



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-000005
FRANKLIN HARDY
53 DAVIS AVENUE, BROOKLINE, MA

Petitioner, Franklin Hardy, applied to the Building Commissioner for permission to construct a dormer at the fourth floor and a roof deck. 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 7:20 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: 53 Davis Avenue - Renovate existing attic and add dormers in T-5 TWO-FAMILY and ATTACHED SINGLE-FAMILY, on July 20, 2017 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Franklin and Laura Hardy) 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 5.30: Maximum Height of Buildings
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

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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 Petitioner, Franklin Hardy.

Chairman Zuroff called the hearing to order at 7:30 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen stated that the property is an attached single-family home located in an T-5 zoning district. Mr. Allen stated that attached to the left of the structure is 55 Davis Avenue which has a roof deck and indicated that the instant proposal is to mirror the dormer and roof deck arrangement, both in design and proposed dimensions, at 55 Davis Avenue.

Mr. Allen stated that the non-conforming height of 45 feet predates zoning. He indicated that the proposal does not increase the height. Therefore, 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. Mr. Allen stated that the maximum allowable height is 35 feet and the current height is 45 feet. Mr. Allen stated that the proposed dormer and will maintain the 45 foot height. Mr. Allen stated that the Petitioner reached out to his neighbors and has received over 20 signatures in support. Mr. Allen reasoned that the instant proposal is contemplated by Deadrick because the relief requested will maintain an existing non-conformity, without creating any new non-conformities, and will not create any substantial detriment to the neighborhood.

Mr. Allen indicated that the subject premises has a landscaped area along the side of the home and that the required side yard setback is 10 feet where the existing is 15 feet.

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 this is an attached single-family home and the proposed dormer and roof deck will not change the existing use; (2) the use will not adversely affect the neighborhood because currently, there is a roof deck on the structure that is nearly identical to the one that is proposed which will be minimally visible from the street. Furthermore, the Petitioner met with his neighbors and obtained over 20 signatures in support including support from 55 Davis Avenue and his neighbor at 49 Davis Avenue which are the closest abutters; (3) there will be no nuisance or

serious hazard to vehicles or pedestrian; (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.

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

§5.30: Maximum Height of Buildings

Dimensional Requirements	Required	Existing	Proposed	Relief
Building Height	35'	45'	45'	Special Permit*

** Under Dadrick, 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 supports this plan for a fourth story dormer and a roof deck. The Planning Board felt that although the height of this structure is substantially higher than allowed by zoning, the height will not increase with this proposal. Ms. Clark stated that the Planning Board felt that the proposal will offer a more symmetrical appearance to the structure overall and noted that the dormer and deck will be minimally visible from the street. The Planning Board suggested that the Petitioner work to ensure that there will be no negative impacts from noise on nearby abutters.

Therefore, the Planning Board recommends approval of the site plan by Arthur Foley dated 10/14/1987 and floor plans and elevations by Sidney C. Graves dated 5/12/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for 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 floor plans and elevations stamped and signed by a registered architect 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 5.30 pursuant to Section 8.02.2 and Section 9.05 of the Zoning By-Law 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, elevations, and floor plans subject to the review and approval of the Assistant Director for

Regulatory Planning.

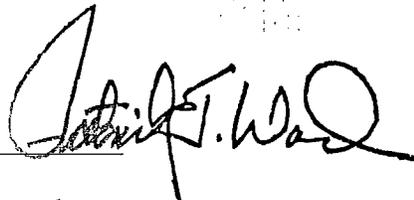
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect 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: 8/11/17


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals