



Town of Brookline Massachusetts

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

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0011
J. ROBERT BASILE
1040 WEST ROXBURY PARKWAY, BROOKLINE, MA

Petitioner, J. Robert Basile, applied to the Building Commissioner for permission to construct an addition that would add 1,724 s.f. to the existing home. 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 March 29, 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 March 15, 2018 and March 22, 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:

1040 WEST ROXBURY PARKWAY, BROOKLINE, MA 02467 - Construct addition that will add 1,724 s.f. in a(n) S-7 SINGLE-FAMILY on 03/29/2018 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) 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:

§5.09.2.J – 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 in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

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

Publish: 03/15/2018 & 03/22/2018

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Chris Hussey. 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 was the Petitioner, Bob Basile and the architect, Andrew Zalewski.

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 on the side of the house facing the Putterham shops. Attorney Allen explained that proposal would add 1,724 s.f. which would fill out the lot and create needed living space for a growing family. He added that the addition will be located where there is currently pavement and that Preservation found that the building was not significant. Furthermore, Attorney Allen noted that the Planning Board recommended that the Petitioner consult with the Building Department regarding options for the garage door or other enclosures on the open-air section of the addition. Attorney Allen noted that the open-air area discussed would not be visible from the street. He added that the area is considered open space under **Section 5.91.2.b** and is allowed under the Zoning By-Law, noting that adding a door would count towards Floor Area Ratio and require a variance. Andrew Zalewski then presented the plans. Attorney Allen noted that the front yard setback on the South Street side was incorrectly noted on the plans as eleven feet, seven inches, and it is really fourteen feet, seven inches, which was confirmed by the surveyor that day.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 5.09.2.J** for design review, **Section 5.22.3.B.1.B** for floor area ratio, **Section 5.50** under **Section 5.43** for front yard setback, 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 because the residentially-zoned lot abuts a commercial property, is currently undersized for the neighborhood, and the new addition is facing the commercial lot and will be a significant distance away from the abutting property and keep with the overall style of the existing home; the existing single-family use will continue; there will be no nuisance or serious hazard to vehicles or pedestrians because while the new addition will modify the garage's entrance somewhat, it will not significantly affect on-site circulation, and traffic to and from the site is not expected to increase; adequate and appropriate facilities will be provided for the proper operation of a single family dwelling; and there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen added that the counterbalancing amenity would be landscaping.

Chairman Zuroff and the Board Members asked clarifying questions as to the open space entrance to the garage. Attorney Allen described that the Planning Board did not like the entrance to the garage.

Chairman Zuroff then asked whether anyone was present to speak 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 to the proposal. No one spoke in opposition to the proposal. Board Member Schneider asked whether the Petitioner did any neighborhood outreach for the project. Attorney Allen stated that they did not have a neighborhood meeting because the project was low-impact and noted that no abutters attended the Planning Board Meeting.

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

FINDINGS

Sections 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-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 significant landscaping. The majority of the lot that will be covered with the addition is currently a paved driveway and parking area.
- b. **Relation of Buildings to Environment** – The new two-story side addition will have minimal impact on the home’s surroundings. The property abuts a commercial parking lot on the side closest to the addition and its abutter to the east is across South Street. The addition is no taller than the existing building.
- 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 match the existing home’s materials. The home is currently well below the allowed FAR and is much smaller than other nearby homes.

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

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.22 (63%)	.42 (120%)	Special Permit*/Variance
Floor Area (s.f.)	3,079	1,971	3,695	

**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 5.43 – Exception to Yard and Setback Regulation

Section 5.50 – Front Yard Requirements

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Front Yard Setback	20 feet	21.9 feet	14.7feet	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.*

NOTE: At the Planning Board it was determined that the deck could go into the front yard setback, so the setback relief is no longer for a pre-existing non-conforming setback.

Section 8.02.2 – Alteration or Extension

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

PLANNING STAFF ANALYSIS

The Planning Board is supportive of this two-story addition. The home that was built in 2007 was significantly under the allowable FAR and this proposal is within the allowable 120% FAR bonus by special permit. The home has an ample amount of space in the side yard that was being used as a parking area. Because to the left of the property is the parking lot for the Shops at Putterham and the house to the rear is across South street, the impact of the addition should be minimal to abutters. The Staff does feel that the addition in front of the existing below ground garage will create a somewhat cavernous-like deep entrance into the garage bays but understands this configuration is necessary to add the living space on the first and second levels. The design of the addition will match well with the existing house. The Staff would like to see the amount of impervious paving on the site reduced. The parking area is excessively large for a single-family home and the Staff recommends that the applicant add planted areas on the lot as a counterbalancing amenity.

PLANNING BOARD RECOMMENDATION

The Planning Board recognized that this existing home was originally built substantially under the allowable FAR and that the original design resulted in a home with a truncated appearance. The Board was supportive of the applicant's desire to make the house more functional by adding additional space. However, the Board was largely concerned with the creation of the space adjacent to the garage which would be counted as open space and not towards the FAR. The design will have a large "gaping" hole that the Board did not support. The Board offered numerous alternative suggestions that involved swapping the existing basement out for living space and creating this new open area as the garage. A few Board members gave suggestions for other configurations that would improve the design on the second floor of the home to create a hallway rather than bedrooms that are only connected to each other. Ultimately, the Board agreed to recommend approval of the project, noting that the design will not impact any abutters and that the applicant believes the addition will best suit his family's needs. The Board voted to include a condition urging the applicant to consult with the Building Department on options for the design of the open-air garage area. The Board would like to see a type of garage door added and would like to know what types of doors the Building Department would allow for the space without considering it habitable space that would be included in the FAR.

Therefore, the Planning Board recommends approval of the site plan by Bruce Bradford dated 11/21/2017 and the floor plans and elevations by The MZO Group, dated 12/29/2017, 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 consult with the Building Department regarding options for garage doors or other enclosures on the open-air section of the addition, as per the Planning Board's recommendation.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan subject to the review and approval of the Assistant Director of Regulatory Planning.
4. 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 Deputy Building Commissioner, Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this request. Mr. Yanovitch explained that under **Section 5.91** space driving to and from parking, like that in the proposal, does not count as open space but is open area that does not count towards floor area ratio. He added that he would be reluctant to require a door. Mr. Yanovitch added that should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

In reliance on the above referenced plans and the revised site plan, the Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.09.2.J** for design review, from **Section 5.22.3.b.1.** for floor area ratio, **Section 5.50** for front yard setback, and from **Section 8.02.2** pursuant to **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 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 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.

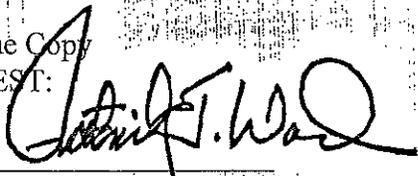
Unanimous Decision of
The Board of Appeals



Mark G. Zuroff, Chairman

Filing Date: 5/4/2018

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals