



Jesse Geller, Chairman  
Mark Zuroff

# Town of Brookline Massachusetts

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

2019 FEB 20 P 2:25

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
74 LAWTON STREET  
CASE NO. 2018-0082

Petitioner Todd Williamson applied to the Building Commissioner for permission to remove first and second level rear porches and add a rear ground level mudroom, as well as to demolish the existing garage and construct a new garage. The building permit 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed January 31, 2019, at 7:05p.m. in the Selectmen's Hearing Room on the 6<sup>th</sup> floor of Brookline Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 January 17<sup>th</sup> and January 24<sup>th</sup>, 2019, 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:

**74 LAWTON STREET, BROOKLINE, MA 02446 – Remove rear porches on 1st and 2nd floor, add rear ground-level mudroom, demolish existing detached 2-car garage and replace with new 2-car garage in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on January 31, 2019 at 7:00 pm in the 6th Floor Select Board’s Hearing Room (Petitioner/Owner: Todd Williamson)  
*Precinct 9***

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 – EXCE[TIONS TO YARD AND SETBACK REGULATIONS**
- §5.60 – SIDE YARD REQUIREMENTS**
- §5.72 – ACCESSORY BUILDINGS OR STRUCTURES IN REAR YARDS**
- §5.90 - MINIMUM LANDSCAPED OPEN SPACE**
- §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 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 Zuroff*

**Publish: 01/17/2019 & 01/24/2019**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Mark Zuroff and Johanna Schneider.

Also present was Senior Planner Maria Morelli.

Attorney Jacob Walters, of Walters, Shannon & Jensen of 27 Harvard Street, Brookline, Massachusetts presented the case for the petitioner. Mr. Walters stated that all the relief needed could be accomplished by three (3) Special Permits, specifically under **Section 5.43** Exceptions To Yard and Setback Requirements, **Section 5.91**, Minimum Usable Open Space, **Section 8.02.2**, Alteration and Extension, pursuant to **Section 9.05** of the Zoning By-Law. Mr. Walters continued that with reference to the existing garage, the Preservation Commission had issued a certificate of non-significance. Mr. Walters added that the Planning Board unanimously recommended approval of the applicant's proposal.

With reference to the side yard requirements, as set forth in **Section 5.60**, Mr. Walters stated that relief could be granted pursuant to **Section 5.43** of the Zoning By-Law, which allows this Board to substitute other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-Law, by means of a counterbalancing amenity. He specified that in this instance the proposed counterbalancing amenity to be provided by the applicant consists of rear yard landscaping.

With reference to **Section 5.91**, Minimum Usable Open Space, Mr. Walters stated that the property as built, provided for 18% usable open space where the By-Law requires 30% of the lot to be usable open space. He continued that the proposed minimum usable open space would remain unchanged at 18%.

Mr. Walters next stated that a Special Permit under said **Section 8.02**, alternation or extension, would also be required. Special Permit relief under this Section is needed because the

preexisting non-conforming dwelling is being slightly altered. Mr. Walters confirmed that no new non-conformity was being created and that the mud room addition and a new garage would not create a substantial detriment to the neighborhood greater than the pre-existing non-conforming structures. He noted that relief would be consistent with the findings in the Deadrick v. Zoning Board of Appeals of Chatham, case 85 Mass. App. Ct. 539, (2014).

Mr. Walters continued by stating that the requested Special Permits conformed with the requirements of **Section 9.05** of the Zoning By-Law in that the location of the addition and rebuilt garage were appropriate, no nuisance would be created, traffic would in no way be affected and the supply of housing in Brookline would not be diminished or harmed. Mr. Walters concluded his remarks by saying that there were no objections from any of the abutters and that the applicant had no issues with the proposed conditions suggested by the Planning Board.

The Chairman then asked if anyone in attendance wished to speak in support of or in opposition to the petitioner’s proposal. No one asked to be heard.

Maria Morelli, Senior Planner, delivered the findings of the Planning Department. Ms. Morelli stated the following:

**FINDINGS**

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.60 – Side Yard Requirements**

**Section 5.72 – Accessory Buildings in Side Yards**

**Section 5.91 – Minimum Usable Open Space**

	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Side Yard Setback</b>	10 feet	7.5 feet	4.7 feet	Special Permit**
<b>Side Yard Setback (Garage)</b>	6 feet	~.3 feet to 3 feet	~.9 feet to 3 feet	Special Permit**

<b>Landscaped Open Space</b>	10%	28.7%	26%	Complies
<b>Usable Open Space</b>	30%	18%	18%	Special Permit/Variance*

\* 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.

### **PLANNING BOARD COMMENTS**

The Planning Board had no concerns with this proposal. They were very supportive of the design of the new rear addition and had no issues with the rebuilding of the garage.

**Therefore, the Planning Board recommends approval of the site plan dated 11/15/2018 by Robert Staples and the floor plans and elevations dated 11/2/2018 by Siemasko & Verbridge, 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.

The Chairman then asked Maria Morelli whether the Building Department had any comments.

Ms. Morelli responded in the negative but noted that the Building Department will work with the applicant to ensure compliance with the Building Code.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the petitioner has satisfied the requirements necessary for relief from Sections 5.60, 5.91 and 8.02.2 of the Zoning By-Law, pursuant to Section 5.43 and Section 9.05 of the

Zoning By-Law, respectively, and made the following specific findings pursuant to said Section 9.05 of the Zoning By-Law:

- 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.

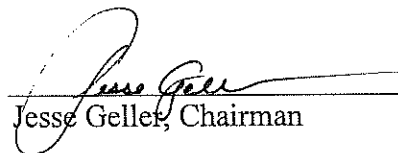
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, 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 indicating all counterbalancing amenities 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.

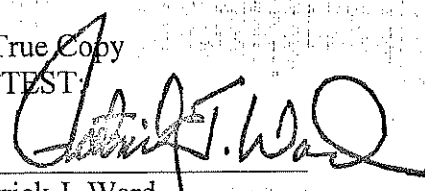
Unanimous Decision of

The Board of Appeals

Filing Date: 02/20/19

  
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Jesse Gellet, Chairman

A True Copy  
ATTEST

  
\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals