



BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Mark G. Zuroff

# Town of Brookline

## Massachusetts

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0002  
25 Asheville Road  
INSHAW SOHRAB R, EHTA RASHNA F

Petitioners, Sohrab Dinshaw and Rashna Mehta, applied to the Building Commissioner for a building permit to add a second story addition to their single family property at 25 Asheville 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 January 25, 2018 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 Petitioner, 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 January 11, 2018 and January 18, 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:

**25 Asheville Road, Brookline, MA 02467 – second floor addition per plans in an S-7 (single family) 1/25/2018, at 7:10 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner/Owner: Sohrab Dinshaw and Rashna Mehta) Precinct 16**

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:

- 1. Section 5.20: Floor Area Ratio**
- 2. Section 5.43: Exception to Yard and Setback Regulations**
- 3. Section 5.70: Rear Yard Requirements**
- 4. Section 8.02.2: Extension or Alteration**
- 5. 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 Town programs and services may 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 email at [llgellineau@brooklinema.gov](mailto:llgellineau@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Mark G. Zuroff*

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At the time and place specified in the notice, this Board held a public hearing.

Present at the hearing was Chairman Mark G. Zuroff, and Board Members Johanna Schneider and Randolph Meiklejohn. The case was presented by Attorney Scott C. Gladstone, 822 Boylston St., Suite 300, Chestnut Hill, Massachusetts 02467. Chairman Mark G. Zuroff called the hearing to order at 7:10 p.m.

Attorney Gladstone waived the reading of public notice and presented to the Board a background of the property, stating as follows: 25 Asheville Road is a 1 1/2 story ranch style home with parking in the basement level accessed from a driveway sloping downward from street level ("Property"). The petitioners, Sohrab Dinshaw and Rashna Mehta, currently living at 646 Newton Street, #2, in Brookline, are the Property owners. Petitioners wish to add a second story addition on top of the existing first floor in order to expand the living space and as part of a complete gut rehabilitation of the Property. The overwhelming majority of the homes in the neighborhood are 2 1/2 stories. The proposed addition will add a second with the resulting appearance will be of a 2 1/2 story house, consistent with a majority of the other houses in the neighborhood.

Attorney Gladstone next discussed the zoning relief required from the Board of Appeals:

**Setbacks:** The addition does not expand the footprint of the existing home; however, the building is pre-existing non-conforming with respect to being within the required rear and front setback (with respect to Asheville Road frontage). The rear yard setback requirement for the S-7 Zoning District is 30 feet and the rear yard setback for the existing home is 8.4 feet. The front yard setback requirement for the S-7 Zoning District is 20 feet. The existing home complies with that requirement with respect to its frontage on Bonad Road but is pre-existing non-conforming with respect to frontage on Asheville Road, which is setback 11.5 feet to 14.8 feet. The additional second floor will carry the same rear and front setbacks as the existing building, thus requiring relief to increase the pre-existing non-conformity.

**F.A.R.:** The Property is in the S-7 Zoning District, which carries an F.A.R. limit of .35, which for this lot means a maximum gross living space of 1894.90 sq. ft. The existing home contains 2208 sq. ft. of gross living area. Since the proposed addition will result in gross floor space of

2930 sq. ft., a difference of 722 sq. ft., relief is needed because of the increase in the pre-existing non-conformity.

Attorney Gladstone next discussed the available special permits to address the non-conformities:

**Setbacks:** The denial letter refers to Zoning By-Law Section 8.02.2, which states that pre-existing non-conforming structures may increase the non-conformities if permitted by some section of the By-Law. The By-law permits relief from required setbacks by special permit under §5.43. Attorney Gladstone explained that landscaping would be provided as the required counterbalancing amenity. The final landscaping plan will be provided to the Planning Department staff for approval.

Alternatively, the second except clause under G.L. c. 40A, Section 6 states that such intensifications of pre-existing non-conformities may be allowed by special permit for one or two family structures as long as the permit granting authority finds that the increase presents “no substantial detriment” to the neighborhood without the need to comply with any additional special permit requirements of the Town By-Law. See *Deadrick v. Zoning Board of Appeals of Chatham*, 85 Mass. App. Ct. 539, 550 (2014).

**F.A.R.:** The current Home at the Property is pre-existing non-conforming with respect to F.A.R., but there is also no zoning by-law available to give relief. In such cases, relief may be granted when the permit granting authority makes a finding of “no substantial detriment.” *Gale v. Zoning Board of Appeals*, 80 Mass.App.Ct. 331, 337 (2011); *Deadrick v. Zoning Bd. Of Appeals of Chatham*, 85 Mass.App.Ct. 539, 541 (2014); *Bransford v. Zoning Board of Appeals of Edgartown*, 444 Mass. 852, 858 (2005). Attorney Gladstone presented evidence that the proposed project is not substantially detrimental to the neighborhood as the proposed addition is

designed to make the existing home look more like the majority of the other homes in the neighborhood, which are already 2 ½ stories. Even with the increase in F.A.R., the Property will still comply with the requirement for useable and landscaped open space, so the proposed addition will not be overburdening the lot. Moreover, the proposed F.A.R. constitutes 155% of the F.A.R. allowed in **Section 5.04**. This is less (sometimes significantly less) than the F.A.R. for six other homes within a two block radius, as illustrated by the chart and map Attorney Gladstone provided with his submitted materials and again at the hearing (the chart and map also show other homes above the 130% special permit limit within the same two block radius).

Attorney Gladstone went on to explain that the proposal satisfies all of the Special Permit standards under **Section 9.05** of the Zoning By-Law as follows:

a. The site is an appropriate location for such a use, structure, or condition: This is a continuation of an allowed use and the addition is designed to fit in with the majority of houses in the neighborhood, which are already 2 ½ stories and is consistent with the F.A.R. of many homes in the immediate vicinity.

b. For the reason set forth above, the proposed use will not adversely affect the neighborhood.

c. There will be no nuisance or serious hazard to vehicles or pedestrians since the existing driveway and location of the parking will not change.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. See all of the above.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people as the proposal does not take away any current housing.

Zoning Board of Appeals Chairman Mark G. Zuroff asked if there was anyone present who wished to speak in favor of the application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Mark G. Zuroff asked if there was anyone present who wished to speak in opposition to the application. No one spoke in in opposition to the application.

Zoning Board of Appeals Chairman Mark G. Zuroff asked if the Board members had any questions. There were no questions at that stage.

Chairman Zuroff called upon Ashley Clark, Planner for the Town of Brookline, to deliver the findings of the Planning Board.

**FINDINGS**

**Section 5.20: 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>	.35 (100%)	.41 (117%)	.54 (154%)	Special Permit*/ Variance
<b>Floor Area (s.f.)</b>	1,895	2,208	2,930	

*\* 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 5.34 – Exception to Yard and Setback Regulation**

**Section 5.50 – Front Yard Requirements**

**Section 5.70 – Rear Yard Requirements**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief Required</b>
<b>Front Yard Setback (Asheville Road)</b>	20'	11.5' to 14.8'	11.5' to 14.8'	<b>Special Permit *</b>
<b>Rear Yard Setback</b>	30'	8.4'	8.4'	<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 or Extension**

A special permit is required to alter this non-conforming structure.

Ms. Clark stated that the Planning Board was supportive of the requested relief and of the design. Ms. Clark noted that the Petitioners had made a number of changes at the request of the

Planning Board and that the Planning Board appreciated the changes, especially the removal of a proposed room over the garage.

Ms. Clark concluded that the Planning Board recommended that the requested relief be granted, 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 for Regulatory Planning.
2. Prior to the issuance of a building permit, to satisfy the counterbalancing amenity threshold set forth in Section 5.43, the applicant shall submit a final landscaping plan 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 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 Deputy Building Commissioner, Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department had no objections to granting the required relief. Mr. Yanovitch indicated that he would continue to work with the Petitioners to ensure that the project complies with the Building Code and the Zoning By-Law. Chairman Zuroff asked Mr. Yanovitch about the size of the garage and fireproofing between the garage and living area. Mr. Yanovitch responded that he would be addressing those issues in the course of the construction set plan review to ensure code compliance.

Board Member Randolph Meiklejohn commented that he has studied the neighborhood and he noted that the larger homes that exceeded allowed F.A.R. were originally built that way so that allowing this relief would not be the start of a trend in the neighborhood. Board Member

Randolph Meiklejohn voted to grant the relief. Board Member Johanna Schneider noted that she had sat on an earlier panel reviewing the Project and that she appreciated both the evolution of the design and the comprehensive manner in which Petitioners presented the information necessary to establish consistency of the design with the neighborhood. Board Member Johanna Schneider voted to grant relief. Chairman Zuroff noted that the Petitioner demonstrated that they have met all of the elements of **Section 9.05** and he voted to grant the requested relief.

The Board of Appeals then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Sections 5.50 and 5.70 of the Zoning By-Law pursuant to Sections 5.43 and 9.05 were met. The Board of Appeals also determined, by unanimous vote that the requirements for relief from the application of Section 5.20 of the Zoning By-Law were met under Massachusetts General Laws Chapter 40A, Section 6, as interpreted by Deadrick, and may be granted without substantial detriment, under **Section 8.02.2** and **Section 9.05** of the Zoning By-Law. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site in 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.

Accordingly, the Board of Appeals voted unanimously to grant the requested relief and approved **the site plan by David Philip Terenzoni, dated 4/26/2016, and elevations and floors plans by Marcos A. Devers, PE with revisions dated 11/17/2017, 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 review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, to satisfy the counterbalancing amenity threshold set forth in Section 5.43, the applicant shall submit a final landscaping plan 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 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.

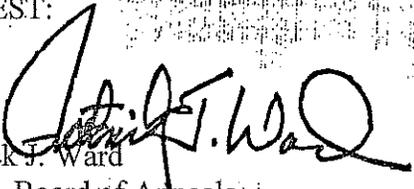
Unanimous Decision of  
The Board of Appeals

Filing Date: 2/23/2018

  
Mark G. Zuroff, Chairman

A True Copy

ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals