



Town of Brookline Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2017 JUN -9 A 9:45

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0022
45 WILLOW CRESCENT
WARNER CHERYL K &
DONALD A

Petitioner, Donald Warner, applied to the Building Commissioner for permission to construct a shed in the side yard. 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 May 11, 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 April 27, 2017 and May 4, 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:

45 WILLOW CRESCENT to CONSTRUCT A SHED LOCATED IN THE SIDE AND REAR YARD in a S-10 (Single-Family) Residence District, on MAY 11, 2017 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Donald and Cheryl Warner) Precinct 13

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 Buildings or Structures in the Rear Yard
3. 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: April 27, 2017 & May 4, 2017

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 Mark Zuroff.

The case was presented by the homeowner and petitioner, Donald Warner.

Chairman Geller called the hearing to order at approximately 7:10 p.m. Donald Warner waived the reading of the public notice.

Mr. Warner stated that he is seeking special permit for relief for rear yard setback to construct a shed at the rear corner of the yard. Mr. Warner stated that the shed will not have a negative impact on the surrounding abutters since there exists or will be planted ample landscaping and the shed will be behind the direct abutter's garage. On inquiry from Board Member Zuroff, Mr. Warner confirmed he would be amenable to maintaining the existing fence as part of a condition as long as the structure was there.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in favor of the proposal. Mr. Geller asked if anyone wished to speak in opposition to the application. No one spoke in opposition to the proposal.

Ashley Clark, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.72 – Accessory Building or Structures in the Rear Yard

Dimensional Requirements	Required	Existing	Proposed	Relief
Rear Yard Setback (Accessory Structure)	6 ft.	n/a	~0 ft.	Special Permit*

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

Ms. Clark stated that the Planning Board supports the requested relief for the proposed tool shed. Ms. Clark stated that although the proposed setbacks are very minimal, the shed will be shielded from both abutters by fencing and trees and is located behind the abutter’s rear garage. Ms. Clark concluded that the shed will be designed in a style that complements the main dwelling and the applicant will be required to provide additional screening as a counterbalancing amenity.

Therefore, Ms. Clark stated that the Planning Board recommends approval of the site plan by Medford Engineering & Survey dated 6/16/14 and the floor plan and elevations by D. Warner, architect, dated 3/12/17 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit site plan, floor plan and 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 building elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Deputy Building Commissioner Michael Yanovitch delivered the comments of the Building Department. Mr. Yanovitch stated that the Building Department had no objection to the relief requested and, if the Board finds that the proposal meets the criteria for the grant of a special permit, the Building Department will work with the Petitioner to ensure compliance.

The Board deliberated on the merits of the proposal. Board Member Zuroff stated that he was in favor of granting relief and felt a condition should be included to maintain the fence while the structure is in existence in the rear yard setback. Board Member Hussey agreed with Mr. Zuroff. Chairman Geller was amenable to including in the decision a condition requiring that the existing fence be maintained and stated that the proposal meets the requirements for the requested relief by special permit under **Sections 5.43** and **9.05** of the Zoning By-Law.

The Board then determined that the requirements for relief by special permit from the application of the provisions of **Section 5.72** of the Zoning By-Law pursuant to **Sections, 5.43,** and **9.05** of the Zoning By-Law as requested by the Petitioners 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.

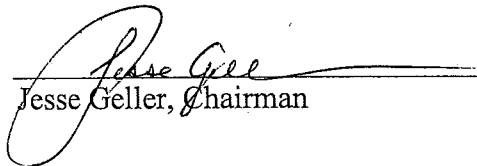
- e. Development will have no effect on the supply of housing available for low and moderate income people.

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

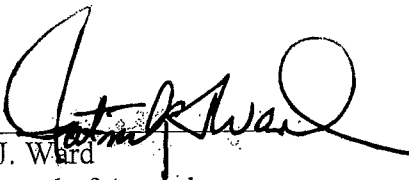
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor and roof plans and elevations of the garage, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a landscape plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning. As an additional counterbalancing amenity, the owner of the property shall additionally be required to maintain the existing fence (or, if necessary, replace it with a fence offering no less screening to the abutter) as long as the shed structure is located in the rear yard setback.
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 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: 6-9-17


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

