



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zupoff

RECEIVED
TOWN OF BROOKLINE
2018 MAR 27 A 10

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0080
STEPHEN WHALEN
95 WELLAND ROAD, BROOKLINE, MA

Petitioner, Steve Whalen, applied to the Building Commissioner for permission to construct a rear 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 December 20, 2018 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 Robert L. Allen, Jr., 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 December 6, 2018 and December 13, 2018 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:

95 WELLAND ROAD, BROOKLINE, MA 02445 - Construct two story rear addition in a(n) S-7 SINGLE-FAMILY on December 20th, 2018 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Steve Whalen) Precinct 6

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

*Jesse Geller, Chair
Christopher Hussey
Mark G. Zuroff*

Publish: December 6, 2018 & December 13, 2018

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested that the hearing be continued to allow time to return to the Planning Board and the Preservation Commission. The hearing was continued to February 14, 2019 at 7:00 p.m. in the Select Board's Hearing Room. At the continued hearing, the Petitioner requested that the hearing be continued for the same reasons as stated above. The hearing was continued to March 14, 2019 at 7:00 p.m. in the Select Board's Hearing Room. Present at the hearing were Chairman Mark G. Zuroff and Board Members Kate Poverman and Lark Palermo. 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 02445. Also present at the hearing were the Petitioner, Steve Whalen, and the architect for the project, Dartagnan Brown of Embarc Studio.

Chairman Zuroff 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 Petitioner proposes to construct a rear addition. He noted that the home is located in the S-7 Zoning District. He noted that the proposal was determined to meet the threshold for partial demolition and the Preservation Commission voted to impose a twelve month stay at their November 2018 meeting. The Petitioner has worked with the Commission and received the unanimous approval to lift the stay based on this proposal at the March 12, 2019 Preservation Commission Hearing. Attorney Allen stated that the Petitioner attended three Preservation Commission Hearings and two Planning Board Meetings relative to the proposal, and he stated that the Petitioner has the unanimous approval of the Planning Board. He noted that with the guidance of the two Boards and communication with the rear abutters at 61 Blake Road, the proposal has been improved aesthetically and the proposed additional square footage has significantly decreased. Mr. Allen noted that the Petitioner has the written support of the immediate abutters at 89 and 99 Welland Road as well as the verbal support of the rear abutters at 61 Blake Road, whom he noted were in the audience. In summary, Attorney Allen noted that the proposed additional square footage was radically reduced from 1,578 s.f. in the original proposal to 290 s.f. in the present proposal. He continued that the originally proposed rear yard setback was sixteen feet and is now nearly twenty-three and a half feet. He then introduced Dartagnan Brown of Embarc Studio to present the plans.

Dartagnan Brown, Embarc Studios, 60 K Street, Boston, Massachusetts, presented the plans to the Board.

Attorney Allen then stated that the Petitioners seek a special permit for relief from Section 5.20 for floor area ratio, Section 5.70 under Section 5.43 for a pre-existing non-conforming rear yard setback, and Section 8.02.2 for alteration or extension of a non-conforming structure, all pursuant to Section 9.05. He argued that with respect to Section 5.20, under M.G.L. c. 40A, s. 6, the current floor area ratio, which is over the allowed, could be increased further, provided that no new non-conformities are created and the increase is not substantially detrimental to the neighborhood.

Chairman Zuroff questioned the nature and scope of the prior Board of Appeals decision for the property from 1982. Attorney Allen noted that the prior decision made the property conforming at that time, but the changes in how habitable space is defined that were made to the Zoning By-law at the Fall 2017 Town Meeting made the property non-conforming again.

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 and will improve the aesthetic appearance of the property and the drainage of the lot; the use will not adversely affect the neighborhood because the discussion throughout the zoning process has positively improved the proposal and the proposal does not impact the streetscape; additionally, the Petitioner will provide additional landscaping as a counterbalancing amenity for dimensional relief; there will be no nuisance or serious hazard to vehicles or pedestrians, as the property's on-site circulation will not change; 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. Attorney Allen noted, with respect to M.G.L. c. 40A, s. 6, that this Board has previously evaluated whether a proposal is substantially detrimental to the neighborhood based on opposition and the standards under Section 9.05. He noted that there was no opposition to this proposal.

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

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.67 (191%)	.72 (206%)	Special Permit*/ Variance
Floor Area (s.f.)	2,353	4,514	4,804	

** 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	30 feet	~28 feet	23.5 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 Planning Board was very pleased to see the large reductions in size as well as the improved design of this addition that is much more in character with the existing home and the neighborhood. The Board had no concerns with the proposal and encouraged the applicant to work with the rear abutter with regards to landscaping and tree removal plans.

Therefore, the staff recommends approval of the site plan by Kevin Kiernan dated 9/18/2018 and the floor plans and elevations by Embarc Studios dated 2/7/2019 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 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 Zuroff then called upon Karen Martin to deliver the comments of the Building Department. Ms. Martin stated that Planning Department would work with the Deputy Building Commissioner and the Petitioner to ensure compliance with the conditions of this decision.

During deliberation, Board Member Poverman noted that she believed the plans were drastically improved and the criteria for the requested relief were met. Chairman Zuroff and Board Member Palermo agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for relief from **Section 5.20** for floor area ratio, under M.G.L. c. 40A, s. 6, **Section 5.70** under **Section 5.43** for 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 improve the site and the drainage and the home will continue to be used as a single-family dwelling.
- b. The use as developed will not adversely affect the neighborhood because the abutters are in support of the proposal and landscaping will be provided as a counterbalancing amenity.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as the property's on-site circulation will remain the same.
- 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:

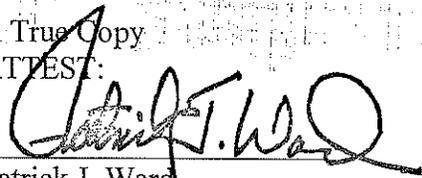
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Unanimous Decision of
The Board of Appeals

Filing Date 03/27/19


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals