



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zurroff  
Christopher Hussey

Town Hall, 1<sup>st</sup> 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 30 A 11:00

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0023  
PODER DANIEL & AIVAN  
65 WOLCOTT ROAD, BROOKLINE, MA

Petitioners, Daniel and Aivan Poder, applied to the Building Commissioner for permission to add a second-story addition over existing single-story, four-season room. 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 7:10 PM., in the Select Board'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 as 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:

**65 WOLCOTT ROAD, BROOKLINE, MA 02467 - Add second story addition over existing 1-story, four-season room in a(n) S-15 SINGLE-FAMILY on 06/21/2018 at 7:10 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Dimiter Kostov) 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:

**§5.43 - 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](http://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](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair*

*Christopher Hussey*

*Mark Zuroff*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Chris Hussey and Lark Palermo. Also present at the hearing were Zoning Coordinator and Planner, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch.

The case was presented by the project architect, Dimiter Kostov, 109 Adena Road, Newton, Massachusetts. Also in attendance were the Petitioners, Daniel and Aivan Poder.

Chairman Schneider called the hearing to order at 7:10 p.m. Mr. Kostov waived the reading of the public notice.

Mr. Kostov then described the proposal stating that the proposed project consists of a second-story addition above an existing sun room in an S-15 residential zoning district. He noted that the sun room is pre-existing nonconforming with regards to the side-yard and front-yard setbacks. Mr. Kostov stated that the Petitioners seek a special permit for relief from the side-yard and front-yard setbacks. He further stated that the Planning Board recommended a condition that counterbalancing amenities in the form of landscaping be installed between the Petitioner's property and direct abutters who will be most impacted along the driveway. He noted that the abutter submitted a letter of support.

Chairman Schneider clarified that the counterbalancing amenity is a required part of the grant of a special permit for setback relief. Mr. Kostov stated that the Petitioners will provide landscaping and are open to suggestions.

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

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

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

**FINDINGS**

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.60 – Side Yard Requirements**

<b>Setback</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
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<b>Side Yard (left side)</b>	15 feet	12.5 – 13.35 feet	12.5 – 13.35 feet	Special Permit*
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\* 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. The second-story addition is well designed to match the character of the existing home. The footprint of the structure will not be increased and the home will remain under the allowable FAR. The left side of the home is separated from its abutter by a driveway. The staff recommends that the applicant provide additional screening along the driveway as a counterbalancing amenity.

Ms. Clark stated that the Planning Board was supportive of landscaping to serve at the counterbalancing amenity and had no concerns about this project and supported the proposal design and the Board agreed with the staff’s analysis and recommended approval.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Michael Paul Antonino dated 12/6/2017 and the floor plans and elevations by Dimiter Kostov dated 2/8/2018 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.

Chairman Schneider then called upon Mike Yanovitch, Deputy Building Commissioner, to deliver the findings of the Building Department.

Mr. Yanovitch stated that the Building Department does not have an objection to the request for relief. He noted, however, that front-yard setback relief was not included in the advertisement but is needed. Mr. Yanovitch concluded that should relief be granted the Building Department will work with the Petitioner to ensure compliance with the Building Code.

Chairman Schneider stated that the Board cannot grant front-yard setback because it was not properly noticed in accordance with Massachusetts General Laws 40A §11. The Board then discussed the notice of hearing and the requirement that **Section 5.50** Front Yard Requirements be included. Mr. Kostov was amenable to continuing the hearing to July 12, 2018 to allow the proposal to be advertised again to include front-yard setback relief.

July 12, 2018. Second night of the public hearing.

Present at the continued hearing were Chairman Johanna Schneider and Board Members Chris Hussey and Lark Palermo. Also present at the hearing were Zoning Coordinator and Planner, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch. After reopening the Hearing on July 12, 2018, Chairman Schneider reminded those in attendance that at the previous hearing, the Board heard from the Petitioner, heard the Planning Board's Report, heard the Building Department's Report, and began deliberation and continued the hearing to property notice **Section 5.50** for front-yard setback requirements.

Notice of the hearing was published on June 28 18, 2018 and July 5, 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:

**65 WOLCOTT ROAD, BROOKLINE, MA 02467 - Add second story addition over existing 1-story, four-season room in a(n) S-15 SINGLE-FAMILY on 07/12/2018 at 7:00 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Dimiter Kostov) 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:

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.50 - FRONT YARD REQUIREMENTS**

**§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](http://www.brooklinema.gov).*

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*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

The Petitioner, Daniel Poder, was present and waived a reading of the published notice. Mr. Poder stated that a new notice of hearing including **Section 5.50** was advertised and sent to abutters. Upon inquiry from Chairman Schneider, Mr. Poder stated that there have been no changes to the

proposal from the previous hearing. He noted that the counter balancing amenity will be screening around the proposed addition.

Ms. Clark confirmed that the notice was property advertised in the Brookline TAB and mailed to abutters within 300 feet of the subject property, as certified by the Assessor's Department.

There was no one present from the public to submit comments.

During deliberation, Board Members Palermo and Hussey felt the proposal and requested relief were minimal and worthy of the grant of a special permit. Chairman Schneider concurred.

In reliance on the plans identified above by the site plan by Michael Paul Antonino dated December, 6, 2017 and floor plans and elevations by Dimiter Kostov dated February 8, 2018, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.50, Section 5.60, and Section 8.02.2, pursuant to Section 5.43 and 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.

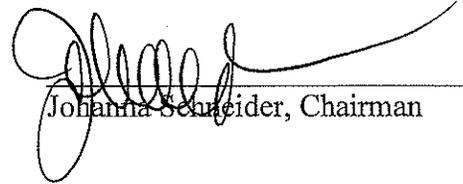
Accordingly, the Board voted unanimously to grant the special permits requested subject to the following conditions:

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.

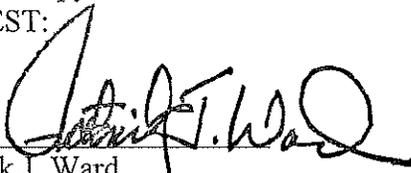
Unanimous Decision of  
The Board of Appeals



Johanna Schneider, Chairman

Filing Date: 7/30/18

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals