



Town of Brookline Massachusetts

BOARD OF APPEALS
Kate Poverman, Chair
Steven Chiumenti
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
TOWN CLERK
2017 MAR 31 A 9 05

TOWN OF BROOKLINE
BOARD OF APPEALS
OWNER: 190 LEE STREET LLC
CASE NO. 2016-0082
190 LEE STREET

Petitioner, 190 Lee Street LLC, applied to the Building Commissioner for a building permit to construct a garage and two-story 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 on March 9, 2017 at 7:00 p.m., in the 6th Floor 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 its 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 and 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:

190 LEE STREET– CONSTRUCT A GARAGE AND A TWO STORY ADDITION in AN S-40 (SINGLE-FAMILY) RESIDENCE DISTRICT, on March 9 at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: Sharona Taieb) *Precinct 14*

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: Exception to Floor Area Ration (FAR) for Residential Units**
3. **Section 5.43: Exceptions to Yard and Setback Regulations**
4. **Section 5.60: Side Yard Requirements**
5. **Section 8.02.2: Alteration or Extension**
6. **Modification, as necessary, of BOA case #2713 and 2714, March 14, 1985**
7. **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

Publish: February 23 & March 2

The public hearing was held on March 9, 2017.

Present at the hearing were Chair Kate Poverman and Board Members Steven Chiumenti and Christopher Hussey. The case was presented by Attorney Jeffrey Allen.

Attorney Jeffrey Allen, attorney for the Petitioner, waived a reading of the public hearing notice. Mr. Allen described the case history for 190 Lee Street. Mr. Allen stated that originally, the Applicant sought to construct a two-story addition to the house, raze the existing garage, and build a new garage that connected to the side of the house. Issues arose in connection with this plan: neighbors on three sides of the property (the fourth side abuts Lee Street) opposed the plans, the Preservation Department found the garage to be historically significant and imposed a one-year demolition stay, and the Planning Board requested the Petitioner to modify the design. In response, the Applicant modified the proposal such that the existing garage would be moved, not razed, and would connect to the rear of the house. Mr. Allen stated that there was not a large difference between the design that the Planning Board saw and the current proposal of keeping the garage and moving it. Mr. Allen reviewed the zoning relief required for the project and stated that there was no longer any issue of side-yard setback violations since the garage was no longer going to be on the side of the house. However, the current plans required zoning relief because the relocated garage invades the rear-yard setback by about 7 feet. Mr. Allen stated that the neighbors are generally satisfied with the proposal.

Mr. Allen stated that the proposed addition is allowed by special permit because the project will be staying within the required FAR. The FAR is .18. Zoning Coordinator Ashley Clark stated that, because there is unfinished space that needs to be calculated, the FAR is over what is allowed by-right. Mr. Allen stated that special permit relief is possible because the FAR was already over the amount allowed by-right and is therefore a pre-existing nonconformity acceptable under M.G.L. Chapter 40, Section 6. Mr. Allen reviewed

the landscaping plan and stated that the Planning Board had reviewed the plan and approved it. Mr. Allen stated that they worked with the neighbors to develop the plan.

Board Member Hussey asked about the Preservation Board's review of the proposal. Ms. Clark stated that the Preservation Commission has not approved this proposal and the demolition stay is still on the property until lifted or expired. Board Member Chiumenti asked about the ancillary parking. Mr. Allen stated the ancillary parking will be removed and will be landscaped.

Chair Poverman asked if there was anyone present who wished to speak in support of this application. Attorney Peter Fenn, representing the abutters at 240 Lee Street, stated that they have seen the project evolve and that it seems reasonable. Mr. Fenn stated they have no issues with the landscaping plan. Mr. Fenn stated that they are glad to see they are saving the garage. Attorney Alan Garber, representing the abutters at 182 Lee Street, stated that they are generally satisfied with this project, but have concerns over traffic safety. Mrs. Mulliken, a property owner who shares a driveway with the 190 Lee Street property, also expressed traffic safety concerns. She was worried that the new landscaping would interfere with visibility as drivers exit the shared driveway and merge onto Lee Street, where cars have been known to go fast. Mrs. Mulliken was also concerned about the condition of an existing retaining wall and about the possibility that the landscaping will increase run-off from 190 Lee Street onto her property.

Ms. Clark stated that the Town's Engineering Department will review retaining walls and drainage plans. Mr. Allen represented that the existing retaining wall is crumbling and, through engineering review, this proposal will repair the wall and direct all run-off down to the bottom of the property at 190 Lee Street and not onto neighboring properties. Ms.

Clark noted that the Town's Engineering Department is available to answer questions or concerns. Mr. Allen also stated that the landscape plan had intentionally placed the arborvitae so as to minimize the visual impact.

There was a discussion regarding the landscaping plan and proposed 5 foot fence. Chair Poverman asked about sight lines from corners of the driveway. Ms. Clark stated that there are regulations relating to fences and sight lines that will be reviewed by the Building Department. Chair Poverman stated that visibility did not appear to be was not a major safety issue created in the proposed landscaping plan.

Chair Poverman asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to the application.

Chair Poverman called upon Ashley Clark, Planner for the Planning and Community Development Department of the Town of Brookline, to deliver the findings of the Planning Board.

FINDINGS

New Warrant Article 22 Calculations (including existing basement and attic space):

<u>Floor Area</u>	<u>Allowed</u>	<u>Existing</u>	<u>Allowed by Special Permit</u>	<u>Proposed</u>	<u>Finding</u>
Floor Area Ratio (% of allowed)	<u>.15</u> (100%)	<u>.22</u> (145%)	<u>.18</u> (120%)	<u>.25</u> (164%)	<u>Special Permit*/ Variance/Finding</u>
Floor Area (s.f.)	<u>3,882</u>	<u>5,636</u>	<u>4,658</u>	<u>6,584</u>	

** 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.*

PLANNING BOARD COMMENTS

Ms. Clark stated that the Planning Board is supportive of this revised plan. Relocating the garage to the rear of the property will have significantly less impact on abutters. The new garage will allow the owners to access covered parking from the front driveway, which was widened per BOA Cases #2713 and 2714 to make it safer and more usable. The other additions, a large two-story addition and the two small ones, add functional, livable space for the owners, are in proportion to the rest of the home, and are not out of character with the neighborhood.

Therefore, the Planning Board recommends approval of the revised site plan by Neponset Valley Survey Association, Inc. dated 1/5/2017 and the revised architectural plans by Rav & Associates, Inc. dated 12/26/2016 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit site plan, floor plans and accurate 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 landscape plan indicating all counterbalancing amenities 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 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.

There was a discussion regarding the changes from the version of plans that the Planning Board reviewed and approved. Ms. Clark presented slides that show the difference and stated that the changes do not seem dramatic, but it was up to the Board to ultimately make that determination. Chair Poverman stated that the most recent plans should be referenced and filed.

The Chair then called upon Zoning Coordinator, Ashley Clark to deliver the comments of the Building Department. Ms. Clark stated that the Building Department has no objection to the request for this relief.

Board Deliberation

Board Member Chiumenti stated that he believed the application met the conditions for a special permit under M.G.L.ch. 40A § 6. Board member Hussey concurred. Board Chair Poverman stated that the application met the requirements for special permit relief under Deadrick and 40A § 6. Chair Poverman stated that relief is appropriate for the rear-yard setback requirements under Zoning By-Law § 5.43, with the counter balancing amenities as approved by the Planning Board. Chair Poverman stated the proposal meets the requirements for a special permit under § 9.05.

Accordingly, the Board voted unanimously to grant special permit relief, and approve the revised site plan by Neponset Valley Survey Association, Inc. dated 3/9/2017 and the revised architectural plans by Rav & Associates, Inc. dated 3/7/2017 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit site plan, floor plans and accurate 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 landscape plan indicating all counterbalancing amenities subject to the ZBA discussion on March, 9, 2017 for the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, all newly proposed retaining walls and drainage plans shall be reviewed and approved by the Director of Engineering and Transportation.

4. 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.

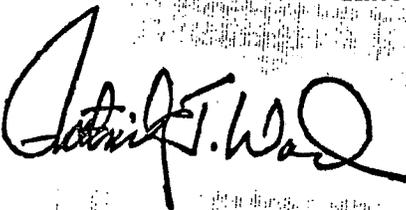
Unanimous Decision of
The Board of Appeals

Filing Date: 3/31/17


Kate Poverman, Chair

A True Copy

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals