



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Mark Zaroff

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0035  
20 DUDLEY STREET  
D ARBELOFF, BRIT

Petitioner, Brit d'Arbeloff, applied to the Building Commissioner for a building permit to construct a two story elevator addition at 20 Dudley Street. 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 December 14, 2017 at 7:10 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 30, 2017 and December 7, 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:

20 DUDLEY STREET, BROOKLINE, MA 02445 - Construct 154 SF 2-story elevator addition in a(n) S-15 SINGLE-FAMILY on 12/14/2017 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: D ARBELOFF, BRIT) *Precinct 15*

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:

§5.20 - FLOOR AREA RATIO

§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](http://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](mailto:llgellineau@brooklinema.gov)*

*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

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 Steve Chiumenti. The case was presented by the Project Architect, Richard Bernstein, Washington Street, Gloucester, MA 01930. Chairman Jesse Geller called the case forward at approximately 7:10 p.m.

Mr. Bernstein presented to the Board a background of the Petitioner's proposal, stating that the subject property is located in an S-15 District within the Brookline Town Green National Registry of Historic Places Neighborhood. Mr. Bernstein described the existing home as a

Federal Revival Style home built in 1880. He noted that the neighborhood is comprised of large single-family homes.

Mr. Bernstein stated that the Petitioner is proposing to construct a two-story elevator addition located along the side kitchen wing and setback from the main portion of the house on the Dudley Street side of the property. He noted that the foundation size of the addition is approximately 7'-6" by 11'-4". Mr. Bernstein continued that the installation of an elevator is needed in order to allow the Petitioner to remain in her home of fifty years.

Mr. Bernstein stated that the addition required a special permit for the alteration of a pre-existing non-conforming structure, as the existing home exceeds the allowable FAR as defined in **Section 5.20** of the Zoning By-Law. He noted that the addition increases the total FAR by approximately two (2%) percent. Mr. Bernstein argued that case law (Deadrick v. Board of Appeals of Chatham, 85 Mass. App Ct. 539) has established that an owner may expand an existing nonconformity via a special permit granted under Massachusetts General Laws Chapter 40A, Section 6, provided there is a finding that such an expansion causes no substantial detriment. He continued that the proposed addition will increase an existing non-conformity, will not create a new non-conformity and will not create any substantial detriment to the neighborhood.

Mr. Bernstein stated that the Petitioner sent a letter to all of her abutters that included a narrative of the proposal, the site plan and a sketch of the addition. Throughout this neighborhood outreach process, Mr. Bernstein noted, there have been no abutters who have voiced any opposition. He added that four letters in support of the proposal have been submitted to the Board for review.

Mr. Bernstein stated that the Planning Board voted in favor of the proposal on December 7, 2017 after finding the proposal will not have a detrimental impact on the neighborhood.

Further, Mr. Bernstein continued that the proposal meets the requirements under **Section 9.05** of the Zoning By-Law. He argued: (a) The specific site is an appropriate location of the structure since it is tucked-away from the main portion of the house within an existing “inside” corner of the house formed by the secondary side wing; (b) the use as developed will not adversely affect the neighborhood since it will not change the perception of the massing of the house by being limited to a two-story addition on a three-story house and matching all the details of the existing historic house; (c) there will be no nuisance or serious hazard to vehicles or pedestrians since there will be no change in occupancy of the property; (d) adequate and appropriate facilities will be provided for the proper operation of the proposed use by locating the machine room for the elevator in the basement of the house; and (e) there will be no effect on the supply of housing for low and moderate-income people.

Upon inquiry from Board Member Hussey, Mr. Bernstein stated that the elevator is designed to comply with all building code requirements for residential elevators.

Upon inquiry from Board Member Chiumenti, Mr. Bernstein stated review by the Preservation Commission was not triggered.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. Matthew d'Arbeloff, 29 Powell Street, spoke in support of the application.

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 5.20: Floor Area Ratio

	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.25 (100%)	.567 (171%)	.568 (175%)	Special Permit/Variance*
<b>Floor Area (s.f.)</b>	4,100	7,031	7,185	

*\*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 for the alteration of a non-conforming building.

Ms. Clark stated that the Planning Board is supportive of this proposal for a two-story elevator addition since the increase in FAR is minimal and several neighbors have submitted letters in support of the proposal. Ms. Clark noted that the Planning Board does not feel this addition will be detrimental to the neighborhood and is in support of improving the interior accessibility of the home.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the plot plan by Rober Survey dated 7/15/17 and elevations, sections, and floor plans by RF Bernstein, dated 10/24/17, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final 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 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 it will not have a detrimental impact on the neighborhood. Further, Ms. Clark stated, should the Board grant the requested relief, the Building Department will review all plans and ensure the residential elevator is compliant with all building code requirements.

The Board deliberated on the merits of the proposal. Board Members Hussey and Chiumenti were in support of granting the requested relief. Chairman Geller stated that the application meets the requirements under M.G.L. c. 40A Section 6 and was in support of granting the requested 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 M.G.L. c. 40A, Section 6.

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

1. Prior to the issuance of a building permit, the applicant shall submit a final 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 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.

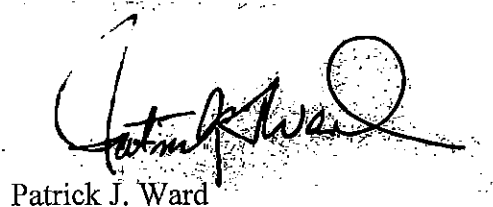
Unanimous Decision of  
The Board of Appeals

Filing Date: 1-12-18

  
Jesse Geller, Chairman

A True Copy

ATTEST:

  
Patrick J. Ward

Clerk, Board of Appeals