



# *Town of Brookline*

## *Massachusetts*

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

BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Mark Zuroff

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
2018 FEB 21

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0038  
109 BABCOCK LLC  
109 BABCOCK STREET, BROOKLINE, MA

Petitioner, 109 Babcock LLC, applied to the Building Commissioner for permission to enclose a small landing on the northeast side of the dwelling for new interim space and to construct a new porch. 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 18, 2018 at 7:00 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 4, 2018 and January 11, 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:

**109 Babcock Street, Brookline, MA 02446 - building a deck in the front of the house in a(n) on 01/18/2018 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: alfredo correia) 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**

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§8.02 - ALTERATION OR 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: 01/04/2018 & 01/11/2018**

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 Lark Palermo and Mark Zuroff. Also present at

the hearing was Zoning Coordinator, Ashley Clark and Deputy Building Commissioner, Mike 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 was the Petitioner, Scott Shuster.

Chairman Geller called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal stating that the Petitioner proposes to enclose a small landing on the northeast side of the dwelling for new space and to construct a wood-covered front porch. Mr. Shuster reviewed the elevations and floor plans of the proposal and distributed photos of the surrounding neighborhood to Members of the Board.

Attorney Allen stated that the Petitioner seeks a special permit for relief from Section 8.02.2 (to alter or extend a nonconforming use or structure), and from Section 5.50 and Section 5.60 under Section 5.43 for front yard and side yard setback requirements.

Attorney Allen 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. Mr. Allen stated that the new front porch is consistent with the neighborhood and the relief requested is minimal. Attorney Allen then described that relief under Section 5.50 and Section 5.60 should be granted pursuant to Section 5.43 because landscaping will be provided as a counterbalancing amenity. With respect to Section 8.02.2, Attorney Allen referred to the fact that the elements for Section 9.05 were 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. Ken Kaplan, 95 Babcock Street, stated there was a lot of objection to this project at the Planning Board meeting. Furthermore, Mr. Kaplan noted that he represented many of the neighbors, from whom he had letters, and that they would like as much screening as possible as a counterbalancing amenity. Mr. Kaplan also requested that a small wall at the edge of the property conform with the other properties on the street. Mr. Kaplan noted his concerns with the process by which relief was sought and noted that the Planning Board decision was significantly less than unanimous (4-3). Finally, he commented that there were no other Farmer's porches on the side of the street on which the subject property is located.

Attorney Allen explained that the wall would need to be placed on Town-owned property or set back further than other walls because of the location of the Petitioner's front lot line. Chairman Geller noted that the issue did not appear to be monetary, and he asked if the Petitioner would work with the Town to attempt to construct a conforming wall. Attorney Allen responded that the Petitioner would be willing to do this. Chairman Geller stated that counterbalancing amenities are meant to ameliorate the dimensional nonconformity.

Lee Glickenhause, 105 Babcock Street, also spoke in opposition. Mr. Glickenhause agreed that building of a low wall would soften the impact of the structure and asked that it match the existing streetscape.

Board Member Palermo noted that Mr. Kaplan's letter also asked for bushes by the porch, a larger caliper tree, and she confirmed with Mr. Glickenhause that he would be in support of these amenities as well.

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

**FINDINGS**

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.50 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

<b>Setback</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Front Yard (Porch)</b>	15 feet	20 feet	12 feet	Special Permit*
<b>Side Yard Setback (Enclosure)</b>	10 feet	8.4 feet	8.4 feet	Special Permit*

*\* 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 supports this proposal. The required relief is part of a major gut renovation of this home. The small enclosure and new deck will improve the appearance of this two-family house and add useable indoor and outdoor space for its occupants. The requested setback relief is very minor and will not have any detrimental impact on the surrounding neighbors, particularly because the property abuts the parking lot of a large condominium building on the left side. The applicant has numerous letters of support from neighbors.

**Therefore, the Planning Board recommends approval of the site plan by Stephen Desroche dated 4/20/2017 and the floor plans and elevations by Sutphin Architects dated 7/26/2017, 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 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 including input from neighbors, subject to review and

approval by 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 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 Mike Yanovitch, Deputy Building Commissioner, to deliver the recommendation of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the requested relief. Mr. Yanovitch commented that there will be no at risk permit issued for this project; once the landscaping plan has been approved a building permit will be issued.

The Board then determined, by unanimous vote that the requirements for a special permit from Section 5.50 and Section 5.60 under Section 5.43, and Section 8.02.2 pursuant to Section 9.05 of the Zoning By-Law 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 requested special permit 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 a final landscaping plan indicating all counterbalancing amenities including input from neighbors, subject to review and approval by the Assistant Director of Regulatory Planning.

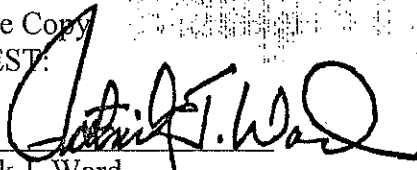
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations 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