



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark G. Zuroff  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-  
6899  
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730-2043

Patrick J. Ward, Clerk

2019 APR -9 P 2:08

RECEIVED  
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TOWN CLERK

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0008  
45 LEICESTER STREET LLC  
45 LEICESTER STREET, BROOKLINE, MA

Petitioner, 45 Leicester Street LLC, applied to the Building Commissioner for permission to construct an addition and attached garage. The application was denied and an appeal was taken to this Board.

The Board 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 21, 2019 at 7:00 PM., in the Selectmen's Hearing Room as the date, time and place for the public hearing. Notice of the hearing was mailed to the Petitioners, to their attorney, Jennifer Dopazo Gilbert, 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 March 7, 2019 and March 14, 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:

**45 LEICESTER STREET, BROOKLINE, MA 02445 - Construct addition and attached garage in a(n) S-15 SINGLE-FAMILY on March 21, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: 45 Leicester Street LLC) Precinct 14**

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:

**§5.09.2.J – DESIGN REVIEW**

**§5.22.3.B.1.B – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.91 - MINIMUM USABLE OPEN SPACE**

**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](http://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](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Mark G. Zuroff*

**Publish: 3/7 & 3/14**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Kate Poverman and Randolph Meiklejohn. Also present at the hearing was Assistant Director of Regulatory Planning, Polly Selkoe.

The case was presented by Jennifer Dopazo Gilbert, Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, First Floor, Brookline, Massachusetts 02445. Also in attendance were the Petitioner, Fred Bennett, the builder for the proposal, Jeff Birnbaum of Pioneer Construction, and the architect for the proposal, Chris Russ of Christopher Russ Architects.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Dopazo Gilbert waived the reading of the public notice.

Attorney Dopazo Gilbert then described the proposal at 45 Leicester Street. She noted that the proposal triggered partial demolition and is in a National Register District. She continued that the Preservation Commission upheld the initial determination of significance for the home and imposed an 18-month stay of demolition. She stated that the Petitioner worked with the Preservation Commission, and the Commission approved the plans in January and voted to lift the stay pending final review and approval of Staff and one Commissioner. She noted that the Planning Board also unanimously approved this proposal. Attorney Dopazo Gilbert noted that the property is in the S-15 Zoning District and stated that the proposal involves demolishing the existing detached garage and constructing an addition with an attached garage. She noted that the applicant has regraded the proposed site conditions to bring the proposal into compliance with the usable open space requirements under Section 5.91 of the Zoning By-Law. She added that there was an error in the original existing and proposed surveys which noted the front yard setback of 19.4' when in reality it is 39.4' and thus compliant with Section 5.50 of the Zoning Bylaw. Attorney Dopazo Gilbert argued that the proposal would no longer need relief from Section 8.02.2 because no non-conformity is being extended. Board Member Poverman asked a clarifying

question regarding the front yard setback. Polly Selkoe, Assistant Director of Regulatory Planning, noted that the front yard setback was never 19.4', rather it was 39.4' and thus conforming. Attorney Dopazo Gilbert stated that the Petitioner seeks relief by special permit under **Section 5.22.3.b.1.b** pursuant to **Section 9.05** for floor area ratio and for **Section 5.09.2.J** for design review. She added that the architect provided a community and environmental impact statement in a letter addressed to Polly Selkoe and dated January 25, 2019. The Board Members stated that they had not received the statement; Attorney Dopazo Gilbert provided a copy to the Board. Chairman Zuroff entered the community and environmental impact statement, addressed to Polly Selkoe and dated January 25, 2019, into the record as Exhibit A. She continued her presentation, stating that the proposal would add 2,999 s.f., which would be 120% of the allowed gross floor area with a proposed FAR of .30. She stated that the existing is .21 and the allowed in the S-15 District is .25. She indicated that the Petitioner worked to ensure that the three-car garage was in compliance with **Section 6.04.14** to ensure that no more than forty percent of the width, or twenty-four feet, whichever is less, of the façade facing the street as devoted to the garage. She then introduced the architect, Chris Russ, to review the plans in more detail and answer any questions.

Chris Russ, Christopher Russ Architects, 580 Farm Road, Marlborough, Massachusetts, described the proposal. Board Member Meiklejohn asked whether the proposed side yard setback of the garage was compliant. Mr. Russ responded that the side yard setback would be compliant at 15'. Mr. Russ noted that the basement space would be finished and the attic space would not, but he noted that the attic space was counted towards the FAR per the requirements of the Zoning By-Law.

Chairman Zuroff asked whether there was any neighbor input. Attorney Dopazo Gilbert stated that there was no opposition at any of the public hearings and noted that she was not aware of any opposition at all.

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 Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe noted the following:

**FINDINGS**

**Sections 5.09.2.j – Design Review:** Any exterior addition for which a special permit is requested pursuant to *Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations)* requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

*SEE ATTACHED STATEMENT PROVIDED BY APPLICANT. [Exhibit A.]*

**Section 5.22.3.B.1.B – Floor Area Ratio**

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.25 (100%)	.21 (84%)	.30 (120%)	Special Permit*/ Variance
<b>Floor Area (s.f.)</b>	8,720	7,427	10,426	

*\*Under Section 5.22.3.b.1.b, the Board of Appeals may grant a special permit for an increase in FAR of up to 120% of the allowable FAR.*

**Section 5.43 – Exception to Yard and Setback Regulation**

**Section 5.50 – Front Yard Requirements**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief Required</b>
<b>Front Yard Setback</b>	25 feet	19.4 feet	19.4 feet	<b>Special Permit *</b>

\* 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.

Ms. Selkoe noted that per the earlier presentation, the front yard setback was compliant and no longer required relief.

**PLANNING BOARD COMMENTS**

The Planning Board was very supportive of this proposal and found it to be a well-designed addition. The Board felt that although it does not usually support front-facing garages, this project was an exception and the design fit in well with the rest of the home.

**Therefore, the Planning Board recommends approval of the site plan by Bruce Bradford dated 2/20/19 and the floor plans and elevations by Christopher Russ Architects dated 1/16/2018, 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: 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 or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Selkoe requested that the word final be removed from condition two. The Board Members agreed. Board Member Poverman asked whether the Preservation Commission approval needed to be noted in the conditions. Ms. Selkoe suggested that condition one include approval of the Preservation Staff. The Board agreed.

Chairman Zuroff asked whether relief under **Section 8.02.2** was still required given that the front yard setback was established to be compliant. Ms. Selkoe noted that it may no longer be relevant. Board Member Meiklejohn noted that the garage was previously non-conforming in the side yard. Thus, the Board agreed that relief under **Section 8.02.2** was needed and allowable.

The Board then deliberated. Chairman Zuroff noted his support for the proposal, particularly given the support of the other Boards and the fact that there was no opposition. Board Members Poverman and Meiklejohn agreed.

In reliance on the above referenced plans and the reasons stated by the Petitioners counsel, the Board then determined, by unanimous vote, that the special permit should be granted under Section 5.22.3.b.1.b, Section 5.09.2.J, and Section 8.02.2, pursuant to Section 9.05.

Accordingly, the Board voted unanimously to grant the zoning 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 and the Preservation Staff.
2. Prior to the issuance of a building permit, the applicant shall submit a 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: 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 or engineer; 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: 04/09/19

  
Mark G. Zuroff, Chairman

A True Copy

ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals