



Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0040
CASEY AND CHRISTINA CONDRON
113 HEATH STREET, BROOKLINE, MA

Petitioners, Casey and Christina Condron, applied to the Building Commissioner for permission to construct a single-story rear addition. 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 July 20, 2017 at 7:00 PM., 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 Petitioners, 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 July 6, 2017 and July 13, 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: 113 HEATH STREET- Construct a rear addition in AN S-40 (SINGLE-FAMILY) RESIDENCE DISTRICT, on July 20, 2017 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Casey Condron) Precinct 14

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

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 Steve Chiumenti. Also present at the hearing were Zoning Coordinator, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch.

The case was presented by 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, Casey Condron, and the project architect, Kent Duckham, Duckham Architecture & Interiors, 53 Central Ave, Needham Heights, MA 02494.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen stated that the property is located in the S-40 District. Mr. Allen stated that the Petitioners is proposing to construct a 453-square foot addition at the rear which will be utilized for

office space, a mudroom area, and a three-season's porch. Attorney Allen indicated that the FAR relief requested is minimal and will not significantly impact the pre-existing nonconforming home.

Mr. Allen argued that the requested relief may be granted pursuant to Massachusetts General Laws Chapter 40 A, Section 6. He reasoned 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-40 District is .15 and noted that the home has an existing FAR of .20. Mr. Allen reasoned that the instant proposal is contemplated by Deadrick because 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. Mr. Allen stated that the Petitioners reached out to their neighbors and have received support. Mr. Allen contended that the addition will not create any substantial detriment to the neighborhood.

Mr. Allen then described relief under **Section 9.05** of the Zoning By-Law stating: (1) the specific site is an appropriate location for the proposed use because the home will retain its style and will maintain its existing use; (2) the use will not adversely affect the neighborhood because the goal of the proposal is to increase the living space in a manner and 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 pedestrian as the proposal is intended to improve living conditions for the family and there will be no change of occupancy in the home or to its parking on site; (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. Attorney Allen stated that letters of support, including letters from the direct abutters at 7 Cutler Lane and 77 Heath Street.

Chairman Zuroff asked what year the subject home was constructed and whether it was constructed in compliance with the Town of Brookline Zoning regulations. Attorney Allen stated that the home was constructed in 2011.

Upon inquiry, Mr. Yanovitch confirmed that in 2011, the home was constructed in compliance with Zoning but has since become pre-existing nonconforming. Mr. Yanovitch explained stating that Warrant Article 22 which amended the Zoning By-Law to now require special permit review for the construction of newly created space that exceeds the allowed Floor Area Ratio (FAR) automatically rendered all existing structures with space that exceeds the allowed Floor Area Ratio (FAR), non-conforming because they exist without the benefit of a special permit.

Chairman Zuroff then asked whether anyone was present in favor of the proposal. No one spoke in favor of the proposal.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Ashley Clark, Zoning Coordinator & Planner, to deliver the findings of the Planning Department.

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.15 (100%)	.20 (133%)	.21 (140%)	Special Permit*
Floor Area (s.f.)	6,017	8,150	8,603	

** 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 small compared to the overall size of the home. Ms. Clark stated that the Planning Board further supports the proposal because the location of the addition and the large lot size will reduce visibility from neighbors.

Therefore, the Planning Board recommends approval of the site plan by Rod Carter Associates, dated 6/27/2011 and architectural plans by Duckham Architecture & Interiors, dated 4/5/2017, subject to the following conditions:

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

Chairman Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the recommendation of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the proposal relief requested and believe that the relief is minor. Therefore, should relief be granted, the Building Department will work with the Petitioners to ensure compliance.

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 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 (3) 11x17" sets of 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.

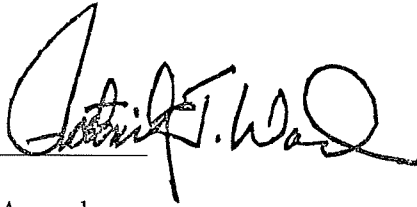
Unanimous Decision of
The Board of Appeals



Mark G. Zuroff, Chairman

Filing Date: 8/11/17

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals