



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
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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2017 JUN 30 A 9 19

TOWN OF BROOKLINE
BOARD OF APPEALS
JONATHAN & JENNIFER BARNES
CASE NO. 2017-0027
75 STANTON ROAD

Petitioners, Jonathan & Jennifer Barnes, applied to the Building Commissioner for permission to construct a 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 June 8, 2017 at 7:05 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 25, 2017 & June 1, 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:

75 STANTON ROAD - CONSTRUCT A TWO STORY ADDITION in AN S-7 (SINGLE-FAMILY) RESIDENCE DISTRICT, on JUNE 8, 2017 at 7:05 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Jonathan and Jennifer Barnes) 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 5.20: Floor Area Ratio**
- 2. Section 8.02.2: Alteration or Extension**
- 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

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Mark Zuroff and Christopher Hussey. Zoning Coordinator and Planner Ashley Clark was also present. The case was presented by the attorney for the Petitioner, Angela Vastey, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in

attendance was Petitioner, Jonathan Barnes. Attorney Vastey waived a reading of the public notice.

Attorney Vastey stated that the property is located in an S-7 Zoning District and stated that the Petitioners seek relief from Section 5.20 of the Zoning By-Law in order to construct a 554 s.f. two-story addition. Attorney Vastey stated that the proposed space will be used for a relocated kitchen on the first floor and an additional bedroom on the second floor.

Attorney Vastey argued that case law precedent has established that under Chapter 40A, Section 6, the owner of a nonconforming single-family or two-family house needs a variance for any reconstruction that creates a new nonconformity. Attorney Vastey continued that case law (Deadrick v. Board of Appeals of Chatham, 85 MassApp Ct. 539) has further established that an owner can however expand an existing nonconformity via a special permit granted under Massachusetts General Laws Chapter 40 A, Section 6, provided there is a finding that such expansion causes no substantial detriment. Attorney Vastey stated that the maximum allowable FAR in the S-7 District is .35 and noted that the Petitioners are currently at .53. She specified that the nonconforming FAR is pre-existing. Ms. Vastey commented that the relief requested will increase an existing non-conformity, without creating any new non-conformities, and will not create any substantial detriment to the neighborhood. Ms. Vastey stated that the Petitioners reached out to their neighbors and have received support. She contended that the addition will not create any substantial detriment to the neighborhood.

Attorney Vastey then reviewed the requirements under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location because the home will retain its existing Colonial Style and will be built of materials that will be in harmony with the existing house; (2) the use will not adversely affect the neighborhood because the massing of the

proposed addition will be at the back of the house, reducing its visibility from the street; (3) there will be no nuisance or serious hazard to vehicles or pedestrians as there will be no change of occupancy in the home as a result of the FAR increase; (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 of housing available for low and moderate income people.

Chairman Geller called for public comment in favor of the proposal. No comments were offered in favor of the proposal. Chairman Geller called for public comment in opposition to the proposal. No comments were offered in opposition to the proposal.

Chairman Geller then called upon Ms. Clark to deliver the findings for the Planning Board:

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.53 (151%)	.80 (180%)	Special Permit*
Floor Area (s.f.)	1,913	2,892	3,446	

** 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.*

Section 8.02.2 – Alteration or Extension

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

Ms. Clark stated that the Planning Board is supportive of the proposed addition because the addition is not visible from the street and meets all yard setbacks. The Planning Board felt that given the proposed location of the addition, it should have minimal impact on

abutters. Ms. Clark concluded that the Planning Board recommended approval of the site plan by Bruce Bradford dated 2/16/2017 and architectural plans by Paul Pressman, dated 2/12/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations showing proposed 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 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.

Ms. Clark then delivered the findings on behalf of the Building Department stating that the Building Department has no objection to this proposal. Ms. Clark continued that if the Board grants the requested relief, the Building Department will work with the Petitioners to ensure compliance.

The Board deliberated on the merits of the relief as requested. The Board then determined, by unanimous vote that the requirements for a special permit from **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** and **Section 9.05** of the Zoning By-Law. 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 no 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 showing proposed 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 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.

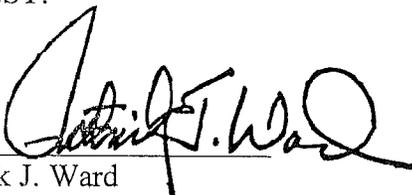
Unanimous Decision of
The Board of Appeals

Filing Date: 6/30/2017



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals