



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0052
LEV MASKEVITCH
9 WHITE PLACE

Petitioner, Lev Matskevich, applied to the Building Department for a building permit to add a side addition in the rear as well as a second-story addition at the rear of 9 White Place, totaling 401 square feet. 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 September 13, 2018 at 7.05 PM, 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 Petitioner, 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 August 30, 2018 and September 6, 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:

9 WHITE PLACE,, BROOKLINE, MA 02445 — Rear and side addition in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on 9/13/2018 at 7:05 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Lev Matskevich) Precinct 6

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:

- Section 5.20 – Floor Area Ratio
- Section 5.43 – Exception to Yard and Setback Regulations
- Section 5.60 – Side Yard Requirements
- Section 5.70 – Rear Yard Requirement
- Section 5.90 – Minimum Landscaped Open Space
- Section 5.91 – Minimum Usable Open Space
- Section 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 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. Assisted 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 Devices, please contact Caitlin Haynes at (617) 730-2345 or at chanynes@brooklinema.gov.

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

At the time and place specified in the notice, this Board held a public hearing.

Petitioner appeared on September 13, 2018 and requested a continuance to January 24, 2019, which request was granted.

Present at the hearing was Chair Johanna Schneider, and Board Members Lark

Palermo and Randolph Meiklejohn. The case was presented by Attorney Scott C. Gladstone, 822 Boylston St., Suite 300, Chestnut Hill, Massachusetts 02467. Chair Johanna Schneider called the hearing to order at 7:20 p.m.

Attorney Gladstone waived the reading of public notice and explained the background of the case as follows: 9 White Place is a 1.5 story single-family cottage style home built in 1866. The cottage at #9 is similar in proportion to #11 which was built a few years earlier in 1860-61. The two houses also share similar second floor and side fenestration and roof types. The existing two-story rear addition was constructed sometime in the 1970s or 1980s, though building permit records for this work could not be located. The house appears to feature its original windows, though the original entry hood has been removed, and vinyl or aluminum siding replaced asphalt/asbestos shingle siding sometime after 1980. The home abuts a business on Washington Street to the right and at the rear. White Place is a unique neighborhood of mid-19th century vernacular architecture and workers' housing which developed in response to the emerging importance of Brookline Village as the town's major commercial and civic center. The neighborhood consists of similarly sized homes on small lots.

Attorney Gladstone explained the proposal as follows: The Petitioner, Lev Matskevich, proposes to add a side addition in the rear as well as a second-story addition at the rear totaling 401 square feet. At the right side, a two-story addition is proposed that follows the slant of the property line and fills in the existing side yard. The addition will expand the kitchen and add a mudroom with an entrance from the front and pantry on the first floor and expand the master bedroom on the second floor. Additionally, at the rear, a patio will be added at the first floor with a master bathroom and walk-in closet overhanging above the patio at the rear. The current plans reflect the Planning Board's initial comments that applicant reduce the rear second story

addition/overhang by about 50 square feet and 3 feet at the rear.

Attorney Gladstone then explained the relief that was needed and available as follows:

The initial application had not calculated the open space requirements, so open space was cited in the denial letter. Petitioner enclosed a plot plan containing the open space calculations and it is now clear that the proposed project complies with the 10% landscaped open space requirement by providing more than double the requirement. Planner Karen Martin, on behalf of the Building Department, indicated that the newly provided calculations do show compliance.

The property is pre-existing non-conforming with respect to usable open space, which is not being increased. Since the non-conformity is not being increased, usable open space complies with zoning by-law §8.02.2 and no relief is needed.

The property is pre-existing non-conforming with respect to side and rear setbacks, which non-conformities are being increased slightly. The pre-existing non-conforming side-setback to the east is adjacent to the abutting commercial property, which appears to be built right up to the shared property line. Such an increase is permitted under zoning by-law §8.02.2 by virtue of zoning by-law 5.43, which permits increases to yard and set back non-conformities by Special Permit as long as there are counter-balancing amenities provided. In this case, the counter-balancing amenity will be improvements to the streetscape through improved front yard landscaping. The increase in these non-conforming conditions are also permitted by virtue of G.L. c. 40A, §6. Petitioner showed charts demonstrating that many properties on White Place have less than the proposed setbacks for this project, making it clear that the proposed project cannot be substantially more detrimental to the neighborhood. To the contrary, it is in line with the neighborhood.

The property is pre-existing non-conforming with respect to F.A.R., which non-conformity is being increased. Allowed F.A.R. is 1.0, existing F.A.R. is 1.2, and the proposed

addition will raise the F.A.R. to 1.46. The increase in the non-conforming condition is permitted by virtue of G.L. c. 40A, §6. Attorney Gladstone also presented charts demonstrating that proposed project is less dense (per F.A.R.) than 4 other properties on the street and 11 other properties in White Place that exceed the proposed project with respect to “total area.” “Total area” is a data point provided on the assessor’s database, which represents all interior space of a structure, whether or not it meets the definition of “gross floor space” or “living space.” Attorney Gladstone stated that “total area” is a good measure of density within any building envelope and, in this case, it shows that the proposed building is well within the limits of the type of structures that populate White Place. Attorney Gladstone argued that these comparisons make it clear that the proposed project cannot be considered substantially more detrimental to the neighborhood. Moreover, 9 White Place is the last residential structure before the commercial building fronting on Washington Street.

Attorney Gladstone next argued that special permit standards under the Town By-Law don’t apply when G.L. c. 40A, §6 is triggered. While there are available special permits to address the yard and setback non-conformities, because those conditions existed prior to passage of the zoning by-law, they are pre-existing legal non-conformities and, therefore, any increase thereof is governed exclusively by G.L. c. 40A, §6, citing *Gale v. Zoning Board of Appeals*, 80 Mass.App.Ct. 331 (2011).

Attorney Gladstone went on to explain that, to the extent that the Board wished to use the Special Permit standards under Section 9.05 to further guide their Section 6 finding, the proposal complied as follows:

- a. The site is an appropriate location for such a use, structure, or condition:

The structure remains a single family home and even as expanded would be

consistent with the density and positioning on its lot as compared to other homes on White Place.

b. For the reason set forth under the Section 6 analysis, the proposed use will not adversely affect the neighborhood.

c. There will be no nuisance or serious hazard to vehicles or pedestrians as there will be no change in parking or traffic patterns on and off the property.

d. For the reasons set forth under the Section 6 analysis, adequate and appropriate facilities will be provided for the proper operation of the proposed use.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people as this will remain a single family home.

Attorney Gladstone concluded by explaining that there was a letter of support signed by the surrounding residential abutters and stating that the standards for a special permit, both under the Zoning By-Law and per G.L. c. 40A, §6 has been met and Petitioners request that the Plan be approved.

Zoning Board of Appeals Chair Schneider invited the Board members to ask questions. Chair Schneider asked about the issues raised in an August 23, 2018 letter of objection by Lisa Sivan of Village Works, a tenant in the abutting commercial building. Petitioner responded that the letter was written before the Planning Board process led to modifications to the design, including an adjustment to the proposed mudroom to permit more light into the window of the commercial building, and that Ms. Sivan had no further objections and had since retracted her letter. Planner Karen Martin, on behalf of the Planning Board, agreed with the Petitioners' representation.

Zoning Board of Appeals Chair Schneider asked if there was anyone present who wished to speak in favor of the application. Constance Sloan Furniss of 10 White Place spoke in favor of the

application explaining that the proposed work will be a welcomed improvement to the street and that the neighbors all feel the proposal is appropriate and will have no negative impacts. Zoning Board of Appeals Chair Schneider asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition.

Zoning Board of Appeals Chair Schneider called upon Karen Martin, Planner for the Town of Brookline, to deliver the findings of the Planning Board. Ms. Martin responded that the Planning Board requested that the rear addition be pulled back by three feet to provide greater yard space and was pleased to see the Petitioner return to the Planning Board with a revised plan that made the requested reduction. The Board was supportive of the revisions and felt that the proposal is reasonable for a particularly constraining lot.

FINDINGS

Section 5.20 – Floor Area Ratio

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

	Required	Existing	Proposed	Finding
Floor Area Ratio	1.0 (1,892 sf)	1.2 (2,334 sf)	1.46 (2,735 sf)	Special Permit*
(% of allowed)	100%	120%	146%	
Side Yard (Left)	7.5 feet	.6 feet	.3 feet	Special Permit**
Side Yard (Right)	7.5 feet	3.9 feet	.3 feet	Special Permit**
Rear Yard	30 feet	12 feet	8.4 feet	Special Permit**

Landscaped Open Space	10% (274 sf)	30% (694 sf)	21% (578 sf)	Complies
Usable Open Space	30% (831 sf)	0% (0 sf)	0% (0 sf)	Special Permit**

* 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.

** 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 for alterations to a non-conforming structure.

PLANNING BOARD COMMENTS

The Planning Board acknowledged that the applicant had responded to what had been asked by removing three feet from the rear addition. The Board was supportive of the revisions and feel that this is a reasonable proposal for a particularly constraining lot.

Therefore, the Planning Board recommended approval of the site plan dated 5/18/2018 by George C. Collins and the floor plans and elevations dated 10/17/2018 by McKay 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.

The Chair then called upon Karen Martin to speak on behalf of the Building Department.

Ms. Martin reported that the Building Department has no objection to the proposal and would work with the Petitioner to ensure compliance with all requirements.

In deliberations, Chairman Schneider expressed gratitude for the proponent working with his neighbors to forge a consensus and to propose an addition that is sensitive and respectful of the scale of the neighborhood. Member Palermo commented that the proposal will be an improvement to the neighborhood. Member Meiklejohn appreciated that the Petitioner accepted the suggestion of the Planning Board to enlarge and improve the proposed rear yard space.

The Board of Appeals then determined by unanimous vote that the requirements for a Special Permits for Sections 5.20, 5.43, 5.60, 5.70, 5.90, 5.91 have been met. The Board found that the proposed project meets the c. 40A, Section 6 standard that it will not be substantially more detrimental to the neighborhood. The Board further found that, if necessary, the elements of Section 9.05 have also been satisfied:

- a. The specific site in 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.

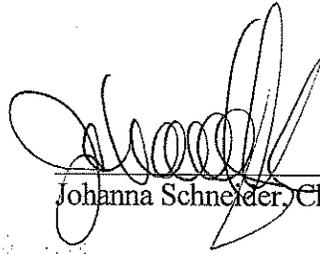
Accordingly, the Board of Appeals voted unanimously to grant the requested relief for the site plan of George C. Collins dated 5/18/2018, as revised on 10/31/2018, and the floor plans and elevations dated 10/17/2018 by McKay Architects subject to the following conditions:

- 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.

Unanimous Decision of
The Board of Appeals

Filing Date: 2/1/2019



Johanna Schneider, Chair

A True Copy

ATTEST

Patrick J. Ward
Clerk, Board of Appeals

