



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zurroff
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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2018 AUG 31 A 11:30

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0051
ELIZABETH & PATRICK DUNN
12 MAPLE STREET, BROOKLINE, MA

Petitioners, Elizabeth and Patrick Dunn, applied to the Building Commissioner for permission to construct a rear addition on the first floor. 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 August 23, 2018 at 7:05 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 August 9, 2018 and August 16, 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 Maple Street, Brookline, MA- To construct a rear addition on first floor in a(n) S-10 SINGLE-FAMILY on 08/23/2018 at 7:05 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Patrick Dunn) Precinct 5

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

§5.70 - REAR 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: 08/09/2018 & 08/16/2018

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Jesse Geller and Board Members Mark Zuroff and Randolph Meiklejohn. Also present at the hearing was Zoning Coordinator and Planner, Ashley Clark.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts.

Chairman Geller called the hearing to order at 7:05 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal stating that the Petitioners seek relief to construct a small rear addition, adding a total of 180 s.f. to the home. He noted that the property is located in the Pill Hill Local Historic District, and that the applicant went before the Preservation Commission which approved the proposed changes and issued a Certificate of Appropriateness for the proposed work in June 2018. Attorney Allen explained that the addition will allow for reconfiguration and expansion of the kitchen eating area and the addition of a mudroom and small bathroom, which will help to accommodate the family of five. He added that new windows and doors will provide more light to the family room and easier access to the back yard. Attorney Allen continued, stating that Hillary Maddox, the immediate rear abutter at 51 Upland Road, attended the Preservation Commission Hearing in support of the proposal. Furthermore, Attorney Allen noted that the Planning Board unanimously supported these plans.

Attorney Allen then stated that the Petitioners seek a special permit for relief from Section 5.20 for floor area ratio, from Section 5.70 under Section 5.43 for rear yard setback and from Section 8.02.2 pursuant to Section 9.05 to alter or extend a nonconforming use or structure.

Attorney Allen stated that under M.G.L. ch. 40A, Sec. 6, the Board of Appeals may allow for an extension of an existing non-conformity if they find that there is no additional non-conformity and if they find that the extension is not substantially detrimental to the neighborhood. Attorney Allen argued that the best way to analyze substantial detriment to the neighborhood is to look at the lack of opposition and to the special permit requirements under Section 9.05. He noted that there was no opposition to this proposal even though it is located in Pill Hill.

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 of the home, which will continue to be used as a single-family dwelling; the addition will be tucked into the back of the house at the rear of the home and the setback will be in line with the preexisting nonconforming rear yard setback; the use will not adversely affect the neighborhood because the home will continue to be used as a single-family dwelling in a manner which is consistent with the surrounding neighborhood, and the entire project will be appropriately landscaped, resulting in a significant improvement in overall aesthetics; there will be no nuisance or serious hazard to vehicles or pedestrians because the property's on-site circulation will not change and the general improvements to the front of the home and the site's landscaping will improve the pedestrian environment; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

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

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

Chairman Geller 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)	.30	.67	.69	Special Permit*

Floor Area (s.f.)	2,650	5,953	6,133	
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** 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 5.70 – Rear Yard Requirements

Setback	Required	Existing	Proposed	Finding
Rear Yard	30 feet	11 feet	11 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 or extend a pre-existing non-conforming structure.

PLANNING BOARD COMMENTS

The Planning Board had no concerns about this proposal and fully supported the addition. The Board felt this would be an improvement to this historic home

Therefore, the Planning Board recommends approval of the site plan dated 6/5/2018 by George C. Collins and the floor plans and elevations dated 5/21/2018 by DNA Architecture, subject to the following conditions:

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

Chairman Geller then called upon Ashley Clark to deliver the comments of the Building Department. Ms. Clark stated that the Building Department has no objection 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 under M.G.L. Ch. 40A, Section 6 and the Deadrick case for a special permit from Section 5.20 for floor area ratio, a special permit from Section 5.70 under Section 5.43 for rear yard setback, 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 because the home will remain a single-family home.
- b. The use as developed will not adversely affect the neighborhood because the addition will be tucked in at the rear of the home and extensive landscape will improve the overall aesthetics.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because there will be no change to on site circulation.
- 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 a final site plan, floor plans and 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 final landscaping plan indicating counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.

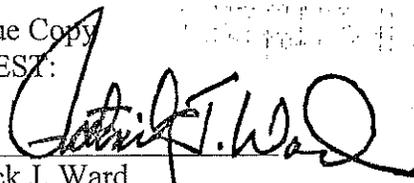
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and building elevations; 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: 8/31/18


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals