



# Town of Brookline Massachusetts

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

Town Hall, 1<sup>st</sup> Floor  
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Patrick J. Ward, Clerk

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TOWN CLERK

2018 NOV - 8 P 4 5

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0067  
122 CLINTON ROAD LLC  
122 CLINTON ROAD, BROOKLINE, MA

Petitioner, 122 Clinton Road LLC, applied to the Building Commissioner for permission to construct a rear 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 October 18, 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 October 4, 2018 and October 11, 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:

**122 CLINTON ROAD, BROOKLINE, MA 02445 - Construct rear addition, in a(n) S-10 SINGLE-FAMILY on October 18, 2018 at 7:00pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: )**

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**

*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 G. Zuroff*

**Publish: 10/4/2018 & 10/11/2018**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Steve Chiumenti and Johanna Schneider. Also present at the hearing was the Assistant Director of Regulatory Planning, Polly Selkoe.

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 were representative of the Petitioner, James Kinsella and architect for the project, Alex Svirsky.

family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

Attorney Allen mentioned that the Preservation Commission felt strongly that the proposal have a gable roof and lifted the stay based on such plans. He noted that the Planning Board suggested a hip roof. Attorney Allen asked that the Board opine as to whether either roof would be okay. The Board Members discussed and stated that they would accept either roof design, noting that they did not have the jurisdiction to choose one or the other.

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. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Mrs. Selkoe 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>	.30 (100%)	.32 (107%)	.39 (130%)	Special Permit*
<b>Floor Area (s.f.)</b>	5,536	5,826	7,177	

*\* 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 for alterations to a non-conforming structure.

**PLANNING BOARD RECOMMENDATION**

The Planning Board was supportive of this proposal. The members offered the suggestion that the roof could be a hip rather than a gable but otherwise felt comfortable with the proposal and the zoning relief requested.

**Therefore, the Planning Board recommends approval of the site plan by Peter McManus dated 5/7/2018 and floor plans and elevations by Architecture SV dated 7/12/2018:**

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan, floor plans and elevations, subject to review and approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to review and approval by the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit for each house, the applicant shall submit to the Building Commissioner, for review and approval for conformance to the Board of Appeals Decision: 1) final floor plans and elevations stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the Board of Appeals decision have been recorded at the Registry of Deeds.

Attorney Allen asked that condition two be amended since the Petitioner was not seeking setback relief or required to provide a counterbalancing amenity. He noted that the Petitioner would provide landscaping but would like to not need the plan reviewed by Planning Staff. The Board agreed to the modification of condition two to remove the requirement of staff approval of the landscaping plan.

Chairman Zuroff then called upon Polly Selkoe to deliver the comments of the Building Department. Mrs. Selkoe stated that the Building Department provided no feedback indicating any issue with this proposal.

During deliberation, Board Member Schneider noted that the lack of opposition and stated that the restoration of the property and the addition seem welcomed. Chairperson Zuroff noted that the Board has no opinion on the roof of the building and would support a hip or gable roof.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for relief from Section 5.20 for floor area ratio, under M.G.L. ch. 40A, section 6, and

Section 8.02.2 for alteration or extension of a non-conforming structure, both 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 addition is at the rear of the home and all setbacks comply with zoning.
- b. The use as developed will not adversely affect the neighborhood because the home will continue to be used as a single-family dwelling and the neighborhood will be positively impacted by the restoration of the structure along with the addition.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because on site circulation will not change and the restoration of the property will improve the streetscape and the pedestrian environment.
- 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:

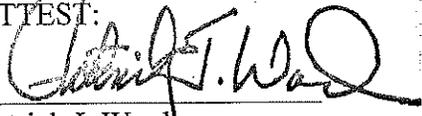
1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan, floor plans and elevations, subject to review and approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a certificate of occupancy, the applicant shall install landscaping appropriate for the neighborhood.
3. Prior to the issuance of a building permit for each house, the applicant shall submit to the Building Commissioner, for review and approval for conformance to the Board of Appeals Decision: 1) final floor plans and elevations stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the Board of Appeals decision have been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 11/9/18

  
Mark G. Zuroff, Chairman

A True Copy  
ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward", written over a horizontal line.

Patrick J. Ward  
Clerk, Board of Appeals