



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0011
153 UNIVERSITY ROAD

Petitioners, Thomas Vitolo and Jennifer Taranto, applied to the Building Commissioner for a building permit to add an addition with basement space and two stories to their single family home at 153 University Road. 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 March 23, 2017 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 March 9, 2017 and March 16, 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:

153 University Road – Construct an addition at the rear of the structure in a T-6 (two-family and attached single-family) Residence District, on March 23, 2017, at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: Thomas Vitolo and Jennifer Taranto) *Precinct 6*

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: Exception to Yard and Setback Regulations**
- 2. Section 5.70: Rear Yard Requirements**
- 3. Section 8.02.2: Extension or Alteration**
- 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 Town programs and services may make their needs known to **Robert Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@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 Jesse Geller, and Board Members Christopher Hussey and Kate Poverman. The case for the petitioner was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467. Chairman Jesse Geller called the hearing to order at 7:00 p.m.

Attorney Gladstone waived the reading of public notice and presented to the Board a background of the property, stating as follows: 153 University Road is a two story single family

home. The Petitioners, Thomas Vitolo and Jennifer Taranto, are a married couple who reside in the home with their small children. Petitioners wish to add an addition with basement space and two stories. The addition will be added to the inside of the existing L-shaped structure, making it squarer. This will provide needed additional living space for their growing family. The proposed project requires setback relief to a condition that is already pre-existing non-conforming.

ZBA Case #2016-0040 at 29-33 Winthrop Road granted relief to that Petitioner that allowed him to sell a polygon-shaped piece of land equaling approximately 128 square feet of land to his abutter, the petitioners. As a result of this impending sale and the resulting expansion to his existing lot, the petitioners are able to propose this addition.

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

Setback: The required setback is 7.5 feet. Existing conditions maintain a 5.2' setback. With the new lot line created by the sale of the polygonal shaped parcel of land, the proposed expansion will have a 5.1' setback to the foundation with a setback of 4.03' from the second floor of the addition, all of which is depicted on a Certified Plot Plan of Boston Survey, Inc., dated March 21, 2017 ("March 21, 2017 Plot Plan"). The March 21, 2017 Plot Plan shows an area slightly smaller than the polygon that was part of an earlier submitted Plot Plan dated March 9, 2017, which was later clarified as set forth below.

Special Permit is available under By-Law §5.43: The denial letter refers to By-Law Section 8.02.2, which states that pre-existing non-conforming structures may increase the non-conformities if permitted by some section of the By-Law. The By-law permits relief from required yards and setbacks by special permit under Section 5.43. With respect to §5.43 and counterbalancing amenities, the petitioners stated that they are working on a landscape plan in

conjunction with the immediate abutter most affected by the addition at 29-33 Winthrop Road and will present the plan to the Planning Department for approval prior to seeking a building permit.

Attorney Gladstone went on to explain that the proposal satisfied all of the Special Permit standards under Section 9.05 of the Zoning By-Law as follows:

a. The site is an appropriate location for such a use, structure, or condition: This is an oddly shaped lot and the current house is already very close to the abutter at 29-33 Winthrop. By purchasing additional land from that abutter, Petitioners are able to construct an addition to facilitate their growing family but still maintain roughly the same set-back as is currently the case with the existing structure.

b. For the reason set forth above, the proposed use will not adversely affect the neighborhood. Moreover, because of the shape and the angle of the house, the addition should not be visible from the street or from most of University Path.

c. There will be no nuisance or serious hazard to vehicles or pedestrians since the existing driveway and parking will not change.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. See all of the above.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people as the proposal does not take away any current housing.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in favor of the application. Ron Scharf, as agent for 31-33 Winthrop Development LLC, the owner of the abutting property at 29-33 Winthrop Road, expressed his support for the application.

Zoning Board of Appeals Chairman Geller 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 Geller asked if the Board had any questions. All of the board members requested more details about the revised March 21, 2017 Plot Plan. Mr. Gladstone demonstrated how the March 21, 2017 Plot Plan shows an area slightly smaller than

the polygonal parcel of land that was part of an earlier submitted Plot Plan dated March 9, 2017. The March 21, 2017 Plot Plan is consistent with the plan that was part of the approval of **ZBA Case #2016-0040** at 29-33 Winthrop Road. Mr. Gladstone explained that the parties may still agree to the purchase and sale of the full sized polygon depicted in the Plot Plan dated March 9, 2017, but the Petitioner wanted to make sure that his request for setback relief was based on the most restricted potential area, notwithstanding the fact that the required relief for each of the plan iterations would have been the same.

Chairman Geller called upon Ashley Clark, Planner, for the Town of Brookline, to deliver the findings of the Planning Board.

FINDINGS

Section 5.70 - Side yard Requirements

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Side yard setback	7.5'	5.2'	5.1'	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 was supportive of the requested side yard relief and the addition comes as a part of relief requested during a previous case on Winthrop Road, which was granted last year. Ms. Clark stated that the applicant had spoken to the Board at that time about his plans to propose this addition and the only abutter impacted by the reduced setback is the owner who has agreed to convey the land to provide room for this addition. Ms. Clark noted a small setback of 5 feet or less is common in this neighborhood; the impact will be

minimal and will allow needed living space for the homeowners. Ms. Clark stated that the resulting FAR of .70 is below the allowed FAR of .75 in this T-6 district.

Ms. Clark concluded that the Planning Board 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 a final certified 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.

The Chairman then called upon acting Deputy Building Commissioner, Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department had no objection to the request for relief, even though they are not minimal. Mr. Yanovitch indicated that he had worked with the architect regarding fire rating issues raised by the close proximity and that he would continue to work with the architect and home owners to ensure that the project complies with the Building Code and the Zoning By-Law.

After a brief discussion, all members of the Board expressed support for the proposal.

The Board of Appeals then determined by unanimous vote that the requirements for the grant of the Special Permits from the provisions of **Sections 5.70** and **8.02.2** pursuant to **Sections 5.43** and **9.05** as requested have been met. The Board made the following specific findings pursuant to said **Section 9.05**:

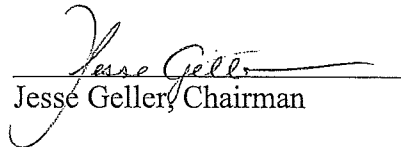
- a. The specific site in an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board of Appeals voted unanimously to grant the requested relief as indicated by **the site plan by The Boston Survey, Inc., dated 3/21/2017, including Detail "A", and elevations and floors plans by Next Phase Studios, dated 3/7/2017, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final certified 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.

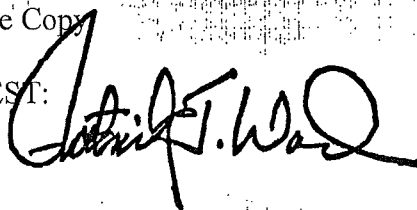
Unanimous Decision of
The Board of Appeals

Filing Date: 4-10-17


Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals