



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. 2019-0002
JOHN DEGNAN
39 VERNDALE STREET, BROOKLINE, MA

Petitioner, John Degnan, applied to the Building Commissioner for permission to renovate a two-family house and construct rear decks. 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 March 7, 2019 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 February 21, 2019 and February 28, 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:

39 VERNDALE STREET, BROOKLINE, MA 02446 - Renovate two-family house and construct rear deck in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on March 7, 2019 at

7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: John Degnan) 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 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§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 the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

***Jesse Geller, Chair
Mark Zuroff***

Publish: 2/21 & 2/28

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing was Planner Karen Martin.

The case was presented by John Degnan, contractor for D&D Homes. Mr. Degnan stated that the house is a two-family residence located in a T-5 zoning district that is being completely renovated to create two units that each contains 5 bedrooms and 4 bathrooms. A new front porch and new rear decks

are being added as a part of these renovations. Mr. Degnan explained that he visited all of the abutters to the property to show them the plans and explain the project and that he has collected a petition of signatures from four of the abutters in support of the project. He noted that one person at the rear second-floor condominium did submit a letter of opposition. Mr. Degnan stated that the Planning Board supported the project on the condition that the third floor deck be reduced in size and shown without any columns or supports and that plans showing said change have been provided to the Board of Appeals.

Mr. Degnan stated that he is requesting relief for the side and rear yard setbacks under **Section 5.43, Section 5.60, and Section 5.70**. The side and rear yard setbacks are pre-existing non-conforming and qualify for relief under **Section 8.02.2**, he explained, with the exception of the setback dimension at the rear deck which is being reduced from 15 feet to 10.8 feet. Chairperson Schneider asked to clarify if the applicant has reduced any of the dimensions of the first or second floor deck in response to the rear abutter's concerns. The applicant confirmed that no changes have been made in response to his letter of opposition.

Peter Elton (36 Verndale Street) stated that he has lived at his property for 35 years and stated that he does not have objections to the project because the house is in a state of disrepair and has been vacant for the past seven years. He believes that it is great to see the house renovated. He stated that he has spoken to Mr. Degnan about the proposal previously and that he is an architect himself. He spoke with Mr. Degnan earlier in the evening and Mr. Degnan indicated a willingness to speak with him further and work on the design. Mr. Elton stated that there are opportunities to work on the design of the roof to make it more architecturally interesting and appealing. He stated that Mr. Degnan indicated he would defer this hearing for two weeks to work out the design details that would improve the character of the roof design that would improve the conformance with the setbacks. Ms. Palermo asked to clarify how the setbacks could become more conforming if they are not proposed to change. Mr. Elton explained that he believes the space utilization in the proposed dormers could be improved to pull them in further.

Chairperson Schneider asked Mr. Degnan if he is willing to continue the hearing in order to speak further with Mr. Degnan. She indicated that it could take a number of weeks to find another hearing date where all Board members could meet. Mr. Degnan replied that the construction is already underway on the site for the as-of-right interior work on the basement, first and second floors. He stated that he is more than willing to work with the neighbor and meet with the architect about changing the roof but that he would still like to utilize as much space in the attic as possible. Chairperson Schneider stated that any design changes to the roof would not impact the zoning relief being requested. She suggested that the Board proceed this evening with the zoning relief. Mr. Elton suggested a condition be placed on the decision that he and the applicant work together on the design. Chairperson Schneider stated that such a condition did not seem appropriate because the design of the roof is not a zoning issue; but rather a Planning Board issue. Chairperson Schneider urged the applicant to work with the neighbor.

Chairperson Schneider called upon Karen Martin to deliver the findings of the Planning Board.

Ms. Martin noted the following:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Requirements

Section 5.60 – Side Yard Setback

Section 5.70 – Rear Yard Setback

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Rear Yard Setback (roof)	30 feet	23 feet	23 feet	Special Permit*/Variance
Rear Yard Setback (deck)	20 feet	15 feet	10.8 feet	Special Permit*/Variance
Side Yard Setback (roof)	10 feet	7.7 feet	7.7 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.*

Section 8.02.2 – Alteration or Extension

A special permit is required for alterations to a non-conforming structure.

PLANNING BOARD COMMENTS

The Board supported this proposal but asked that the applicant revise the third-story deck to be more minimal and not supported by columns. They would prefer a small Juliet-type balcony that is either tied or cantilevered from the building.

The Planning Board recommends approval of the site plan by James Richard Keenan, dated 1/14/2019, and the floor plans and elevations by RDK Architects dated 3/4/2019, 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 revised elevations showing a reduction of the 3rd floor deck with no column support 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 all counterbalancing amenities, subject to review and approval by 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 building elevations stamped and signed by a registered architect; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairperson Schneider then called upon Ms. Martin to deliver the comments of the Building Department. Ms. Martin stated that the Building Department was not present and provided no report, but the Planning Department would work with the Petitioner to ensure compliance with the conditions of this decision.

The Board discussed the opposition letter received from the neighbor at the rear. Ms. Palermo asked the applicant if he has been able to speak to the writer of the letter. Mr. Degnan stated that he has not because it was only received two days prior. Ms. Palermo asked the applicant to describe the dimensions of the first and second floor decks. Mr. Degnan stated that the proposed deck is 12 feet by 21 feet and that the as-of-right deck would have a 7.8 foot dimension. Ms. Palermo stated that she has

sympathy for the rear neighbor and asked if the applicant would be willing to reduce the 12 foot dimension. Mr. Degnan replied that he is willing to reduce the size of the decks and offered to make the first and second floor decks 10 feet in depth. The Board agreed to amend the first condition to indicate that the decks be 10 feet by 21 feet. Chairperson Schneider stated that now that this condition has been amended, this project requires very little zoning relief and that most of the relief that is being sought is for pre-existing non-conformities that are not being intensified. She noted that there are signatures of support from four neighbors and that the applicant has committed to continue to work on the architecture with Mr. Elton next door.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for relief from Section 5.60 and Section 5.70 under Section 5.43 for side and rear yard requirements, and Section 8.02.2 for alteration or extension of a non-conforming structure, all pursuant to Section 9.05 of the Zoning By-Law 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 proposed addition will be consistent with other homes in the neighborhood and will not change the use of the property.
- 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 new height will be compliant with the Zoning By-Law.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians and the property's on-site circulation will not change.
- 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 relief subject to the following conditions:

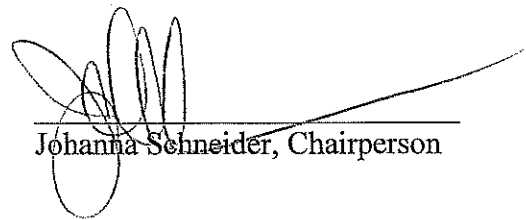
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and revised elevations showing a reduction of the 3rd floor deck with no column support and a reduction in size of the first and second floor decks to no more than 10 feet by 21 feet from the

north/rear wall 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 floor plans and 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.

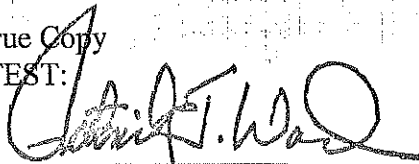
Unanimous Decision of
The Board of Appeals

Filing Date: 3/25/19



Johanna Schneider, Chairperson

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals