



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
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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. 2017-0029  
CAROLINE & ALBERT GANJEI  
26 BABCOCK STREET, BROOKLINE, MA

Petitioners, Caroline and Albert Ganjei, applied to the Building Commissioner for permission to construct a dormer at rear (west elevation). 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 February 1, 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 January 18, 2018 and January 25, 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:

**26 BABCOCK STREET, BROOKLINE, MA 02446 - Construct a dormer at rear (west elevation) in a(n) M-2.0 APARTMENT HOUSE on 02/01/2018 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: ALLEN TR ROBERT L) Precinct 8**

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:

**§5.43 - 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](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: 01/18/2018 & 01/25/2018**

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 Kate Poverman and Randolph Meiklejohn. Also present

at the hearing were Zoning Coordinator and Planner, 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 were the Petitioner, Albert Ganjei and the engineer, Hal Abrams.

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

Mr. Allen then described the proposal stating that the Petitioner proposes to construct a dormer at the rear (west elevation). Attorney Allen stated that this case involves a single family structure located to the rear of a lot behind an existing multifamily structure and that the Petitioner seeks to maintain the single-family use despite being surrounded by multi-family structures. He noted that the Petitioner has worked with the Preservation Commission to develop the plans in a way that does not trigger partial demolition under the Demolition By-Law and has the unanimous approval of the Planning Board.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from Section 5.60 under Section 5.43 for a pre-existing nonconforming side yard setback that will now be more conforming, from Section 5.70 under Section 5.43 for a pre-existing nonconforming rear yard setback that is not changing, and from Section 8.02.2 pursuant to Section 9.05 to alter or extend a nonconforming use or structure.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the use since the home's existing single-family use will continue, and the additions and conversion of space will increase the home's livability and long-term viability; the use developed will not adversely affect the neighborhood since the proposal's changes to the exterior are minor, and will not be visible from the street; 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. Attorney Allen then argued that relief under Section 5.60 and Section 5.70 is warranted under Section 5.43 of the Zoning By-Law because the Petitioner is proposing to install landscaping as the required counterbalancing amenity. Attorney Allen commented that the landscape plan includes an iron fence with planters which will block two existing dumpsters at the entrance of the existing driveway. With respect to Section 8.02.2, Attorney Allen reiterated that the requirements under Section 9.05 were met for the reasons previously described.

Chairman Geller then asked whether anyone was present to speak 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. No one spoke in opposition to the proposal.

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

**FINDINGS**

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

<b>Dimensional Requirements</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Side Yard Setback (West)	7.5 feet	5.4 feet	6.8 feet	Special Permit*/Variance
Rear Yard Setback (North)	30 feet	25.6 feet	25.6 feet	Special Permit*/Variance

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

**Section 8.02.2 – Alteration or Extension**

A special permit is required for alterations to a nonconforming structure.

**PLANNING BOARD COMMENTS**

The Planning Board is supportive of these dormer additions. The dormers do significantly alter the appearance of the house but will offer additional and needed living space which was previously limited by the home's steep roof. This home is not visible from the public way and sits back off of Babcock Street behind a multi-unit building. The footprint of the home is not changing and impacts will be minimal.

**Therefore, the Planning Board recommends approval of the plot plan by George Collins dated 9/16/2016 and the floor plans and elevations by Trinity Tech Engineering dated 7/27/2017, 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 Planning Board.
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 by the Planning Board.
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 building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Geller then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this request, and that it is a tremendous improvement that will involve no change to the footprint. Mr. Yanovitch concluded that should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

In reliance on the plans identified above as revised by the floor plans and elevations by Trinity Tech Engineering dated December 30, 2017, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.60, Section 5.70, and Section 8.02.2, pursuant to Section 5.43 and Section 9.05 of the Zoning By-Law, respectively, were met 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.

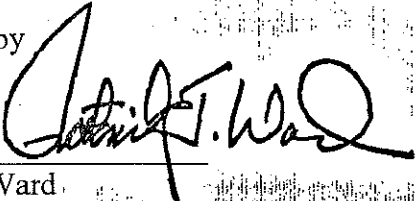
Accordingly, the Board voted unanimously to grant the special permits requested subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations subject to 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 landscaping plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for 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 building elevations stamped and signed by a registered architect; 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: 2/21/2018

  
Jesse Geller Chairman

A True Copy  
ATTEST:   
Patrick J. Ward  
Clerk, Board of Appeals