



Town of Brookline Massachusetts

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

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2018 JUN -7 A 8:14

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0022
12 ACKERS TERRACE
MAURER STEPHEN & LORA B

Petitioners, Lora and Stephen Maurer, applied to the Building Commissioner for a building permit to extend a rear deck at 12 Ackers Terrace. 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 May 10, 2018 at 7:00 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 Petitioners, 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 April 26, 2018 and May 3, 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:

12 ACKERS TERRACE, BROOKLINE, MA 02445 - EXTEND REAR DECK in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on 05/10/2018 at 7:00 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Lora Maurer) Precinct 14

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

§5.70 - REAR YARD REQUIREMENTS

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: 04/26/2018 & 05/03/2018

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 Chris Hussey and Kate Poverman. The case was presented by the Petitioners, Lora and Stephen Maurer. Chairman Mark G. Zuroff called forward ZBA case #2018-0022 seeking to amend 1997 ZBA case #3389 at approximately 7:00 p.m.

Mr. Maurer waived a reading of the published notice and presented the case for 12 Ackers. He stated that the single-family home is in a T-5 zoning district. He noted that the surrounding neighborhood is comprised of single-and-two-family homes. He then described the shape of the lot as narrow, similar to other homes on the street and highlighted that due to this condition the rear yard is very small.

Mr. Maurer then described the proposal to extend an existing rear deck. He stated that the deck expansion would allow them to have more room outdoors. He noted that the impetus for the proposal to modify a previous ZBA decision was due to some renovations by the rear yard abutter which made their once roomy yard perceptively much smaller. He described the existing deck¹ as 18 feet wide by eight feet deep and the proposed deck would be 18 feet wide and 14 feet deep.

Mr. Maurer then described the zoning relief required for the proposal. He stated that the proposal needs relief from the provisions of Sections 5.50 and 5.70 of the Zoning By-Law for front yard and rear yard requirements. He noted that front yard setback relief was triggered because of a shared passageway along the side of the house. He then argued that relief for the setbacks is warranted under Section 5.43 of the Zoning By-Law because the Petitioners are proposing to install landscaping as the required counterbalancing amenity. Mr. Maurer stated that the details of that landscaping will be worked out with the rear abutters.

Mr. Maurer reviewed the Petitioners' efforts to communicate with the abutters to the property stating that they have two letters of support from the rear abutter on Ackers Avenue and one from an abutter on Ackers Terrace. He noted that the rear abutters want to see the completed deck before agreeing on what the appropriate screening amenities would be.

¹ The rear yard deck received special permit relief from the provision of Section 5.70 Rear Yard Requirements under Section 5.43 Exceptions to Setback Regulations in 1997 under ZBA case 1997-3389.

Mr. Maurer described the standards under Section 9.05 of the Zoning By-Law, stating that extending the existing deck at the rear of the property will not have any negative impact on the neighborhood. He noted that the neighbors are supportive and feel the improvement will have a positive impact on their property values.

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.

Ashley Clark, Planner and Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.70 – Rear Yard Setback

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Rear Yard Setback	15 feet	10 feet	4 feet	Special Permit*/ Variance

**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 for alterations to a non-conforming structure.

Modification of ZBA Case #3389

Modification to allow for new deck dimensions of 14 feet by 18 feet as per revised plans.

STAFF ANALYSIS

The Planning Department staff is not opposed to this deck extension. Although a four foot setback at the rear yard is very minimal, the applicant has the support from the abutter at the rear. Due to the unique lot configuration, the deck does not directly affect any neighbors – it will look out onto the long and narrow yard of 39 Ackers Avenue, whose owners are using that area as a play area and garden. The applicants installed significant landscape improvements as a part of

their 1997 ZBA approval that have enhanced the yard. The Board recommends additional screening at the rear.

Ms. Clark stated that the Planning Board supported the staff's recommendation and had no objections to the proposal based on the unique lot configuration at the rear of this property.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan, dated 2/12/2018, and the deck plans, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and deck plan 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 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.

The Chairman then called upon Ms. Clark to deliver the comments of the Building Department. Ms. Clark recommended that the Board consider amending condition number three of the Planning Board report to not require plans stamped by a registered architect, land surveyor, or engineer, as this is a simple deck addition. She then stated that the Building Department has no objection to this request and should the Board find the proposal meets the requirements for the grant of relief, it will work with the Petitioner to ensure compliance with the Building Code.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Members Poverman and Hussey were both in support of granting the

requested relief. Chairman Zuroff stated that the proposal meets the requirements for the requested relief since the Petitioner is providing landscaping as a counter balancing amenity and **Section 9.05** of the Zoning By-Law.

The Board 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 **5.43**, **8.02.2** and **9.05** of the Zoning By-Law as requested by the Petitioners were met.

The Board made the following specific findings pursuant to 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 relief subject to the following amended conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and deck plan 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 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; 2) final deck plans; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

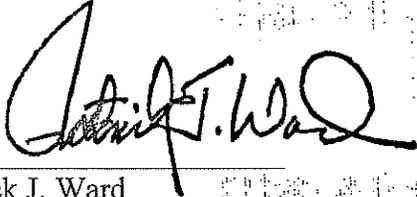
Unanimous Decision of
The Board of Appeals



Mark G. Zuroff, Chairman

Filing Date: 6/7/18

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals