



Town of Brookline Massachusetts

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

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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2018 FEB 23 A 8:57

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0037
TAO CAI
524 CLINTON ROAD, BROOKLINE, MA

Petitioner, Tao Cai, applied to the Building Commissioner for permission to construct additional story to existing single-family dwelling. 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 7:00 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 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:

524 CLINTON ROAD, BROOKLINE, MA 02467 - Construct additional story to existing single-family dwelling in a(n) S-10 SINGLE-FAMILY on 01/25/2018 at 7:00 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

§5.09.2.N – DESIGN REVIEW

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

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT 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.

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

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

Publish: 01/11/2018 & 01/18/2018

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. Also present at the hearing was Zoning Coordinator, 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 was representative for the Petitioner, Patrick Chan.

Chairman Zuroff 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 construct an addition of a second story on top of the existing first floor in order to expand the living space as part of a total gut renovation of the structure. The first floor will be reconfigured to include an office, a larger kitchen, a family room, a living/ dining room, and a three-season porch. The proposed second floor will include four bedrooms, four baths, and a laundry room. The Petitioner proposes to update the materials and extend the existing clapboard and brick onto the new second story. The new height of the structure will be 33.4 feet. Attorney Allen further noted that the Petitioner reached out to neighbors, and has worked with John Freeman of 530 Clinton Road to accommodate screening for the side of the property abutting Mr. Freeman. Furthermore, Attorney Allen stated that the Planning Board unanimously recommended approval of these plans.

Attorney Allen 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 5.22.3.b.1.b for maximum gross floor area, from Section 5.09.2.j and n for design review, and from Section 5.50 under Section 5.43 for front yard setback.

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. Attorney Allen 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 Allen stated that the requirements for Section 5.09.2.j and n were also met. Attorney Allen continued that relief under Section 5.50 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 Allen reiterated that the requirements under Section 9.05 were met for reasons previously described.

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

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

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

FINDINGS

Sections 5.09.2.j and n – 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-l)*. 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 trees. The addition will be added only atop the existing footprint of the house and does not extend into any landscaped areas.
- b. Relation of Buildings to Environment – The new second story may have some shadow impacts on the closest abutters but they are expected to be minimal due to the size of the lots.

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. There are other two story homes on this street and the addition the design will fit in with other surrounding homes. The setbacks will all be maintained.

Section 5.22.3.B.1.B – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.30 (100%)	.23 (77%)	.36 (120%)	Special Permit*/ Variance
Floor Area (s.f.)	3,292	2,496	3,946	

**Under Section 5.22.3.b.1.b, the Board of Appeals may grant a special permit for an increase in FAR of up to 120% of the allowable FAR.*

Section 5.34 – Exception to Yard and Setback Regulation

Section 5.50 – Front Yard Requirements

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Front Yard Setback	20'	13.1' to 32'	13.1' to 32'	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 or Extension

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

PLANNING BOARD COMMENTS

The Planning Board is supportive of this attractive second-story addition. The addition will not expand the footprint of the home and has been designed sensitively. Other nearby homes have added second stories so the addition will not be out of character with the neighborhood. The Board would like to see additional screening installed between the home and the closest abutter to the left in order to increase privacy.

Therefore, the Planning Board recommends approval of the site plan by Jon L. Fagerstrom, dated 3/16/2017, and the floor plans and elevations by Design by Sami LLC, dated 3/25/2017, 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 showing screening on both sides of the property subject to the 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) 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.

Chairman Zuroff then called upon Mr. Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this application and, should relief be granted, the Building Department will work with the Petitioner to ensure compliance.

The Board then determined, by unanimous vote that the requirements for a special permit from Section 5.22.3.b.1.b, Section 5.09.2.j and n, Section 5.50, and Section 8.02.2 pursuant to Section 9.05 of the Zoning By-Law, respectively, were met, and the Board voted unanimously to grant the special permit subject to the following conditions:

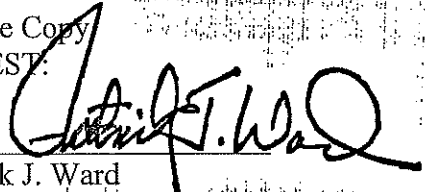
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, subject to review and approval by the Assistant Director of Regulatory Planning and the Preservation Commission staff.
2. Prior to the issuance of a building permit, the applicant 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: 2/23/2018



Mark G. Zuroff Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals