



Town of Brookline

Massachusetts

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BOARD OF APPEALS

Jesse Geller, Chairman
Mark Zurroff

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0086
STEVEN AND ANDREA FEIN
18 SOMERSET ROAD

Petitioners, Steven and Andrea Fein, applied to the Building Department for a building permit to construct additions and dormers at 18 Somerset Road, totaling 2,603 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 February 7, 2019 at 7:00 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 January 24, 2019 and January 31, 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:

18 SOMERSET ROAD, BROOKLINE, MA 02445 - Construct additions and dormers in a(n) S-7 SINGLE-FAMILY on February 7th, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Steven Fein) Precinct 12

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:

§5.10 - MINIMUM LOT SIZE

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.70 - REAR 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 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.

Publish: 1/24/19 & 1/31/19

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

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

Present at the hearing were Chairman Jesse Geller, and Board Members Randolph Micklejohn and Steve Chiumenti. Also present was Polly Selkoe, Assistant Director for Regulatory Planning. The Chairman called the hearing to order at 7:00 p.m.

The case was presented by applicant, Steven Fein. He gave the background for the request and described the neighborhood, his proposal and the required zoning relief, as follows:

18 Somerset Road is improved by a two and one half story single-family house built in 1926. It has 3,759.67 s.f. of living area with three bedrooms and a one-car attached garage. The home is located in the Aspinwall Hill neighborhood. The neighborhood has mostly single-family homes between two and three stories.

Mr. Fein stated that he proposes to construct numerous small additions, including an elevator for handicap accessibility at the rear, with a small shaft to be added to each floor; a new dormer and an expanded pantry. He also proposes to construct an addition on top of the added sunroom, making the current addition two stories instead of one. This space will include a master bathroom and closet, totaling 252 s.f. of livable space. Lastly, he proposes to construct walls and infill the space underneath the existing deck to create a second garage bay for one car. A new garage door will be added. He believes the proposal has been designed to fit in with the character of the home.

The zoning relief required is for **Section 5.10** – Minimum Lot Size, **Section 5.20** – Floor Area Ratio and **Section 5.70** – Rear Yard Requirements. The relief for rear yard setback can be granted by special permit under **Section 5.43** of the Zoning By-Law and under Massachusetts General Laws Chapter 40A, Section 6 by virtue of the decision in Deadrick v. Zoning Board of Appeals of Chatham, 85 Mass. App. Ct. 539 (“Deadrick”) for the FAR.

Board of Appeals Members asked several questions about the location of the elevator, the additions and the new garage and driveway expansion.

A letter from the rear abutter was entered into the record of the case expressing concerns with drainage and soil erosion.

Board Member Meiklejohn agreed that increased paving for the driveway might cause more run-off to the rear property. He suggested a condition requiring a drainage and erosion control plan.

Chairman Geller also raised questions about run-off, soil erosion and possible impacts on the retaining wall.

Mr. Meiklejohn added that the contractor should protect the retaining wall during construction.

The Chairman then asked whether anyone was present to speak in favor of the application. No one spoke in favor of the application.

He then asked whether anyone was present to speak in opposition to the application.

Sarah Schultzman, 55 Stanton Road, the rear abutter, stated that she wanted to make sure all impacts would be mitigated, such as soil instability and run-off. She showed photos and questioned how a car will access the new garage and suggested that additional paving will increase the water flow. She noted she had installed on her property a perimeter drain, dry well, and retaining wall to solve the prior water run-off problem and fears the new installations will not handle extra run-off caused by the increase in impermeable area on the subject property. She was also concerned that the weight of the elevator installed on unstable soils could be a problem.

Mr. Meiklejohn, who is an architect, commented that the building code would not allow the new elevator not to be anchored properly.

Board Members also suggested adding a condition requiring details about the new driveway and a retaining wall, if any.

The Chairman then called on Polly Selkoe, Assistant Director for Regulatory Planning, to give the Planning Board and Building Department reports.

Ms. Selkoe first verified with the applicant that he had submitted to the Board the new plan that the Planning Board had requested. The applicant then submitted to the Board Members a revised massing plan showing the pantry wing shorter and wider.

Polly Selkoe stated that with this slight alteration to the plan, the Planning Board was supportive of this project and had recommended approval of the requested special permits. She

then stated that the Building Department would ensure compliance with all required conditions before a building permit is issued.

Mr. Geller stated that, subject to revised conditions, the proposal meets the requirements for special permit relief under Massachusetts General Laws Chapter 40A, Section 6 by virtue of the Deadrick decision and under Section 5.43 and Section 9.05 of the Zoning By-Law and that specifically with respect to said Section 9.05:

- 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 Somerset Road.
- b. The proposed use 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. 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.

Board Member Meiklejohn and Board Member Chiumenti agreed that the special permits should be granted.

The Zoning Board of Appeals:

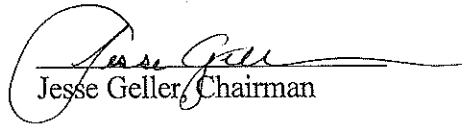
VOTED: a unanimous grant per the site plan by Michael Clancy, dated 8/24/2018, and the elevations and floor plans, dated 12/17 & 18/2018, by Colonial Home Design, with slight alterations to the massing plan as illustrated in a rendering, marked Revised Plan 2/7/19, making the pantry wing shorter and wider, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan with details about the driveway and retaining wall, if any, elevations, and floor plans, 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 landscaping provided as the counter balancing amenity as required by Section 5.43 of the Zoning By-Law, 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 a drainage and a soil erosion control plan, with grades indicated, subject to the review and approval of the Town's Director of Engineering and Transportation.
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 elevations and floor plans stamped and signed by a registered architect; 3) a drainage and erosion control plan approved by the Director of Engineering and Transportation, and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

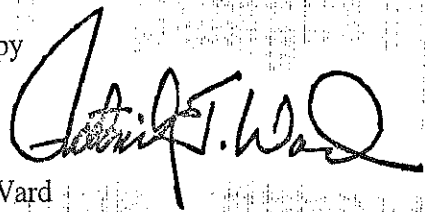
Unanimous Decision of
The Board of Appeals

Filing Date: 3/25/19


Jesse Geller, Chairman

A True Copy

ATTEST


Patrick J. Ward
Clerk, Board of Appeals