



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

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

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2017 MAY 26 A 11:00

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0031  
DANIEL & ELIZABETH O'CONNOR  
299 BEVERLY ROAD, BROOKLINE, MA

Petitioners, Daniel & Elizabeth O'Connor, applied to the Building Commissioner for permission to construct additions at the rear and expand front entry. 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 May 18, 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 their attorney (if any) 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 May 4, 2017 & May 11, 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: 299 Beverly Road to construct a two story addition at rear in an S-7 (Single-Family) Residence District, on May 18, 2017 at 7:10 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioners: Beth and Daniel O'Connor) *Precinct 16*

*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).*

1. **Section 5.20: Floor Area Ratio**
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.70: Rear yard Requirements**
4. **Section 8.02.2: Alteration or Extension**
5. **Any additional relief the Board may find necessary**

*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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Book and Board Members Christopher Hussey and Lark Palermo. 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 Petitioners, Daniel & Elizabeth O'Connor.

Chairman Book called the hearing to order at 7:15 p.m. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that 299 Beverly Road is located in an S-7 District. Attorney Allen stated that the proposal is to construct additions at the rear and expand the front entry which will add 196 square feet to the existing home. Attorney Allen stated that the Petitioners have

communicated with their neighbors and have received a letter of support from the immediate abutter at 7 Independence Drive.

Attorney Allen stated that the FAR is pre-existing non-conforming. Therefore, Attorney Allen stated that FAR relief is available under Chapter 40 A, Section 6. He argued that relief under Section 5.22.3.c. is also an option where, as here, an increase in floor area of up to 350 s.f. is not more than 150% of the permitted gross floor area. Attorney Allen stated that the Petitioners also seek relief under Section 5.70 of the Zoning By-Law.

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 structure will remain a single-family home; (2) the proposed use will not adversely affect the neighborhood because neighbors have expressed support for the requested relief; (3) there will be no nuisance or serious hazard to vehicles or pedestrians as the addition will not increase occupancy within 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 on 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 Book 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 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio (FAR) Regulations For**

Residential Units

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	0.35 (100%)	.46 (131%)	.49 (140%)	Special Permit*
<b>Floor Area (s.f.)</b>	2,470	3,279	3,475	

\* 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.

\*\*Note – the previous version of this report from 2012 had different FAR figures because unfinished basement and attic space were not required to be included at that time.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.70 – Rear Yard Setback

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Rear Yard Setback</b>	30'	11.1'	11.1'	Special Permit**

\*\* Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

PLANNING BOARD COMMENTS

The Planning Board is supportive of the proposed additions and renovations for this single-family dwelling. The additions are modest and will improve the home’s livability for the residents. Due to the close proximity of the rear addition to the rear lot line, landscaping or some other counterbalancing amenity should be provided in order to help screen or beautify the area.

**Therefore, the Planning Board recommends approval of the site plan by Joseph Porter dated 3/1/2017 and architectural plans by D.L. Grose & Associates, dated 12/27/2016, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all salient dimensions and materials 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 final 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 building 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.

Chairman Book called upon Deputy Commissioner Michael Yanovitch to deliver the opinion of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief requested, 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 Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Zoning Board of Appeals Member Christopher Hussey stated that he is in support of the relief requested. Chairman Book and Zoning Board of Appeals Member Lark Palermo echoed support for the relief requested.

The Board then determined, by unanimous vote that the requirements for a special permit under Sections 5.22.3.b.1.b and 5.70 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:

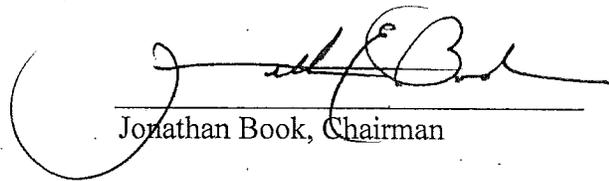
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 final plans and elevations indicating all salient dimensions and materials 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 final 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 building 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.

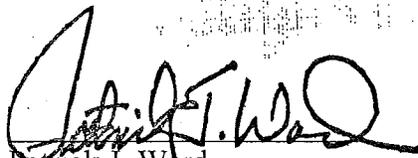
Unanimous Decision of  
The Board of Appeals

Filing Date: 5/26/17



Jonathan Book, Chairman

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals