



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
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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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0036
DANA AND LAUREN FALLON
17 ARLINGTON ROAD, BROOKLINE, MA

Petitioners, Dana and Lauren Fallon, applied to the Building Commissioner for permission to replace an attached garage with a larger garage and living space above. 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 9, 2018 at 7:00 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 July 26, 2018 and August 2, 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:

17 ARLINGTON ROAD, BROOKLINE, MA 02467 - ENLARGE EXISTING ATTACHED GARAGE AND LIVING SPACE ABOVE in a(n) S-10 SINGLE-FAMILY on 08/09/2018 at 7:00 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Dana Fallon) 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:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE 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 butters 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: 07/26/2018 & 08/02/2018

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioners requested that the hearing be continued to allow time to return to the Planning Board. The hearing was continued to September 27, 2018 at 7:10 p.m. at 350 Washington Street, Brookline, Massachusetts, in the Police Department Community Room. Present at the continued hearing were

Chairman Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. Also present at the continued hearing was the Assistant Director of Regulatory Planning, Polly Selkoe.

The case was presented by the Petitioner, Dana Fallon, 17 Arlington Road, Brookline, Massachusetts.

Chairman Geller called the hearing to order at 7:10 PM. Mr. Fallon waived a reading of the public notice.

Mr. Fallon explained that he and his wife Lauren requested to enlarge the existing garage and add living space above. He stated that he made adjustments to the plans at the request of the Planning Board and noted that many neighbors were in support of the proposal.

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

Chairman Geller asked whether anyone was present to speak in opposition to the proposal. Benjamin O'Grady, Esq., Lawson & Weitzen, LLP, 88 Black Falcon Avenue, Suite 345, Boston, Massachusetts, representing Christopher and Susan Riffe of 23 Arlington Road, Brookline, Massachusetts, spoke in opposition to the proposal. Attorney O'Grady stated that his clients were the only neighbors actually impacted by the enlargement of the garage. He submitted photos addressing shadowing and noted that the house was already non-conforming. He stated that no alternative options were considered by the Petitioners and requested denial.

Board Member Zuroff requested that the Petitioner look at alternatives. Board Member Schneider asked if the Petitioners favored screening. Mr. Fallon stated that he was open to changing the screening. Chairman Geller noted no concern with the proposed widened garage (to allow proper function), but he noted that no evidence was provided to enable the Board to determine whether the second story would have an adverse impact on the abutting neighbors. Board Member Schneider stated concern over the impact of shadows and questioned why the garage could not be relocated elsewhere on such a large lot.

At the Board's urging, Mr. Fallon requested that the hearing be continued to enable the Petitioners to be able to review alternative options, the impact of any shadowing caused by the altered garage, if any, and respond to the concerns raised by the Board Members. The hearing was continued to December 6, 2018 at 7:15 p.m. in the Select Board's Hearing Room.

December 6, 2018. Second Night of Public Hearing.

Present at the continued hearing were Chairman Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. Also present at the continued hearing were Deputy Building Commissioner, Michael Yanovitch and Assistant Director of Regulatory Planning, Polly Selkoe. Chairman Geller summarized the concerns expressed by the Board Members at the first hearing.

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 the Petitioners, Dana and Lauren Fallon and the architect for the project, Pam Woodworth.

Attorney Allen noted that he joined the project team after the first open hearing in September. He then described the revisions to the proposal stating that the Petitioners still seek relief to enlarge the footprint of the garage and add living space above. Attorney Allen stated that the Petitioners had further revised the plans and conducted a shadow study since the last hearing. He noted that he had been working with the Riffes' attorney to come to an agreement between the abutters and the Petitioners. Attorney Allen added that the Petitioners were able to reach an agreement with the abutters, who chose not to attend the continued hearing. He stated that the abutters requested that there not be additional landscaping between the two properties, along the side of the proposed garage, and he noted that the situation is often the opposite and additional landscaping is often used as a counterbalancing amenity for setback relief. Attorney Allen stated that the Petitioners have agreed to use slate for the roof, which would serve as a counterbalancing amenity that would appease the abutters and preserve the character of

the home. Furthermore, Attorney Allen noted that the Petitioners have six support letters from neighbors.

Attorney Allen then stated that the Petitioners seek a special permit for relief from Section 5.60 under Section 5.43 for a pre-existing non-conforming side yard setback and from Section 8.02.2 pursuant to Section 9.05 to alter or extend a nonconforming use or structure.

The Board asked Attorney Allen to address the differences since the last hearing. Attorney Allen noted that the roof height was reduced by five feet and the width of the proposed garage addition was reduced by a foot. He stated that throughout the process the roof was changed. He established that the Petitioners and the abutters went through three sets of plans before they were able to reach an agreement. He also reiterated the fact that the Petitioners ordered a shadow study which showed minimal to no impact on the abutters.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed garage, and the home will continue to be used as a single-family dwelling; the use will not adversely affect the neighborhood and the Petitioners have six letters of support; there will be no nuisance or serious hazard to vehicles or pedestrians because the property's on-site circulation will not change and the visibility exiting the garage will be improved; 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. Francesca Ferraris of 16 Arlington Road spoke in favor of the proposal, noting that the neighborhood wants the Petitioners' family to stay a part of the neighborhood.

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 Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Mrs. Selkoe noted the following:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Setback	Required	Existing	Proposed	Finding
Side Yard	10 feet	9.5 feet	7.3 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.*

PLANNING BOARD COMMENTS

The Planning Board was supportive of the revisions the applicant made to the proposal after receiving the Board’s feedback. Some Board members believed additional space could be taken out of the second story addition but the Board ultimately felt that the change to the roof shape made a larger difference than the a few feet of space. The Board encouraged the applicant to work out a landscaping plan for screening with the abutter.

Therefore, the Planning Board recommends approval of the site plan dated 5/16/2017 by Dennis O’Brien and the floor plans and elevations dated 8/16/2018 by Woodworth Architects, 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 Deputy Building Commissioner, Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no

opposition to this request and, should relief be granted, the Building Department will work with the Petitioners to ensure compliance with the Building Code.

Board Member Schneider commended the Petitioners for working with their abutter. She stated that her previous concerns were alleviated and opined that the counterbalancing amenity of a slate roof was appropriate. Board Member Zuroff and Chairman Geller agreed.

In reliance on the above referenced site plan and revised floor plans and elevations dated 11/26/18 by Woodworth Architects, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.60 under Section 5.43 for side 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 home will continue to be used as a single-family dwelling and the Petitioners have six letters of support.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because the enlarged, usable garage will improve conditions and safety.
- d. Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

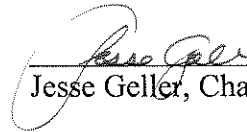
Accordingly, the Board voted unanimously to grant the requested special permit relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, indicating, in part, the use of a slate roof on the garage as a counterbalancing amenity, 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 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

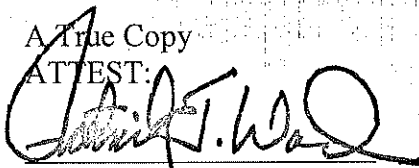
Filing Date: 01/07/19



Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals