



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff

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TOWN OF BROOKLINE
TOWN CLERK

2019 APR 29 PM

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. 2019-0020
LINDA & ANTHONY JOHNSON
15 CUMBERLAND AVENUE

Petitioners, Linda and Anthony Johnson, 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 determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 18, 2019 at 7:00 PM., in the Select Board'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, Robert L. Allen, Jr., 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 April 4, 2019 and April 11, 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:

15 CUMBERLAND AVENUE, BROOKLINE, MA 02445 - construct rear addition in a(n) S-7 SINGLE-FAMILY on April 18, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Aaron Weinert) Precinct 5

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

§5.70 - 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
Mark G. Zuroff*

Publish: 4/4 & 4/11

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 Johanna Schneider. Also present at the hearing were Planner, Karen Martin and Deputy Building Commissioner, Joseph Braga.

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 in attendance were the Petitioners, Linda and Anthony Johnson.

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

Attorney Allen then described the proposal at 15 Cumberland Avenue. He noted that the property was in the S-7 Zoning District and in the Pill Hill Local Historic District. He added that this proposal was reviewed by the Preservation Commission and a Certificate of Appropriateness was issued for the work in November 2018. Attorney Allen stated that the proposal is to construct an addition at the rear of the home totaling 472 square feet. He established 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, for **Section 5.09.2.J** for design review, from **Section 5.70** under **Section 5.43** for a pre-existing non-conforming rear yard setback, and from **Section 8.02.2** for alteration/ extension of a non-conforming structure. He continued his presentation, stating that the proposal would add 472 s.f., which would be under the 120% of the allowed gross floor area with a proposed FAR of .42. He stated that the existing is .34 and the allowed in the S-7 District is .35. Attorney Allen further noted that the proposal has the support of eight neighbors, including immediate abutters. He stated that Tom and Johanna Kennedy of 46 Glen Road, Brookline, Massachusetts, immediate abutters directly impacted by the proposal, were in attendance at the hearing. He noted that they spoke in strong support at the Planning Board Meeting in addition to signing the letter in support of the proposal. With respect to the setback relief, he noted that the Petitioners would maintain and supplement existing landscaping and use appropriate materials to preserve the home as counterbalancing amenities. Attorney Allen added that the Planning Board unanimously supported the proposal. He then described the standards of **Section 9.05**.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed use as a single-family dwelling, which is allowed in the S-7 Zoning District; the use will not adversely affect the neighborhood because the proposed addition is minor and within the 120% FAR allowed by special permit and there has not been any opposition through this very public process through Preservation, Planning, and Zoning; there will be no nuisance or serious hazard to vehicles or pedestrians as the property's on-site circulation will not change and the existing driveway will be utilized; 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 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:

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:

- a. Preservation of Trees and Landscape – The proposal does not require the removal of any of the site's mature trees which are primarily located in the western corner of the lot. A few small landscape trees will need to be removed for the addition.
- b. Relation of Buildings to Environment – The new second story addition will have minimal impact on shadows or light.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed addition has been designed to fit in with the neighborhood context in regards to use, scale, setbacks and design.

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

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.34 (97%)	.42 (120%)	Special Permit*/ Variance
Floor Area (s.f.)	2,170	2,109	2,581	

**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 – Exceptions to Yard and Setback Regulations

Section 5.70 – Rear Yard Requirements

	Required	Existing	Proposed	Finding
Rear Yard	30 feet	22.5 feet	21.1 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 for alterations to a non-conforming structure.

PLANNING BOARD COMMENTS

The Planning Board fully supported this proposal and found it to be modest and well-designed and was pleased to see the project had strong support from all neighbors.

THEREFORE, the Planning Board recommends approval of the site plan dated 7/27/2018 by Jason Ellis and the floor plans and elevations dated 2/21/2019 by Studio DRAW, 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; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Joseph Braga, Deputy Building Commissioner, to deliver the report of the Building Department. Mr. Braga noted that he had no issues with the proposal and should the Board grant the requested relief, the building department would work with the Petitioner to ensure compliance with the building code and the conditions of the Board of Appeals decision.

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 Schneider 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** pursuant to **Section 9.05** for floor area ratio, for **Section 5.09.2.J** for design review, from **Section 5.70** under **Section 5.43** for a pre-existing non-conforming rear yard setback, and from **Section 8.02.2**

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.


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; 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: 04/29/19


Mark G. Zuroff, Chairman

A True Copy
ATTEST


Patrick J. Ward
Clerk, Board of Appeals