



# Town of Brookline Massachusetts

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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark G. Zuroff  
Christopher Hussey

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0041  
108-110 GRIGGS ROAD LLC  
108-110 GRIGGS ROAD, BROOKLINE, MA

Petitioner, Belinda Negron, LLC manager of 108-110 Griggs Road LLC, applied to the Building Commissioner for permission to construct an addition. 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 February 22, 2018 at 7:20 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 February 8, 2018 and February 15, 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:

**108 GRIGGS ROAD, BROOKLINE, MA 02446 - Construct addition and new second story, convert to two attached single family dwellings in a(n) T-6 TWO-FAMILY & ATTACHED SINGLE-FAMILY on 02/22/2018 at 7:20PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: MATTHEW CALKINS) Precinct 7**

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:

**§4.07 – TABLE OF USE REGULATIONS, USE #05**

**§5.20 - FLOOR AREA RATIO**

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

**§5.70 - REAR YARD REQUIREMENTS**

**§5.91 - MINIMUM USABLE OPEN SPACE**

**§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 on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at [llgellineau@brooklinema.gov](mailto:llgellineau@brooklinema.gov)*

*Jesse Geller, Chair  
Christopher Hussey  
Mark G. Zuroff*

**Publish: 02/08/2018 & 02/15/2018**

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested that the hearing be continued to allow time to return to the Planning Board and the Preservation Commission. The hearing was continued to April 26, 2018 at 8:00 p.m. in the Select Board's Hearing Room. At the continued hearing, the Petitioner requested that the hearing be continued

for the same reasons as stated above. The hearing was continued to June 28, 2018 at 7:10 p.m. in the Select Board's Hearing Room. At the continued hearing, the Petitioner requested that the hearing be continued for the same reasons as stated above. The hearing was continued to August 2, 2018 at 7:10 p.m. in the Select Board's Hearing Room. At the continued hearing, the Petitioner requested that the hearing be continued for the same reasons as stated above. The hearing was continued to August 23, 2018 at 7:10 p.m. in the Select Board's Hearing Room. At the continued hearing, the Petitioner requested that the hearing be continued for the same reasons as stated above. The hearing was continued to September 20, 2018 at 7:15 p.m. in the Select Board's Hearing Room. Present at the hearing were Chairman Mark G. Zuroff and Board Members Steve Chiumenti and Lark Palermo. Also present at the hearing were Planner, Karen Martin 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. Also in attendance was the Petitioner, Belinda Negrón and the architect for the project, Ryan Spragg of Embarc Studio.

Chairman Zuroff called the hearing to order at 7:15 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the background of the proposal stating that the Petitioner has been before the Planning Board four times, the Preservation Commission three times, and a joint Preservation and Planning Subcommittee one time. He described that the revised proposal based on these meetings now requires relief from Section 5.20 for Floor Area Ratio, under the Deadrick line of cases because it is already over the allowed (.75) at .86. He noted that the proposed FAR is 1.06 and that the proposal also needs relief from Section 5.70 under Section 5.43 for a pre-existing non-conforming rear yard setback and from Section 8.02.2 for alteration/ extension of a non-conforming structure, all pursuant to Section 9.05. Attorney Allen noted that the proposal started out needing a combination of variances and special

permits, but the architects and team worked hard to develop the proposal presented today. Throughout the development, the rear yard setback for the addition has come in 3.5 feet and is proposed to be 15 feet, rather than the existing 11.9 feet.

Ryan Spagg, Embarc Studio, 60 K St, Boston, Massachusetts, then presented the set of pictures and plans to the Board and those in attendance.

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 went on to describe 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 two-family dwelling, which is appropriate in a T-6 district; the use will not adversely affect the neighborhood because the addition is pulled back from the rear lot line further than the existing dwelling, and it preserves the existing structure's traditional character while incorporating modern feel; there will be no nuisance or serious hazard to vehicles or pedestrians because the property's will continue to be used as a two-family, and the design of the on-site circulation will not change; adequate and appropriate facilities will be provided for the proper operation of a two-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

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

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. Michael Meyerovitz, 81 Griggs Road, Brookline, Massachusetts, spoke in opposition to the project and questioned usable open space and the Deadrick line of cases. Don Perks, 107 Griggs Road, Brookline, Massachusetts, spoke in opposition to the proposal stating that twelve of the neighbors strongly prefer

the second option that was presented to the Preservation/ Planning Subcommittee. Rita Tzimirangas, 585 Washington Street, Brookline, Massachusetts, voiced concern of the a/c condensers and the entrance of the new unit. Chairman Zuroff noted that the entrance is located on the side of the home and noise regulations in the Town would regulate the condensers. Ruthann Sneider, Town Meeting Member Precinct 6, asked a clarifying question regarding Deadrick, which Chairman Zuroff explained. Tom Younis, 575 Washington Street, Brookline, Massachusetts, opined that he wanted an addition that was in the same character with the neighborhood.

Chairman Zuroff then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

**FINDINGS**

**Section 5.20 – Floor Area Ratio**

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.75 (100%)	.86 (115%)	1.06-1.02 (141%)-(136%)	Special Permit*
Floor Area (s.f.)	4,501	5,195	6,380 6,115	

*\* 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	Allowed	Existing	Proposed	Finding
Rear Yard	30 feet	11.9 feet	11.9 feet (existing) <del>15.4</del> 15.1feet (addition)	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. We are proposing both a rear fence and a landscape plan for the entire property*

### **PLANNING BOARD RECOMMENDATION**

The Planning Board was unanimous in their support of this modern addition and felt the proportions were well executed and appreciated the preservation of the existing home. The Planning Board felt that the increase in FAR would not be substantially more detrimental to the neighborhood than what already exists, and found that while rear yard setback relief is required for a preexisting nonconformity, the proposed addition is stepped back further away from the rear yard setback than the existing home.

**Therefore, the Planning Board recommends approval of the site plan dated 11/16/2017 by Peter Nolan and the floor plans and elevations dated 8/9/2018 by EMBARC Studio, 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 landscaping plan 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch noted that both the Floor Area Ratio and the rear yard were eligible for relief under the Deadrick line of cases because both were pre-existing non-conformities that were being extended. He noted that, to the best of his knowledge, none of case law pertaining to the substantial detriment element of the Deadrick line of cases deals with design. Mr. Yanovitch opined that the design was pushed to the current proposal because of the two conflicting Boards. He ultimately 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.

During deliberation, the Board Members discussed the Preservation and Planning Subcommittee option two, which was preferred by the neighbors. Board Member Chiumenti expressed a strong preference to support option two, and Board Member Palermo and the Chairman agreed.

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, from Section 5.70 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 two family home.
- b. The use as developed will not adversely affect the neighborhood because the option selected will keep the character of the neighborhood.
- 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 a two-family dwelling.
- 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 for the option 2 alternative design as was presented, 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 landscaping plan subject to the review and approval of the Assistant Director of Regulatory Planning.
4. 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.


Unanimous Decision of  
The Board of Appeals

Filing Date: 10/19/18



Mark G. Zuroff, Chairman

A True Copy  
ATTEST



Patrick J. Ward  
Clerk, Board of Appeals