



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Bok
Christopher Bussey

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
JASON & CHRISTINE IMPERATO
CASE NO. 2017-0031
117 WOODLAND ROAD

Petitioners, Jason & Christine Imperato, applied to the Building Commissioner for permission to construct a second story addition at rear of the 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 June 22, 2017 at 7:20 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 June 8, 2017 & June 15, 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: **117 Woodland Road to construct a second story addition at rear in a S-15 (Single-Family) Residence District, on June 22, 2017 at 7:20 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Jason and Christine Imperato) Precinct 15**

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 5.43: Exception to Yard and Setback Regulation**
- 3. Section 5.60: Side Yard Requirements**
- 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 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 Mark G. Zuroff and Board Members Jonathan Book and Christopher Hussey. Zoning Coordinator and Planner Ashley Clark was also present. 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 Petitioners, Jason and Christine Imperato. Attorney Allen waived a reading of the public notice.

Attorney Allen stated that the property is located in an S-15 Zoning District and stated that the Petitioners seek relief to construct an addition. He indicated that the home is eligible for listing on the National Register of Historic Places. Attorney Allen stated that the proposal

underwent Preservation Review. Attorney Allen indicated that the Preservation Commission suggested changes which have been implemented. He noted that the Preservation Commission encouraged the restoration of a few windows. He stated that the restoration will serve as a counterbalancing amenity under Section 5.43 of the Zoning By-Law along with some landscaping.

With respect to Sections 5.20 and 5.60, Attorney Allen argued that relief may be granted via a special permit. Attorney Allen stated 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 Allen continued that case law (Deadrick v. Board of Appeals of Chatham, 85 Mass.App 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 Allen stated that the maximum allowable FAR in the S-15 District is .25 and the home currently has a FAR of .27. Attorney Allen indicated that the addition will increase the FAR to .315. He stated that the Petitioners reached out to their neighbors and have obtained support. Attorney Allen also noted that the side yard setback is 9.6 feet, which pre-existing non-conforming, as 15 feet is required in an S-15 zoning district. He indicated that the side yard setback will remain 9.6 feet. Therefore, the relief requested will increase an existing non-conformity, without creating any new non-conformities. Attorney Allen argued that the addition will not create any substantial detriment to the neighborhood.

Attorney Allen 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

use; (2) the use will not adversely affect the neighborhood because the proposed addition is at the rear of the property and is aligned with the existing wall of the main home, making it undetectable from the street, and the side yard setback will remain unchanged; (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.

Attorney Allen echoed that the window restoration will serve as a counterbalancing amenity pursuant to Section 5.43 of the Zoning By-Law and will be supplemented with additional landscaping subject to the review of the Assistant Director of Regulatory Planning.

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

Attorney Allen reiterated that letters of support were submitted to the Planning Department on behalf of the Petitioners.

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

FINDINGS

Section 5.20 –Floor Area Ratio (FAR)

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.25 (100%)	.27 (108%)	.315 (126%)	Special Permit*
Square footage	3,785	4,180	4,780	

** 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 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Setback

Dimensional Requirements	Required	Existing	Proposed	Relief
Side Yard Setback	15'	9.6'	9.6'	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.

Ms. Clark stated that the Planning Board is supportive of the proposed two story addition. The Planning Board felt that the proposal will not impact the streetscape since the addition is at the rear of the house. The Planning Board noted that the side yard setback relief requested is minimal and that a counterbalancing amenity should be provided in order to help mitigate any impact. Therefore, the Planning Board recommended approval of the site plan by Dennis O'Brien dated 1/20/2017 and architectural plans by New Bridge Architecture, dated 3/20/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) 11x17 copies of final site plans, floor plans 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 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 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 recommendation 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 Sections 5.20 and 5.60 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 (3) 11x17 copies of final site plans, floor plans 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 final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.

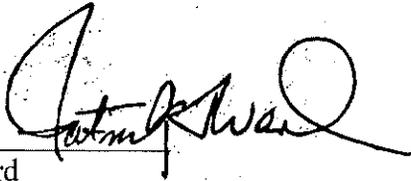
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations stamped and signed by 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: 7-14-17


Mark G. Zurhoff, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals