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BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

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2017 APR 27 A 10 53

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0011
RICHARD ALLEN
30 CHANNING RD, BROOKLINE, MA

Petitioner, Richard Allen, applied to the Building Commissioner for permission to construct a one story mudroom at the rear of the subject property. 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 30, 2017 at 7:00 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 his 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 16, 2017 & March 23, 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: **30 Channing Road to construct a one story mudroom addition in the rear in a S-15 (Single-Family) Residence District, on March**

30, 2017 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Richard Allen) 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 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.72: Accessory Structures in the Rear Yard**
- 3. Section 5.20: Floor Area Ratio**
- 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 lgellineau@brooklinema.gov

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At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chairman Kate Poverman and Board Members Christopher Hussey and Lark Palermo. 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. Attorney Allen stated that Dennis Greenwood, Sousa Design, 81 Boylston St, Brookline, MA 02445 is the project architect.

Chairman Poverman called the hearing to order at 7:00 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the property is located in an S-15 District in a neighborhood comprised primarily of large single-family homes. He stated that the property is a 2.5 story brick single-family home with a detached garage. He continued that the surrounding neighborhood is residential with primarily brick colonial style single-family homes.

Attorney Allen stated that the Petitioner sought relief to construct a small mudroom to his house. Under the plans previously submitted to and reviewed by the Planning Board and Building Department, the mudroom did not connect to the garage, requiring special permit dimensional relief. Attorney Allen stated that, at the suggestion of the Planning Board, the Petitioners connected the mudroom to the garage, resulting in a better design and eliminating the need for dimensional relief.

The property is in an S-15 district with an FAR of .25. The addition of the mudroom would increase the FAR from .332 to .344. Attorney Allen argued that the Board could grant the project special permit relief because the house's FAR is a pre-existing non-conformity. Attorney Allen cited *Deadrick v. Board of Appeals of Chatham*, 85 Mass. App. Ct. 539 (2014) as support for the proposition that the owner of a nonconforming single-family or two-family house may expand an existing nonconformity via a special permit relief provided there is a finding by the Board of Appeals that such expansion causes no substantial detriment. Attorney Allen argued that the relief requested is minimal because the addition is at the rear of the property, which is densely screened, and it will not obstruct the view of abutters. Attorney Allen reasoned that the relief requested will only increase an existing nonconformity, without creating any new nonconformities, and will not create any substantial detriment to the neighborhood, and is therefore allowable with special permit relief under *Deadrick*.

Attorney Allen then reviewed the requirements under **Section 9.05** of the Zoning By-Law

for granting special permit relief. Attorney Allen argued: (1) the specific site is an appropriate location for such use because the home will remain a single-family; (2) the use will not adversely affect the neighborhood because the floor area change is modest, will only affect the Petitioner's rear yard, and is not close to abutters; (3) there will be no nuisance or serious hazard to vehicles or pedestrians; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will not have any effect on the supply on housing available for low and moderate income people.

Chairman Poverman commented that connecting the mudroom addition to the home resulted in a more attractive design.

Chairman Poverman then asked whether anyone wanted to speak in opposition to the proposal. No one spoke in opposition to the proposal. Chairman Poverman asked whether anyone wanted to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Poverman called upon Ashley Clark to deliver the findings for the Planning Board:

FINDINGS

Section 5.22.3.b.1.b: Exceptions to FAR Regulations for Residential Units

Ms. Clark stated that the Planning Board supported this proposal for a mudroom addition, stating that the square footage to be added is minimal. Ms. Clark stated that the Planning Board felt that because the initial relief needed had pertained only to the spacing and distance between the main structure and the accessory garage, there would be no negative impact on any abutters. The Planning Board suggested that the Petitioner supplement the densely landscaped property with a landscaping plan as a counterbalancing amenity. Therefore, the Planning Board recommended

approval of the site plan by Peter Nolan, dated 1/20/2017 and elevations and floors plans by Sousa Design Architects, dated 11/18/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan with corrections, 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.
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.

Ms. Clark noted that the Planning Board recommendations were made prior to the Petitioner attaching the mudroom to the home, no longer requiring dimensional relief. Attorney Allen asked to strike the landscaping plan included in Condition #2 since the proposal no longer triggered dimensional relief.

Ashley Clark then delivered the opinion of the Building Department. She stated that the Building Department commented that connecting the mudroom to the home minimized the relief needed. Ms. Clark stated that the Building Department had no objection to the relief requested. Therefore, should relief be granted, the Building Department will work with the Petitioner to ensure compliance.

The Board then deliberated on the merits of a special permit as requested. Chairman Poverman stated that the proposal is worthy of relief. Board Members Hussey and Palermo concurred.

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, under **Section 8.02.2** of the Zoning By-Law and under **Section 9.05**. The Board made the following specific findings pursuant to said **Section 9.05**:

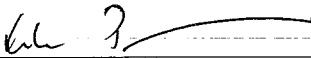
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan with corrections, 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 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.
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.

Unanimous Decision of
The Board of Appeals



Kate Poverman, Chairman

Filing Date: 4-27-17

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals 