



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff

Town of Brookline Massachusetts

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Brookline, MA 02445-6899
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0081
ROBIN & MARGARET LAWRENCE
275 GODDARD AVE, BROOKLINE, MA

Petitioners, Robin and Margaret Lawrence, applied to the Building Commissioner for permission to construct a two story addition. 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 January 17, 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 January 3, 2019 and January 10, 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:

275 GODDARD AVENUE, BROOKLINE, MA 02445 - Construct two story addition in a(n) S-25 SINGLE-FAMILY on January 17, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robin Lawrence) Precinct 15

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:

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

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

Publish: 1/03/2019 & 1/10/2019

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 Kate Poverman and Randolph Meiklejohn. Also present at the hearing was Planner, Karen Martin.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also present at the hearing were the Petitioners, Margaret and Robin Lawrence, and the architect for the proposal, Claudia Noury-Ello.

Chairman Geller called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal stating that the Petitioners seek relief to construct an addition, adding a total of 1,590 s.f. of gross floor area to the home. He noted that the property was found to be significant by the Preservation Commission and a twelve month stay was imposed on October 9, 2018. Attorney Allen explained that the addition will relocate the existing two-car garage, add new first floor living space for a mud room, add a master suite above the garage, and finish additional space in the basement. He noted that the Planning Board voted to recommend approval of the proposal in one meeting. He added that since the Planning Board meeting, the applicants have received and provided written letters of support from the owners of 287 Goddard Ave and 319 Goddard Ave, both members of the condominium association abutting the property.

Attorney Allen then stated that the Petitioners seek a special permit for relief from Section 5.20 for floor area ratio, from Section 5.70 under Section 5.43 for rear yard setback and from Section 8.02.2 pursuant to Section 9.05 to alter or extend a nonconforming use or structure.

Attorney Allen stated that under M.G.L. ch. 40A, Sec. 6, the Board of Appeals may allow for an extension of a pre-existing non-conformity if the Board Members find that there is no new non-conformity and if they find that the extension is not substantially detrimental to the neighborhood. Attorney Allen argued that the best way to analyze substantial detriment to the neighborhood is to look at the lack of opposition and to the special permit requirements under Section 9.05. He noted that there was no opposition to this proposal.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed expansion of the home, which will continue to be used as a single-family dwelling; the addition is in the rear yard of the home and the Petitioners have the exclusive use of the lot that is most immediately impacted by the addition; the use will not adversely affect the neighborhood

because the home will continue to be used as a single-family dwelling in a manner which is consistent with the surrounding neighborhood; there will be no nuisance or serious hazard to vehicles or pedestrians because the property's on-site circulation will not change, except that the garage will function and be able to house two cars out of the view of the streetscape; the proposed garage will utilize the existing driveway; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

Chairman Geller asked Mr. Allen to clarify the site plan which showed lots labeled A, B, and C and asked for more details about the Petitioners' right to use the driveway belonging to the abutting condominium association.

Board Member Poverman questioned whether the rear yard setback was a new non-conformity created by this proposal. She pointed out that the setback between the existing house and the rear lot line is currently 51.9 feet, which is conforming, but will be reduced to 33.6 feet with the construction of the proposed addition. She noted that if this is correct, a variance is required because under M.G.L. ch. 40A, Sec. 6, no new non-conformities can be created on a property. Attorney Allen responded that he did not believe a variance was required but argued that the property met the criteria for a variance if one were deemed to be necessary due to the uniqueness of the lot that stems from the exclusive right to use the driveway.

Attorney Allen then introduced Claudia Noury-Ello, Noury-Ello Architects, 46 Waltham Street, Suite 4A, Boston, Massachusetts 02118, to walk through the plans. Ms. Noury-Ello described the proposal to the Board.

The Petitioner, Robin Lawrence, 275 Goddard Avenue, Brookline, Massachusetts, described the history of the property and how the lot was originally created from the park, later owned by Boston University and ultimately sold off.

The Board Members continued to question whether a variance was needed for the proposal. Attorney Allen requested the Board's approval to continue to hearing to February 14, 2019 at 7:00 PM in the Select Board's Hearing Room in order to have more time to review the need for a.

February 14, 2019. Second night of the public hearing.

Present at the continued public hearing were Chairman Jesse Geller and Board Members Randolph Meiklejohn and Kate Poverman. After re-opening the hearing on February 14, 2019, Chairman Geller reminded those in attendance that at the previous hearing, Board Member Poverman had questioned whether any new non-conformities were being created with this proposal and therefor whether relief may be granted by Special Permit or required a variance.

Attorney Allen, speaking on behalf of the Petitioners, Robin and Margaret Lawrence, explained that since the initial hearing, he discovered that 275 Goddard Avenue was part of a previously approved cluster subdivision and thus was an allowed single family on a smaller lot in the S-25 district. He further noted that he worked with the land surveyor and the architect to prepare a plan to illustrate to the Board that the rear setback was a pre-existing non-conformity and no new non-conformity is being created. Attorney Allen noted that the rear yard was simply one rear yard and since one part of the lot line was already non-confirming, the entire rear yard was non-conforming and the proposal merely extended the existing non-conformity. He noted that Deputy Building Commissioner, Michael Yanovitch, provided an email opining to the same. As such, Mr. Allen argued that the relief for the FAR could be found under M.G.L. Ch. 40A, Section 6 and the Deadrick line of cases, as confirmed by the recent SJC case of Bellalta & another v. Zoning Board of Appeals of Brookline & others, , and maintained that a variance was not required.

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

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal. No

one spoke in opposition to the proposal.

Chairman Geller then called upon Karen Martin, Planner, to deliver the findings of the Planning Board.

Ms. Martin noted the following:

FINDINGS

Section 5.20 – Floor Area Ratio

| Floor Area | Allowed | Existing | Proposed | Finding |
|--|----------------|-----------------|-----------------|------------------------------|
| Floor Area Ratio (% of allowed) | .20 (100%) | .33 (165%) | .44 (220%) | Special Permit*/ Variance |
| Floor Area (s.f.) | 2,707 | 4,420 | 6,010 | |

* 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.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.70 – Rear Yard Requirements

| | Required | Existing | Proposed | Finding |
|--|-----------------|-----------------|-----------------|-----------------|
| Rear Yard Setback (left lot line) | 50 feet | 51.9 feet | 33.6 feet | Special Permit* |
| Rear Yard Setback (angled lot line) | 50 feet | 34 feet | 23.8 feet | Special Permit* |

* 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 to alter this non-conforming structure.

PLANNING BOARD COMMENTS

The majority of the Planning Board supported this project. The Board found that the applicant’s clarifications regarding the property’s relationship to the surrounding parcels belonging to the condominium trust and the applicant’s exclusive right to use the condo’s property for access to their own property helped demonstrate how their property actually sits within a much larger open space. Due to the unique configuration of the lot which is surrounded by property belonging to the condominium trust and the lack of any direct abutters, most Planning Board members felt that the request to increase the FAR was, although large, not detrimental. A couple Planning Board members felt that the addition was too large regardless of the site and that the addition to the right side created a long unbroken elevation and façade that needed to be reduced. Overall, the Planning Board voted to approve the project, citing the unique site features as a mitigating circumstance.

Therefore, the Planning Board recommends approval of the site plan by Joseph Small dated 10/5/2018 and the floor plans and elevations by Noury-Ello Architects dated 9/19/2018 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating the abutting parcels, 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, 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 elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Geller then called upon Karen Martin to deliver the comments of the Building Department.

Ms. Martin acknowledged Mr. Yanovitch's email regarding the rear yard set back and further stated that the Building Department has no objection to this request and, should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

In reliance on the above referenced plans as amended by the revised site plan by Joseph Small dated January 9, 2019 presented, the Board then determined, by unanimous vote that the requirements under M.G.L. Ch. 40A, Section 6 and the Deadrick case for a special permit from Section 5.20 for floor area ratio, a special permit from Section 5.70 under Section 5.43 for rear yard setback, and from Section 8.02.2, all pursuant to Section 9.05 of the Zoning By-Law, respectively, 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 home will remain a single-family home.
- b. The use as developed will not adversely affect the neighborhood because the addition is in the rear yard of the home and there is no opposition to the proposal.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because there will be no change to on site circulation.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- 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 special permit relief subject to the following conditions:

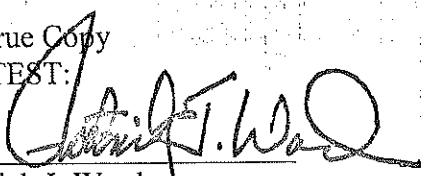
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan 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 stamped and signed by a registered architect or engineer; 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: 3/25/19


Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals