



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Mark Zaroff

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 AUG -2 P 7

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0029
SHIH GARRET W & LUDY C
124 WOLCOTT ROAD,
BROOKLINE, MA

Petitioners, Garret and Ludy Shih, applied to the Building Commissioner for permission to construct a second story addition above an existing family 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 14, 2018 at 7:05 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 May 31, 2018 and June 7, 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:

124 WOLCOTT ROAD, BROOKLINE, MA 02467 - Build a second floor room addition above existing family room on existing footprint in a(n) S-15 SINGLE-FAMILY on 06/14/2018 at 7:05 in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: SHIH, GARRET W & LUDY C) Precinct 15

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**

§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***

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Lark Palermo 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 homeowner, Garret Shih. Chairman Geller called the hearing to order at 7:05 p.m. Mr. Shih waived the reading of the public notice.

Mr. Shih described the proposal stating that the Petitioners propose to construct a second-story addition above an existing family room. Mr. Shih stated that this case involves a single family structure that was built in 1940 and is located in an S-15 residential zoning district. He noted that the proposed 239 square foot addition will be above an existing single-story family room at the rear of the property and will not alter the existing footprint.

Mr. Shih stated that the proposed addition requires zoning relief under Section 5.20 of the Zoning By-Law for floor area ratio (FAR) and a special permit under Section 8.02.2 to alter a nonconforming structure. With regard to FAR, he argued that the current property is preexisting nonconforming since the current single-family structure has an FAR of .28 and in this S-15 residential zoning district there is a maximum FAR allowed of .25. Mr. Shih further stated that the proposal seeks to increase the FAR to .306, thereby increasing the existing nonconformity. He noted, however, the proposal does not create any new nonconformity.

Mr. Shih then reviewed the Petitioner's efforts to communicate with the abutters to the property stating that signatures in support by neighbors were submitted to the Planning Board. Additionally, Mr. Shih added that at the Planning Board meeting there were no objections to the proposal and had unanimous approval from the Planning Board.

Mr. Shih argued that relief may be granted pursuant to Massachusetts General Laws Chapter 40A, Section 6 as interpreted by Deadrick v. Board of Appeals of Chatham, 85 Mass. App Ct. 539, which has established that, provided that such an expansion does not create any new nonconformity and there is a finding that there is no detrimental impact to the neighborhood, relief can be granted via a special permit. In support of his argument, Mr. Shih

reviewed how the proposal meets the standards set forth in **Section 9.05** of the Zoning By-Law stating as follows: (1) the site is an appropriate location since the home retains the current style and maintains the existing use; (2) the use will not adversely affect the neighborhood because the addition is at the rear and is not visible from the street and does not change the setbacks or existing footprint; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because there is no change in the parking situation; (4) adequate and appropriate facilities will be provided for the proposed use; and (5) there will be no effect on the supply of affordable housing.

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

Chairman Geller then asked anyone wished to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Geller then called upon Zoning Coordinator, Ashley Clark to deliver the findings of the Planning Board.

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio	.25	.28	.306	Special Permit*
(% of allowed)	(100%)	(112%)	(122%)	
Floor Area (s.f.)	2,538	2,867	3,106	

* Under Dadrack, 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.

Ms. Clark stated that the Planning Board was fully supportive of this proposal and they found it to be modest and sensitively designed.

Therefore, Ms. Clark stated, stated the planning board recommends approval of the site plan by Scott Cerrato dated 1/9/18 and the floor plans and elevations by Linda Hamlin dated 2/26/2018, 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 by the Assistant Director for 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 Geller then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch clarified that the side-yard setback meets the 15 feet required setback. Mr. Yanovitch stated that the Building Department has no opposition to this request, and that it is an improvement that will involve no change to the footprint. 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 deliberated on the merits of the relief as requested and determined, by unanimous vote, that the requirements for relief by a special permit from application of 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 pursuant to Section 9.05 of the Zoning By-Law and also determined that the requirements for relief by a special permit under Sections 8.02.2 and 9.05 of the Zoning By-Law 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 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 by the Assistant Director for 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 Norfolk Registry of Deeds.

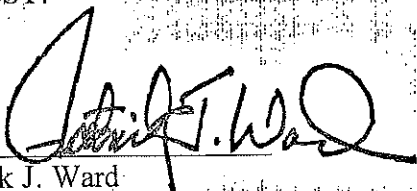
Unanimous Decision of
The Board of Appeals

Filing Date: 8/2/18



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals