



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

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0015
WEISMAN SCOTT & ROBIN
77 EVANS ROAD, BROOKLINE, MA

Petitioners, Scott and Robin Weisman, applied to the Building Commissioner for permission to construct a mudroom connector to garage. 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 September 28, 2017 at 7:00 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 September 14, 2017 & September 21, 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:

77 EVANS RD, BROOKLINE - CONSTRUCT MUDROOM CONNECTOR TO EXISTING GARGAE in a(n) S-7 SINGLE-FAMILY on 09/28/2017 at 7:10 PM in the 6th Floor

Selectmen's Hearing Room (Petitioner/Owner: CICCOLO GREGORY M SONNABEND STEPHANIE) *Precinct 13*

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:

ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

§8.02.2 – ALTERATION AND EXTENSION

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 Christopher Hussey and Kate Poverman.

The case was presented by the attorney for the Petitioners, Attorney Alan Garber, Mason & Martin, 199 Wells Avenue, Suite 210, Newton, MA 02459.

Attorney Garber stated that the property is a single-family home in an S-7 District. Mr. Garber then stated that the applicant sought relief to construct a mudroom at the rear of the home that connects to an existing garage; the proposal also includes the addition of a keeping room. He stated that the project would add 330 square feet of living area on the first floor. He stated that the intention of the design is to preserve the architectural integrity of the structure while improving its functionality.

Attorney Garber indicated that this proposal requires zoning relief for its FAR and setbacks. With regards to the FAR relief requested, Attorney Garber stated that the allowed FAR is .35. Mr. Garber stated that the 100 year old home has a preexisting nonconforming FAR of .64. Mr. Garber stated that as a result of this project the FAR would increase to .67. Mr. Garber stated that this is a minimal increase.

Attorney Garber then described the setback relief required at the side and rear setbacks need relief. Mr. Garber stated that the 7.5 feet are required for side yard setbacks and the existing garage is within 1 foot of the side yard. Attorney Garber stated that the rear yard requires 30 feet and the existing garage is within 3 feet of the rear yard setback. Additionally, Mr. Garber added, the proposed mudroom will be within 14.3 feet of the rear setback and therefore also requires rear yard setback relief. Attorney Garber argued that the mudroom addition will not exacerbate the existing rear yard setback conditions created by the existing garage.

Attorney Garber stated that **Section 5.43** of the Zoning By-law allows exceptions to the setback requirements. Further, Mr. Garber argued, FAR and setbacks may be altered if they are preexisting nonconforming conditions via special permit under Massachusetts General Laws Chapter 40 A, Section 6, provided there is a finding that such expansion causes no substantial detriment. Deadrick v. Board of Appeals of Chatham, 85 Mass.App. Ct. 539.

Attorney Garber then reviewed the requirements under **Section 9.05** of the Zoning By-Law. Attorney Garber argued: (1) the specific site is an appropriate location for such an addition because it will not be visible to the neighbors; (2) the use will not adversely affect the neighborhood and will not expand existing setback issues; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the proposed mudroom addition will not result in a change in occupancy; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will not have any effect on the supply on housing available for low and moderate income people.

Attorney Garber stated that letters have been submitted in support from the abutters to the side, to the rear and across the street. Mr. Garber argued that the two neighbors who will be impacted the most as a result of this proposal have submitted letters of support. Further, Mr. Garber stated that to their knowledge no neighbor has submitted opposition to the proposal.

Attorney Garber stated that the Planning Board issued a positive recommendation of this proposal. Therefore, Attorney Garber stated, for those reasons he is asking for the allowance of the special permit relief requested to allow this project to proceed.

Upon inquiry from Chairman Zuroff, Mr. Garber stated that the Petitioners will submit a landscaping plan indicating plantings as a counterbalancing amenity to fulfill the requirement in **Section 5.43** of the Zoning By-Law for the requested setback relief.

Chairman Zuroff called for public comments in support of and opposition to the proposal. There were no public comments submitted.

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

Section 5.20: Floor Area Ratio

	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.64 (182%)	.67 (191%)	Special Permit*/ Variance
Floor Area (s.f.)	3,510	6,396	6,693	

** 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 and no new nonconformities are created.*

Section 5.43 – Exception to Yard and Setback Regulation

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Side Yard Setback* garage additions	7.5'	~1'	~1' 21.2"	Special Permit**
Rear Yard Setback (garage) (additions)	30'	3'	3' 14.3'	Special Permit**

**By connecting the house to the garage the preexisting nonconforming side and rear yard setbacks for the garage are triggered because it must meet the setbacks for a house*

*** Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements, if a counterbalancing amenity is provided.*

Section 8.02.2 – Alteration or Extension

A special permit is required to alter this non-conforming structure.

Ms. Clark stated that the Planning Board has no objection to this proposal as the addition is modest and at the rear of the home. Ms. Clark stated that it will improve the functionality of the home as it will allow them covered access to the garage. Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Bruce Bradford dated 7/17/2017 and the floor plans and elevations by Oak Hill Architects dated 7/16/2017 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) 11"x17" packets including a site plan and final 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 floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Mike Yanovitch, Deputy Building Commissioner, to deliver the findings of the Building Department.

Mr. Yanovitch stated that the Building Department has no issue with the request for relief.

Mr. Yanovitch stated if the Board finds the Petitioner meets the criteria for the grant of special permit and the criteria for the preexisting nonconforming section 6 finding, the Building Department will work with the Petitioner to ensure compliance.

The Board then deliberated on the merits of the requested special permit relief. Board members Poverman and Hussey were in support of granting the relief. Board Chairman Zuroff stated that a landscape plan will be required to fulfill all the requirements and was in support of relief.

The Board then determined, by unanimous vote that the requirements for a special permit under **Sections 5.20** and **5.43** 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** of the Zoning By-Law and under **Section 9.05**. 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:

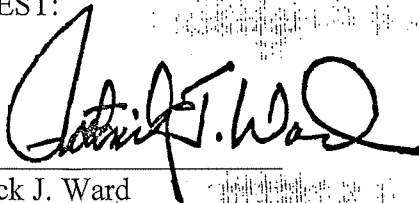
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Unanimous Decision of
The Board of Appeals

Filing Date: 10/20/2017


Mark G. Zuroff, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals