



Town of Brookline Massachusetts

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

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

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TOWN OF BROOKLINE
TOWN CLERK

2018 NOV - 8 P 9 48

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0064
52 PAYSON ROAD
ANDREY CHERTOV

Petitioner, Fran Kent, applied to the Building Commissioner for a building permit to legalize a partially-constructed deck in the side yard at 52 Payson Road. 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 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioners, to their attorney 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:

52 PAYSON ROAD, BROOKLINE, MA 02467 - Remove existing patio and replace with 30'x 13' pressure treated deck according to plans in a(n) S-7 SINGLE-FAMILY on

**October 18, 2018 at 7:00 pm in the 6th Floor Select Board's Hearing Room
(Petitioner/Owner: Francis Kent) Precinct 16**

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:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

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 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 was Chairman Mark G. Zuroff, and Board Members Johanna Schneider and Stephen Chiumenti. The case was presented by the Petitioner, Fran Kent. Chairman Mark G. Zuroff called forward ZBA case #2018-0064 seeking side yard setback relief at approximately 7:45 p.m.

Mr. Kent, the contractor, waived a reading of the published notice and presented the case for a deck in the side yard at 52 Payson Road. He explained that the applicants realized the existing patio was being damaged by their rear addition and decided to construct a platform deck.

He explained that it was partially built when the Building Inspector pointed out that it was within the side yard setback. He then applied for relief. Mr. Kent stated that there is an existing fence and he would install additional plantings in the gap between the deck and the fence as a counterbalancing amenity.

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.

Polly Selkoe, Assistant Director of Regulatory Planning, delivered the findings of the Planning Staff and Planning Board:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.60 – Rear Yard Requirements

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Side Yard Setback	6 feet	16.4 feet	~3 feet	Special Permit*/ Variance

**Sec. 5.43 – If counterbalancing amenities are provided, the Board of Appeals may waive the required setback by special permit.*

STAFF ANALYSIS

The Planning staff finds this deck to be very close to the property line in this neighborhood of small lots and would like to know more about how the abutter to the right side feels about this proposal and whether they have given support. It appears that the applicants currently use this area for outdoor seating and that there is an existing fence between the two lots which should

reduce any possible nuisance. The staff recommends that the applicant install plantings as a counterbalancing amenity around the deck.

PLANNING BOARD COMMENTS

The Planning Board determined that this deck has already been partially constructed before a building inspector noted that it was within the side yard setback. The Board felt that although it is close to the property line, the existing patio is in the same location and there is an existing fence. The Board urged the applicant to plant additional plantings between the deck and the fence and to solicit a written support letter from the immediate abutter.

Therefore, the Planning Board recommends approval of the site plan dated 12/15/2016 by George Collins and the deck plans, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, 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, subject to review and approval by 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 and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Ms. Selkoe to deliver the comments of the Building Department. Ms. Selkoe stated that the Building Department had not submitted a report but as always will work with the Petitioner to ensure compliance with the Building Code.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Members were in support of granting the requested relief; however, they said that the applicant should submit a letter from his abutter in support prior to the building permit being issued. Chairman Zuroff stated that the proposal meets the requirements for the requested relief since the Petitioner is providing landscaping as a counterbalancing amenity and the requested relief complies with Section 9.05 of the Zoning By-Law.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Sections 5.60, of the Zoning By-Law pursuant to 5.43 of the Zoning By-Law as requested by the Petitioners 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 requested relief subject to the following conditions:

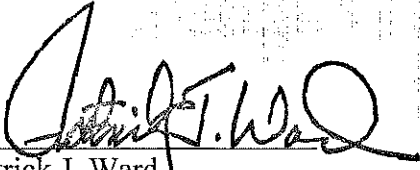
- 1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to review and approval by the Assistant Director of Regulatory Planning.
- 3. Prior to the issuance of a building permit, a letter of support shall be submitted by the direct abutter.
- 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 and 2) evidence that the Board of Appeals decision has 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". The signature is written in a cursive style with a large initial "P" and "W".

Patrick J. Ward
Clerk, Board of Appeals