



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Mark Zuroff

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0024
29 SARGENT BEECHWOOD ROAD
ZOHAR, YISHAI & DAPHNE

Petitioner, Yishai Zohar, applied to the Building Commissioner for a building permit to demolish an existing house and construct a new single family home at 29 Sargent Beechwood Road. 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 November 30, 2017 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioners, to their attorney 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 November 16, 2017 and November 23, 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:

29 SARGENT BEECHWD, BROOKLINE - DEMOLISH EXISTING HOUSE AND CONSTRUCT SINGLE FAMILY in a(n) S-40 SINGLE-FAMILY on 11/30/2017 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: ZOHAR YISHAI & DAPHNE) Precinct 5

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:

§5.09.2.N – DESIGN REVIEW

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
Mark Zuroff*

Publish: 11/16/2017 & 11/23/2017

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller, and Board Members Chris Hussey and Kate Poverman. The case was presented by the Project Architect, Adolfo Perez, 69 Union St # 7, Newton, Massachusetts, 02459. Chairman Jesse Geller called the case forward at approximately 7:00 p.m.

Mr. Perez presented to the Board a background of the Petitioner's proposal, stating that the subject property is located in an S-40 District consisting of large single-family dwellings on similarly large sized lots and floor area ratios. Mr. Perez referenced a neighborhood analysis that was submitted to the Board that shows the proposed gross floor area proposed is similar to the gross floor areas of surrounding homes.

Mr. Perez stated that the Petitioner is proposing to demolish an existing single-family home and construct a new single-family two-story home. He noted that the proposal includes a pool, cabana, and a large basement space with unfinished space. Mr. Perez continued that if the unfinished space in the basement was to be converted to finished space, the FAR would exceed the as-of-right FAR and therefore the Petitioner is seeking special permit relief pursuant to Section 5.09.2.n of the Zoning By-Law.

Mr. Perez reviewed the Petitioners' efforts to communicate with the abutters to the property stating that the Petitioners have verbally communicated with the neighbors. Mr. Perez added that three abutters previously submitted letters of support to the Board.

Mr. Perez stated that the Planning Board positively recommended the proposal on October 26, 2017 after finding that the conditions under design review, specifically that the design was appropriate to its site and surroundings, pursuant to Section 5.09.4 of the Zoning By-Law had been met.

Mr. Perez stated that the proposal meets the requirements under Section 9.05 of the Zoning By-Law. He argued: (1) the site is an appropriate location for such a use since the proposed home is consistent with the residential nature, size and setbacks of surrounding properties; (2) there will be no adverse effect on the neighborhood because the gross floor area of the house is smaller on average than the surrounding homes; (3) there will be no nuisance or serious hazard to vehicles or pedestrians; (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 on housing available for low and moderate income people.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in support of the proposal.

Mr. Geller 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 5.09.2. n

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.

Section 5.09.4 – Design Standards

The most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – All trees and other landscape features shall be preserved in a natural state insofar as possible. A landscaping plan will be proposed to indicate improvements to existing landscaping.
- b. Relation of Buildings to Environment – “Proposed development shall be related harmoniously to the terrain, trees, landscape and natural features.” The new home is nestled into the grade of the lot and surrounding by dense landscaping.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed home will be setback over 200 feet from the street.

Section 5.20 – Floor Area Ratio

	<u>Exempt Space</u>	<u>Included Space</u>
Basement	494	978
Garage*	720	308
Cabana**	150	
First Floor		3243
Second Floor		2038
Allowed FAR:	0.15 or 6,595 SF	
Proposed FAR:	0.149 or 6,567 SF	
Potential FAR IF all unfinished space finished:	0.16 or 7,061	

*Up to 720 square feet of a garage may be exempt; any remainder space must be included in the GFA calculations. In this case, 308 SF were added to the GFA as part of the calculation for total FAR of the proposed building.

**Section 2.07.1.e: excludes for up to 150 square feet of area in an accessory structure

FAR Analysis:

- This proposal does not exceed the as-of-right FAR and it therefore does not require a variance.
- The unfinished space in the basement substantially meets the building code requirements for habitability. If this space were to be finished, it would exceed the as-of-right FAR, and therefore requires a special permit pursuant to section 5.09.n.

Ms. Clark stated that the Planning Board is supportive of this proposal. She noted that the applicant has made revisions to the elevations in response to concerns from the Board regarding discrepancies between the site plan and elevations. Ms. Clark further stated that the Board finds the setbacks, mass and scaling to be consistent with the surrounding properties which vary in size and design. She noted that the Planning Board recommends placing a condition limiting the space that can be finished in the future.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Joseph Porter, Land Surveyor, dated 3/3/17, and the architectural plans by ADOLFO PEREZ ARCHITECT, dated 2/3/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit in PDF format all

final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.

2. The extent to which any non-habitable basement space may be converted to habitable space in the future, in addition to other relevant FAR by-law sections, must comply with §5.22 of the Zoning By-law.
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.

The Chairman then called upon Ms. Clark to deliver the comments of the Building Department.

Ms. Clark stated that the Building Department has no objection to this request and felt the requirements under **Section 5.09.2.n** of the Zoning By-Law have been met through design review with the Planning Board. She noted that if the Board finds the proposal meets the criteria for the grant of special permit relief, the Building Department will work with the Petitioner to ensure compliance.

The Board deliberated on the merits of the proposal. Board Members Poverman and Hussey were in support of granting the requested relief. Chairman Geller was also in support of granting the relief.

After deliberating on the merits of the request for special permit relief, the Board voted unanimously that the requirements have been met for the issuance of a special permit pursuant to said **Sections 5.09.2.n** and **9.05**, finding specifically under 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.

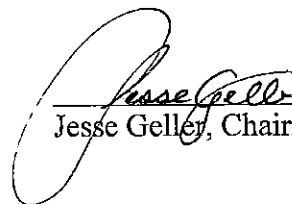
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief, subject to the following condition:

1. Prior to the issuance of a building permit, the applicant shall submit in PDF format all final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The extent to which any non-habitable basement space may be converted to habitable space in the future, in addition to other relevant FAR by-law sections, must comply with §5.22 of the Zoning By-law.
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.

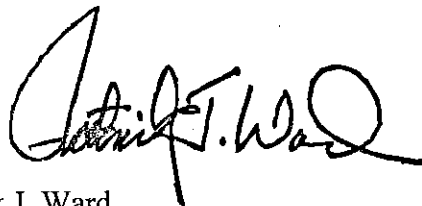
Unanimous Decision of
The Board of Appeals

Filing Date: 12/15/17


Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals