



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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2017 JUL 14 A 10:49

TOWN OF BROOKLINE
BOARD OF APPEALS
225 CLARK ROAD
CASE NO. 2017-0035
GOODMAN RICHARD D &
SANDRA A

Petitioner, Richard Goodman, applied to the Building Commissioner for permission to finish attic and construct dormer. 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 June 22, 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 June 8, 2017 and 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:

225 Clark Road to finish attic and construct dormer in a S-7 (Single-Family)

Residence District, on June 22, 2017 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Richard Goodman) Precinct 12

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: Design 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, this Board held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Christopher Hussey and Jonathan Book.

Chairman Zuroff called the hearing to order at approximately 8:00 p.m. Jonathan Raisz waived a reading of the notice of hearing.

The case was presented by the project architect, Jonathan Raisz, 26 Thorndike Street, Brookline, MA, 02446. Also in attendance was the homeowner Richard Goodman.

Mr. Raisz stated that the home at 225 Clark Road is a modest size home and the owners would like to expand their living space into an existing unfinished attic with a cross gabled roof to provide additional headroom for a bedroom and bathroom. Mr. Raisz stated that this approach

helps maintain the existing front façade which has been considered by the Preservation Commission.

Mr. Raisz stated that they are seeking relief for the floor area ratio as well as relief for changing a preexisting nonconforming structure.

Mr. Goodman stated that he spoke with the neighbors and no one voiced any concerns regarding the proposal.

Chairman Zuroff asked if anyone wished to speak in favor of the application. No one spoke in favor of the proposal. Mr. Zuroff 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 5.20 – Floor Area Ratio:

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.46 (131%)	.52 (149%)	Special Permit*
Floor Area (s.f.)	1,696	2,249	2,517	

** 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 of Extension

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

Ms. Clark stated that the Planning Board is supportive of this proposal to create additional living space in the attic. Ms. Clark noted if the Preservation Commission imposes a year stay on the house at the June meeting, the applicant may appear before the Preservation Commission again in July to request to have the stay lifted. She stated that a design change to

address any concerns of the Preservation Commission should not affect the required zoning relief.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Stephen Desroche dated 4/14/17 and floor plans and elevations by Jonathan Raisz dated 2/9/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) 11"x17" sets of the site plan, 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 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.

Ms. Clark then delivered the comments of the Building Department. Ms. Clark stated the Building Department has no objection to the relief requested and should the Board of Appeals find that the necessary requirements for special permit relief are met, the Building Department will work with the Petitioners to ensure compliance with all building codes.

The Board deliberated on the merits of the proposal. Chairman Zuroff stated the relief should be granted via a special permit under Massachusetts General Laws Chapter 40A where case law (Deadrick v. Board of Appeals of Chatham, 85 Mass App Ct. 539) has established that an owner can expand an existing nonconformity, provided a finding is made that there will be no detriment to the neighborhood as a result of the relief. Mr. Zuroff noted that this proposal does not pose a detriment to the neighborhood or detract from the intent or purpose of the Zoning By-Law. Mr. Zuroff continued that relief granted under this section does not require relief for design

review. Further, Mr. Zuroff stated, the grant of zoning relief does not allow the Petitioner to move forward without also obtaining approval from the Preservation Commission.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Sections 5.22 of the Zoning By-Law pursuant to Sections 8.02.2 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:

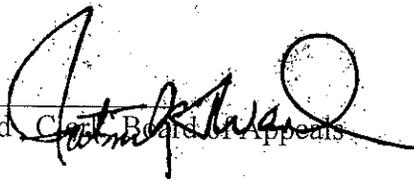
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Unanimous Decision of
The Board of Appeals


Mark G. Zuroff, Chairman

Filing Date: 7-14-17

A True Copy
ATTEST:


Patrick J. Ward, Clerk, Board of Appeals