plan by Stephen Desroche dated 10/14/2016 and elevations and floor plans by Hendren Associates, dated 11/1/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations 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 indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for 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 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 then called upon Mr. Yanovitch on behalf of the Building Department. Mr. Yanovitch stated that the Building Department has no objections to the requested relief. He stated that should relief be granted, the Building Department will work with the Petitioner to ensure compliance.

During deliberation Mrs. Palermo stated that the relief requested is minimal and in keeping with the neighborhood. Chairman Zuroff and Board Member Chiumenti agreed.

The Board then determined, by unanimous vote that the requirements for a special permit under Section 5.20 of the Zoning By-Law were met under Massachusetts General Laws Chapter 40A, Section 6, as interpreted by Deadrick, and may be granted without substantial detriment

pursuant to Section 9.05 of the Zoning By-Law. The Board also determined, by unanimous vote that the requirements for a special permit under Section 5.50 of the Zoning By-law pursuant to Sections 5.43 and 9.05 were met. 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:

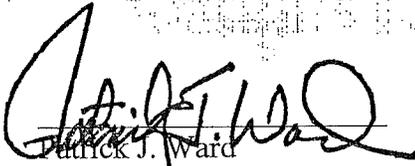
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Unanimous Decision of
The Board of Appeals

Filing Date: 3/2/2017


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals