



Jesse Geller, Chair

Town of Brookline Massachusetts

Mark Zurroff

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

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2019 MAR 14 P 1:46

TOWN OF BROOKLINE
BOARD OF APPEALS
34 JAMAICA ROAD
CASE NO. 2018-0067

Petitioner Bee Yeo applied to the Building Commissioner for permission to construct a three (3) story addition at the rear of the premises, which is a three-family dwelling. 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 March 7th, 2019, at 7:15p.m. in the Selectmen's Hearing Room on the 6th 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 of record (if any), 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 February 21st and February 28th, 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:

34 JAMAICA ROAD, BROOKLINE, MA 02446 – Construct a three story addition in an M-1.0 APARTMENT HOUSE district, on 03/07/2019 at 7:15PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Bee Yeo).

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[PTIONS 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

Publish: 02/21/2019 & 02/28/2019

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairperson Johanna Schneider and Board Members Randolph Meiklejohn and Lark Palermo. 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 one (1) Special Permit, pursuant to **Section 5.43** for Exceptions to Yard and Setback Requirements. Mr. Walters stated that the Preservation Commission determined that the dwelling was significant, and imposed a one year stay of demolition on the property. The stay of demolition expires in April of 2019.

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. Mr. Walters stated that in this instance the counterbalancing amenity to be provided by the applicant consists of rear yard landscaping. Mr. Walters added that the side yard setback requirement is 18'.6" and the existing side setback is 10'6". The current setback is a pre-existing non-conforming condition and the proposed side yard setback, created by the rear yard addition, would be 10'. Mr. Walters suggested that the 6" difference in the setback was *de minimis*.

Mr. Walters continued by stating that the requested Special Permit conformed with the requirements of **Section 9.05** of the Zoning By-Law in that the location of the additional was 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 applicants had no issues with the proposed conditions suggested by the Planning Board.

The Chair 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.

Karen Martin delivered the findings of the Planning Department. Ms. Martin noted the following:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.60 – Side Yard Requirements

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Side Yard Setback (Left)	10 + L/10 = 18.6 feet	10.6 feet	10 feet	Special Permit*/ Variance

** 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 this simplified proposal to add a rear addition. The Board did not feel that the proposed spiral staircase would meet building code for a second means of egress and asked staff to confirm with the Building Commissioner. The Board would like to see the plans revised with a compliant staircase prior to the Zoning Board of Appeals hearing.

Therefore, the Planning staff recommends approval of the site plan by Stephen Desroche dated 2/26/2019 and the floor plans and elevations by Chongzi Chen Architect dated 12/23/18 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, showing a revised egress stair, 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, indicating counter balancing amenities, subject to 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) 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 final decision has been recorded at the Registry of Deeds.

The Chair then called upon Karen Martin representing the Building Department, to deliver the comments of the Building Department. Ms. Martin stated that the Building Department has no objections to the request for relief. She concluded by stating 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 **Section 5.43** of the Zoning By-Law, pursuant to **Section 9.05** of the Zoning By-Law 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, showing a revised egress stair, 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 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final 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

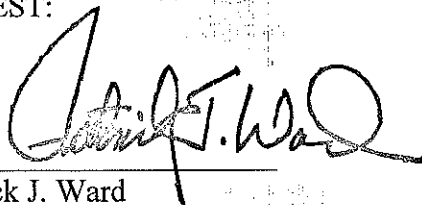
The Board of Appeals

Filing Date: 3/14/2019



Johanna Schneider, Chair

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals