



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

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

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2018 JUL 11 P 3

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-00033
RACHEL VIOLA
344 RUSSETT ROAD, BROOKLINE, MA

Petitioner, Rachel Viola, applied to the Building Commissioner for permission to enclose a small rear three-season porch on the first floor and a small deck directly above on the second floor of an 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 June 21, 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 June 7, 2018 and June 14, 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:

344 RUSSETT ROAD, BROOKLINE, MA 02467 - Enclose porch and deck at the rear in a(n) S-7 SINGLE-FAMILY on 06/21/2018 at 7:00 PM in the 6th Floor Select Board'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:

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE 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 Zuroff*

Publish: 06/07/2018 & 06/14/2018

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Chris Hussey. Also present at the hearing were Zoning Planner & 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.

Chairperson Schneider 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 rear three-season porch on the first floor and a small deck directly above the second floor of an existing single-family dwelling to create 160 s.f. of new living space. Attorney Allen explained that the new living space on the first floor would become part of a large kitchen renovation and contain sliding glass doors that exit onto a new rear landing. He added that the second floor deck would be enclosed with brick infill to match the existing exterior. Attorney Allen noted that a new window would be added as well as a shed roof. Furthermore, Attorney Allen noted that the Planning Board unanimously approved these plans.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from Section 5.20 for floor area ratio, from Section 5.60 under Section 5.43 for a pre-existing non-conforming side 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 proposed additional square footage to the home, which will continue to be used as a single-family dwelling; the use will not adversely affect the neighborhood because the additions are minor and will not significantly alter the home's exterior appearance; there will be no nuisance or serious hazard to vehicles or pedestrians because the property's on-site circulation will not change; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling with an attached garage; and there will be no effect on the supply on housing available for low

and moderate income people. With respect to **Section 5.60**, Attorney Allen noted that the counterbalancing amenity would be landscaping. With respect to **Section 5.20**, Attorney Allen argued that under **Chapter 40A Section 6**, the current FAR, which is over the allowed FAR, could be increased. He stated that the existing FAR is .54 and the proposal increases the FAR to .57.

Chairperson Schneider then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairperson Schneider then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairperson Schneider then called upon Ashley Clark, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Clark noted the following:

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.54 (154%)	.57 (163%)	Special Permit*/ Variance
Floor Area (s.f.)	1,750	2,679	2,839	

** 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 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Setback	Allowed	Existing	Proposed	Finding
Side Yard (right side)	7.5 feet	7.4 feet	7.4 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 or Extension

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

STAFF ANALYSIS

The Planning staff finds this to be a reasonable proposal that will improve the aesthetics of this home. The proposed deck and porch enclosures will be within the existing footprint of the home and will not increase any setbacks. The existing non-conforming setback on the right side is 7.4 feet while the required is 7.5 feet. The enclosure of the second floor deck will be an improved condition for the nearest abutter because there will no longer be an outdoor open space on the roof. Although the existing FAR is well over the allowable .35, the lot is undersized and the additional square footage will be minimal.

Therefore, the Planning staff recommends approval of the site plan by Christopher Charette dated 5/31/2017 and the floor plans and elevations by Sousa Design dated 3/21/2018 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit site plan, floor plans and accurate 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 landscape plan indicating all counterbalancing amenities 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairperson Schneider then called upon Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this request and, 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, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.20, Section 5.60 under Section 5.43 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:

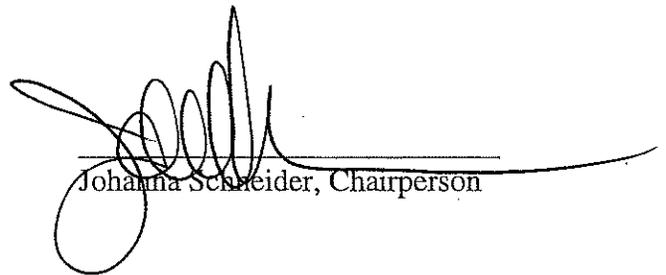
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 site plan, floor plans and accurate 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 landscape plan indicating all counterbalancing amenities 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

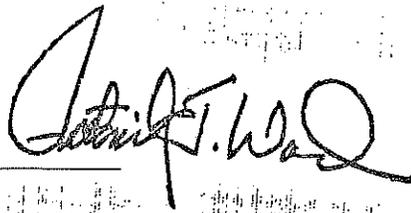
Unanimous Decision of
The Board of Appeals

Filing Date: 7/11/2018



Johanna Schneider, Chairperson

A True Copy
ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is stylized with a large initial "P" and a long, sweeping underline.

Patrick J. Ward
Clerk, Board of Appeals