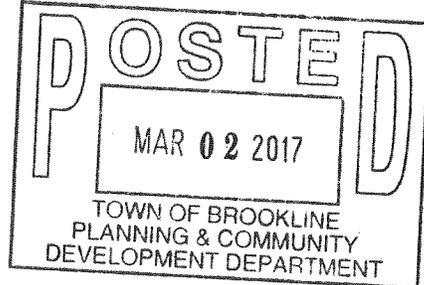




**Board of Appeals**  
Jesse Geller, Chairman

# *Town of Brookline*

## *Massachusetts*



Town Hall, 1<sup>st</sup> 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 **DAVID AND BROOKE RICHARD** for a variance and/or special permit at **131 HIGH STREET TO CONSTRUCT A SECOND STORY ADDITION AND REAR DECK**. 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](http://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**



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

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

Patrick J. Ward, Clerk

RECEIVED  
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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2016-0090  
131 HIGH STREET

Petitioners, David and Brooke Richard, applied to the Building Commissioner for a building permit to construct a second story at 131 High 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 February 16, 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 February 2, 2017 and 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:

**131 High Street to Construct a second story addition and rear deck in a S-10 (Single Family) Residence District, on February 16, 2017 at 7:00 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner/Owner: David and Brooke Richard) Precinct 5**

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 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.55: Front Yard Rear Lot**
- 3. Section 5.70: Rear 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](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, this Board held a public hearing.

Present at the hearing was Chairman Mark G. Zuroff, and Board Members Lark Palermo and Stephen Chiumenti. Michael Yanovitch was present on behalf of the Building Department and Ashley Clark was present on behalf of the Planning Department. The owners, David and Brooke were present with their architect, Andrew Falkenstein.

Mr. Falkenstein presented the application to construct a second story addition and rear deck. Mr. Falkenstein stated that they are here to request the Board's approval for a

special permit for front and rear yard setback. Mr. Falkenstein stated they received approval of the site plan and architecture plans from the Planning Board. Mr. Falkenstein described the lot as a pork chop lot and stated that the majority of the lot is shielded from the street. Mr. Falkenstein stated that the proposal does not change the footprint of the existing structure by adding the proposed second story to the single story portion of the house. Mr. Falkenstein stated that the only portion of the proposed plan that extends any nonconformity is the proposed deck, adding, the deck itself is a fairly low structure. Mr. Falkenstein summarized his comments stated that they are requesting relief for the deck and are in keeping with the allowed FAR.

Chair Zuroff asked Mr. Falkenstein about outreach to the neighbors.

Mr. Falkenstein stated that they have received support from 135 High Street who attended the Preservation hearings. Ms. Clark confirmed that two letters of support from 135 and 137 High had been provided to the Board.

Mr. Falkenstein stated that through the process they have not received opposition to the proposal.

Chair Zuroff called for public comments in favor or opposition. There was no public comment submitted.

Ms. Clark stated that the draft Planning Board report was sent ahead of time to the Board Members and received confirmation from the Board that they had sufficient time to review the advisory report prior to the hearing. Ms. Clark stated that the finalized Planning Board report included one small amendment to drafted condition number one. Ms. Clark presented the Planning Board report as amended.

## **FINDINGS**

Section 5.55 Front Yard Rear Lot

Section 5.70: Rear Yard Requirements

<b>Dimensional Requirements</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief Required</b>
<b>Floor Area Ratio</b> <i>The size of the lot is 8,580 SF.</i>	.30	1,603/8,580 = <b>0.186 SF</b>	2350/8580 = <b>0.273</b>	0.273 < 0.3, ∴ Complies
	(.30)(8,580) = <b>2,574 SF</b>	<b>1,603 SF</b>	<b>2,350</b>	2,350 < 2,574, ∴ Complies

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief Required</b>
<b>5.55 Front Yard Rear Lot</b> <b>(second story addition)</b>	30'	20.4'	20.4'	Special Permit*
<b>5.74 Rear Yard Setback</b> <b>(open deck)</b>	15'**	No rear existing deck	14.3'-14.8'	Special Permit*

\* Under §5.43, the Board of Appeals may waive yard and/or setback requirements if counterbalancing amenity is provided; in this case the Applicant is proposing a tree at the rear property line.

\*\*§5.74: "Uncovered porches or decks may not extend into the yard more than 50% of the required yard setback but in no case closer than six feet to the property line. 50% of 30' = 15'; in this case, the deck is not within 6' of the property line and thus can seek relief under §5.43\*."

### Section 8.02.2 – Alteration of Extension

A special permit is required to alter or extend a nonconforming structure (side-yard setback).

Ms. Clark stated that the Planning Board supports this request for front yard and rear yard setback relief to construct a two-story rear addition and deck. Ms. Clark noted the requested setback relief is minimal and the Applicant is proposing to add a tree along the rear property line as a counterbalancing amenity. Additionally, Ms. Clark stated that the property is heavily screened from the street and the impact on the street is thus minimal.

**Therefore, the Planning Board recommends approval the site plan by Stephen Desroche, dated 1/6/2017, and architectural elevations and floors plans, dated 1/12/2017, 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 including existing and proposed conditions, subject to review and approval by the Assistant Director for 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 review and approval by 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; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chair Zuroff confirmed with the Applicant there will be no trees removed with this proposal.

Board Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to this request for relief. Mr. Yanovitch stated that this is a preexisting nonconforming footprint. Mr. Yanovitch stated that this is a front yard rear lot so they are required to maintain the rear yard setback, which they are extending by going vertical. Mr. Yanovitch described the deck as an open deck and one that just slightly exceeds the rear yard allowed for open decks. Mr. Yanovitch stated that the relief is minimal and should the Board grant relief, the Building Department will work with the Petitioner to ensure compliance.

The Board then deliberated on the merits of the requested special permit relief. Board Members Palermo and Chiumenti were in support of granting the relief. Chairman Zuroff was also in support of the relief requested and found the proposal meets the requirements for special permit relief under **Section 9.05** and **Section 5.43** with the submission of a landscaping plan indicating counter balancing amenities.

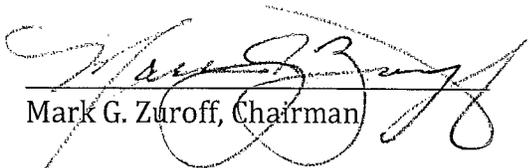
Accordingly, the Board voted unanimously to grant the requested special permit relief under **Section 5.43** and **Section 9.05** of the Zoning By-Law, from application of the

provisions of **Section 5.55, Section 5.70** and **Section 8.02.2**, 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 including existing and proposed conditions, subject to review and approval by the Assistant Director for 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 review and approval by 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; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

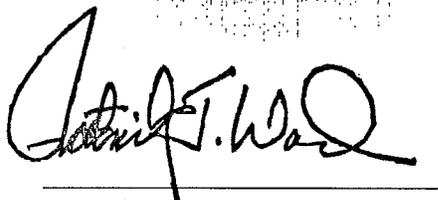
**Unanimous Decision of  
The Board of Appeals**

Filing Date: 3/2/2017

  
Mark G. Zuroff, Chairman

A True Copy

ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals