



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

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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2018 FEB -6 P 3:

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0032  
YK MANAGEMENT, INC.  
393 CLINTON ROAD, BROOKLINE, MA

Petitioner, YK Management, Inc., applied to the Building Commissioner for permission to construct a two-story addition with a garage underneath and to construct a driveway. 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 January 11, 2018 at 7:10 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 December 28, 2017 and January 4, 2018 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:

**393 CLINTON ROAD, BROOKLINE, MA 02445 - Construct two story addition with garage under and construct driveway in a(n) S-10 SINGLE-FAMILY on 01/11/2018 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) 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:

**§5.09.2.J – DESIGN REVIEW**

**§5.22.3.B.1.B – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS**

**§6.04.5.C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§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*

**Publish: 12/28/2017 & 01/04/2018**

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 Christopher Hussey and Mark Zuroff. Also present at the hearing was Zoning Coordinator, Ashley Clark.

The case was presented by Shayna L. Duff, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were Attorney Jennifer Dopazo-Gilbert and representative of the petitioner, Byron Jelden.

Chairman Geller called the hearing to order at 7:10 p.m. Attorney Duff waived the reading of the public notice.

Ms. Duff then described the proposal stating that the Petitioner proposes to construct an addition at the rear of the home. The addition would range from one to two and a half stories and have a basement-level garage. The Petitioner also proposes to modify the driveway. The driveway would be modified to serve the new garage, and the existing detached garage in the far rear corner of the lot would be removed. Attorney Duff stated that the Preservation Commission determined that the building was significant this summer after the project was found to qualify as partial demolition. The Commission has agreed to lift the stay of demolition based on this proposal. Ms. Duff further noted that the Petitioner reached out to neighbors and no neighbors have objected to the proposal. Furthermore, the Planning Board unanimously recommended approval of these plans, and the Preservation Commission approved these plans.

Attorney Duff then stated that the Petitioner seeks a special permit for relief from Section 8.02.2 (to alter or extend a nonconforming use or structure), from Section 5.20 pursuant to Section 5.22.3.b.1.b for maximum gross floor area, from Section 5.09.2.i for design review, and from Section 6.04 pursuant to Section 6.04.5.C.2 under Section 5.43 for driveway setback.

Attorney Duff described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the use; the use developed will not adversely affect the neighborhood, there will be no nuisance or serious hazard to vehicles or pedestrians; adequate and appropriate facilities will be provided for the proper operation and proposed use; and there will be no effect on the supply on housing available for low and moderate income people.

Ms. Duff then argued that relief under 5.22.3.b.1.b should be granted because the home's FAR will not exceed the By-Law's maximum of one hundred twenty percent of what is permitted in the S-10 District, which is allowed by special permit.

Attorney Duff stated that the requirements for Section 5.09.2.j were also met. Attorney Duff continued that relief under Section 6.04.5.C.2 is warranted under Section 5.43 of the Zoning By-Law because the petitioner is proposing to install landscaping as the required counterbalancing amenity. With respect to Section 8.02.2, Attorney Duff reiterated that the requirements under Section 9.05 were met for the reasons previously described.

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

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal.

Alan Lucas of 404 Clinton Road stated that he was not notified of the hearing, and he claimed that the plans posted online were not updated. Mr. Lucas noted his concern with the one hundred twenty percent increase in FAR.

Attorney Jennifer Gilbert noted that the FAR was changing because of the addition, which is allowable by special permit. Board Member Chris Hussey explained that it was not an increase of one hundred twenty percent, rather an increase from seventy percent of the allowed FAR to one hundred twenty percent as permitted by special permit.

Mr. Lucas also sought further clarification regarding the driveway. Byron Jelden, representative for the Petitioner, explained that there was only a small addition to the driveway to allow for a turnaround necessary for the new garage.

Chairman Geller then called upon Ashley Clark, Zoning Coordinator & Planner, to deliver the findings of the Planning Department. Ms. Clark noted the following:

### **FINDINGS**

**Section 5.09.2.j – Design Review:** Any exterior addition for which a special permit is requested pursuant to *Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations)* requires a special permit subject to the design review standards listed under *Section 5.09.4(a-1)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a. **Preservation of Trees and Landscape** – The proposal does not require the removal of any substantial trees. The largest trees on the site are located at the very rear. Overgrown shrubs will be removed and new landscaping at the front and rear will be added.
- b. **Relation of Buildings to Environment** – The proposed addition is not expected to have shadow impacts on neighboring properties due to its location at the rear and the substantial setbacks from neighboring homes.
- c. **Relation of Buildings to the Form of the Streetscape and Neighborhood** – The proposed addition has been designed to fit in with the neighborhood context. The addition will not be taller than the height of the existing building and does not extend into any setbacks. The massing and scaling fit in with the properties on either side and in the neighborhood.

**Section 5.22.3.b.1.b – Floor Area Ratio**

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.30 (100%)	.23 (77%)	.36 (120%)	<b>Special Permit*</b>
<b>Floor Area (s.f.)</b>	3,519	2,730	4,198	

\* Under Section 5.22.3.b.1.b, the Board of Appeals may allow a maximum gross floor area not greater than 120% of the permitted gross floor area in S or SC districts.

**Section 6.04.5.C.2 – Design of All Off-Street Parking Facilities**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief Required</b>
<b>Driveway Setback (left side)</b>	5 feet	N/A	~2 feet	<b>Special Permit*</b>

\* 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 and Extension**

A special permit is required to alter a pre-existing non-conforming structure.

**PLANNING BOARD COMMENTS**

The Planning Board is supportive of this addition. Although it is a large addition, the added square footage does not exceed the allowable FAR bonus of 120%. The addition is entirely at the rear of the house where there is sizeable space for the addition. There will not be any negative impacts on the abutters due to ample side yard setbacks. The design was approved by the Preservation Commission as keeping with the character of the home and neighborhood. The Planning Board supports widening the existing driveway to provide adequate space for cars to enter to the new garage.

Therefore, the Planning Board recommends approval of the site plan by Joseph Porter dated 8/21/2017 and the floor plans and elevations by David O’Sullivan revised 9/13/17 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 review and approval by the Assistant Director of Regulatory Planning and the Preservation Commission staff.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities subject to 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) final floor plans and elevations stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the final decision has been recorded at the Registry of Deeds.

Chairman Geller then called upon Ms. Clark to deliver the comments of the Building Department. Ms. Clark stated that the Building Department has no opposition to this application and, should relief be granted, the Building Department will work with the Petitioners to ensure compliance.

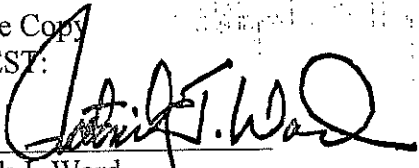
The Board then determined, by unanimous vote that the requirements for a special permit from Section 5.20, Section 6.04 and Section 8.02.2 pursuant to Section 5.22.3.b.1.b, Section 5.09.2.i, Section 6.04.5.C.2, Section 8.02.2 and Section 9.05 of the Zoning By-Law, respectively, were met and the Board voted unanimously to grant the special permit relief requested 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 review and approval by the Assistant Director of Regulatory Planning and the Preservation Commission staff.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities subject to 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) final floor plans and elevations stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the final decision has been recorded at the Registry of Deeds.

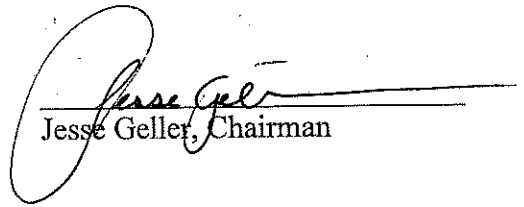
Unanimous Decision of  
The Board of Appeals

Filing Date: 2-6-18

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals



Jesse Geller, Chairman