



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
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0008
EMILY LEVENTHAL
244 HEATH STREET, BROOKLINE, MA

Petitioner, Emily Leventhal, applied to the Building Commissioner for permission to construct a one story 12'x12' mudroom 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 March 9, 2017 at 7:10 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 her 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 23, 2017 & March 2, 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:

244 HEATH STREET– Construct a 12x12 mudroom addition in AN S-40 (SINGLE-FAMILY) RESIDENCE DISTRICT, on March 9 at 7:10 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: Bonny Brook Trust, Emily Leventhal) *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 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.50: Side Front Requirements**
- 3. Section 8.02.2: Alteration or Extension**
- 4. Modification, as necessary, of BOA case #3104 October 17, 1991**
- 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 lgellineau@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 Kate Poverman 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, Emily Leventhal.

Chairman Poverman called the hearing to order at 8 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that 244 Heath Street is located in an S-40 District and that Emily Leventhal is the current homeowner. Attorney Allen stated that 244 Heath is a single-family dwelling at the intersection of Heath Street and Yarmouth Road. He stated that the existing dwelling is close to the front property line, in comparison to the neighboring homes. Attorney Allen stated that the proposal is to construct a single-story mudroom addition on the side of the dwelling that is closest to the driveway.

Attorney Allen stated that the required front yard setback in an S-40 District is 30 ft. and that the existing front yard setback is 25 ft. Attorney Allen stated that the proposed addition will increase the already nonconforming front yard setback by approximately 1.5 feet. Mr. Allen stated that this nonconformity results from the property having two front yards. Mr. Allen stated that neighbors do not have an issue with this proposal.

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 will not be especially visible from the street due to the existing fencing; (2) the proposed use will not adversely affect the neighborhood because it is located a substantial distance from other properties and the addition will be appropriately screened; (3) there will be no nuisance or serious hazard to vehicles or pedestrians as the addition will not change the occupancy in the home; (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 of housing available for low and moderate income people.

Attorney Allen stated that the Petitioner will provide a landscape plan, subject to the review and approval of the Assistant Director of Regulatory Planning, as a counterbalancing amenity.

Chairman Poverman asked whether anyone would like to speak in favor of or in opposition to the proposal. No one appeared in favor of, or in opposition to, the proposal.

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

FINDINGS

Section 5.50- Front yard Requirements

Dimensional Requirements	Required	Existing	Proposed	Relief Required
5.50 Front yard requirements	30'	25'	23.3'	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.*

Section 8.02.2 – Alteration of Extension

A special permit is required to alter or extend a nonconforming structure.

Ms. Clark stated that the Planning Board supports this request for front yard setback relief to construct a 12’x12’ mudroom. The requested setback relief is minimal and the Applicant is proposing to add additional landscaping as a counterbalancing amenity. Ms. Clark stated that the Planning Board believed that the tall stockade fence and ample landscaping would adequately block the addition from the street view. Therefore, the Planning Board recommended approval the site plan by CapeSurv, dated 1/27/2017, and architectural elevations and floor plans by JCG Architecture, dated 11/8/2016, 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 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 Poverman called upon Ms. Clark to deliver the opinion of the Building Department.

Ms. Clark stated that the Building Department has no objection to the relief requested, the relief is minimal and should the Board find it meets the requirements for the grant of a special permit, the Building Department will work with the petitioner to ensure compliance.

The Board then determined, by unanimous vote that the requirements for a special permit under Sections 5.50 and 8.02.2 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 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. Development will not have any effect on the supply of housing available for low and moderate income people.

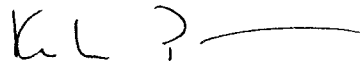
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans, and elevations, 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.

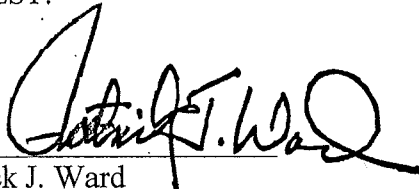
Unanimous Decision of
The Board of Appeals



Kate Poverman, Chairman

Filing Date: 3/24/17

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals