



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff  
Christopher Hussey

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

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0031  
BOER LAURENT J & MARIA  
139 SUMMIT AVENUE, BROOKLINE, MA

Petitioners, Laurent and Maria Boer, applied to the Building Commissioner for permission to construct a three-story, 1048 square foot addition at the rear of an existing single-family structure. 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 28, 2018 at 7:00 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 required by law. Notice of the hearing was published on June 14, 2018 and June 21, 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:

**139 SUMMIT AVENUE, BROOKLINE, MA 02446 - Construction of 2 1/2 story addition. in a(n) S-7 SINGLE-FAMILY on 06/28/2018 at 7:00 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Adolfo Perez) Precinct 11**

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**

**§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 Kate Poverman and Randolph Meiklejohn. 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, Adolfo Perez, 69 Union St # 7, Newton, MA 02459. Mr. Perez waived a reading of the published noticed.

Mr. Perez then described the proposal stating that the Petitioners propose to construct an approximately 1,000 square foot addition at the rear of the single-family structure located in an S-7

residential zoning district. He noted that the neighborhood is comprised of similar sized homes on similarly sized lots.

Mr. Perez then stated that the Petitioner seeks a special permit for relief from Section 5.20 of the Zoning By-Law for floor area ratio that will be more nonconforming and from Section 8.02.2 of the Zoning By-Law. Mr. Perez indicated that the FAR relief requested is minimal and will not significantly impact the pre-existing nonconforming home. He argued that relief may be granted pursuant to Massachusetts General Laws Chapter 40A, Section 6. He reasoned that case law precedent (*Deadrick v. Board of Appeals of Chatham*, 85, Mass. App Ct. 539) has established that under Chapter 40A, Section 6, the owner of a nonconforming single-family structure can expand an existing nonconformity via a special permit provided there is a finding that such expansion causes no substantial detriment and there are not any new nonconformities created. Mr. Perez noted that the allowed FAR is .35, the existing FAR is .37, and the proposal before the Board seeks to extend the FAR to a .49. He further stated that request is for a 25% increase in FAR, however, a full 1/3 of the total FAR increase is located in an underground basement while the rest of the FAR increase is located entirely at the rear of the home, thereby having minimal impact on the streetscape and neighborhood. Further, Mr. Perez stated, the Petitioners submitted letters of support from the two most impacted abutters at 141 and 143 Summit Avenue. He noted that the Planning Board unanimously supported the proposal and felt it was a sensitive addition to the modern home.

Mr. Perez then described relief under Section 9.05 of the Zoning By-Law stating: (1) the specific site is an appropriate location for the proposed use because the home will retain its style and maintain its existing use; (2) the use will not adversely affect neighborhood because it is located entirely at rear (3) there will be no nuisance or serious hazard to vehicles or pedestrians as the proposal does not change the occupancy or number of parking spaces on site; (4) adequate and appropriate facilities will be provided

for the proper operation and proposed use; and (5) there will be no effect on the supply of low or affordable housing available.

Upon inquiry from Board Member Poverman, Mr. Perez clarified that this proposal does not require zoning relief for setbacks.

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 5.20 – Floor Area Ratio**

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.35 (100%)	.37 (106%)	.49 (140%)	<b>Special Permit*</b>
<b>Floor Area (s.f.)</b>	2,938	3,093	4,141	

*\* 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 8.02.2 – Alteration or Extension**

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

**STAFF ANALYSIS**

The Planning staff does not have any opposition to this proposal. Although the addition is large, it will not be visible from the street. The proposal meets all setback requirements. The property has a large backyard and the addition will fill in an existing bump out and is also adjacent to an existing deck, minimizing its impact. Due to the home’s modern design, its character is unique to the street and the addition will blend in with the rest of the home.

Clark stated that the Planning Board fully supported this addition and stated that it was a  
ive addition to this modern home.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Michael  
ifford dated 1/8/2018 and the floor plans and elevations by Adolfo Perez dated 12/27/2017 subject to  
ne 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 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 Michael Yanovitch, Deputy Building Commissioner, to  
deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department  
has no opposition to this request. Mr. Yanovitch concluded that should relief be granted, the Building  
Department will work with the Petitioner to ensure compliance with the Building Code.

The Board then determined, by unanimous vote that the requirements for a special permit from  
**Section 5.20**, of the Zoning By-Law were met under Massachusetts General Laws Chapter 40A, Section  
6, as interpreted by Deadrick, and may be granted without substantial detriment, under **Sections 8.02.2**  
and **9.05** of the Zoning By-Law, respectively, were met finding specifically under said **Section 9.05**:

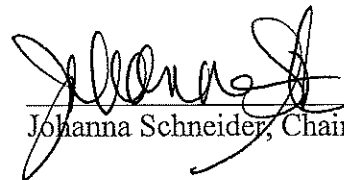
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 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.

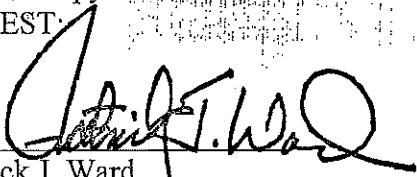
Unanimous Decision of  
The Board of Appeals



Johanna Schneider, Chairman

Filing Date: 8/2/18

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals