



BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zurhoff

# Town of Brookline

## Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0072  
PHILIP HRESKO  
2 CITY VIEW ROAD

Petitioner, Phil Hresko, applied to the Building Commissioner for permission to construct dormers and add 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 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:

**2 CITY VIEW ROAD, BROOKLINE, MA 02446 - Make attic habitable and construct infill addition, in a(n) S-7 SINGLE-FAMILY on January 17, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Phil Hresko)**

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:

§5.22 – EXCEPTIONS TO FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT 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](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 the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto: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. Chairman Geller called the hearing to order at 7:45 pm.

The case was presented by Phil Hresko, Hresko Associates Inc., architect for the project, representing the homeowners, David and Peninah Rosengard. Mr. Hresko stated that the homeowners are looking to expand into their attic by adding front dormers. Mr. Hresko explained that the Planning Board approved the proposal and that the Preservation Commission also reviewed the proposal twice. Mr. Hresko further explained that because the Preservation Commission suggested revisions, the plans before the ZBA are not the exact same set as those reviewed by the Planning Board. He stated that the total FAR has not changed but that some square footage has been re-allocated within the basement.

Ms. Poverman stated that no certification is made by the architect of the square footage measurements on the plans, which is problematic because there is then no way to verify the FAR calculation. Mr. Hresko stated that he only included dimensions on the plans. Ms. Poverman noted that the existing FAR is very close to the allowable FAR and without the certified measured area, she would find it difficult to determine whether Massachusetts General Laws Chapter 40A, Section 6, as interpreted by the Deadrick case, applies. Ms. Poverman stated that she would like to see the existing square footage by floor identified. Chairman Geller added that the Board should receive a table that compares the existing square footage versus the proposed square footage broken down by floor. Ms. Poverman reiterated she did not currently have enough information to vote for the relief requested. Chairman Geller proposed that the applicant either continue and make its argument for relief under Deadrick or request a continuance in order to provide the requested information. Mr. Hresko requested that the Board continue the hearing to February 14, 2019. The Board granted the continuance.

On February 14, 2019, the hearing was reconvened. Chairman Geller called the hearing to order at 7:45 pm. and gave a summary of the previous hearing. Chairman Geller then called upon Ms. Martin to enter into the record a recap of a memo she submitted earlier in the day identifying changes made by the owner to the project p approval by the Planning Board. Ms. Martin noted that, therefore, the report the ZBA has received does not reflect the plans submitted to the ZBA for relief. Chairman Geller noted that the Planning

Board is the recommending body to the Zoning Board of Appeals and suggested that the Planning Board should review these revised plans to make an accurate recommendation. Chairman Geller strongly urged the applicant to return to the Planning Board.

Chairman Geller further noted that in reviewing this project in the context of a Deadrick argument and, specifically, determining whether there is a “substantial detriment”, he finds this proposal to be very large and particularly questioned the impact of expanding living area into an existing garage resulting in cars parked permanently within a rear driveway or on the street.

Mr. Rosengard, homeowner, responded to the latter comment by stating that there are no homes on their street that have functional garages that can fit a modern car.

Chairman Geller stated that the changes from the last iteration of plans are not de minimis and he would like the Planning Board to review the revised plans. Mr. Meiklejohn pointed out that the changes he noticed are the changes to occupied space in the basement, the master bedroom extension into the deck at the second floor and the extension of space on the third floor. Mr. Hresko confirmed these changes.

Chairman Geller again expressed concern that a proposal that was already extremely large has now gotten larger. Ms. Poverman also expressed concern that the existing FAR numbers have changed between the previous and current proposal. The Board discussed the basis for the FAR calculation and how they are typically verified. Mr. Meiklejohn stated that he would like to proceed with the numbers as presented in this full set of plans and that the stamp of the architect on the plans indicates the architect is taking responsibility for the accuracy of the figures. The Board Members renewed their request that the Planning Board review the revised proposal.

Chairman Geller asked Mr. Hresko if he would like to proceed with his argument for relief under Deadrick case law or request a further continuance in order to allow the Planning Board to review the

changes and make a recommendation . Mr. Hresko requested a continuance. The Board unanimously granted a continuance to April 4, 2019.

On April 4, 2019, the hearing was reconvened. Chairman Geller called the hearing to order at 8:20 pm. Mr. Hresko stated that the Planning Board reviewed the revised proposal on March 28 and that the Planning Board had no objections to the revised plans. Mr. Hresko re-iterated that the proposal is to expand the attic for additional bedroom space for the applicants’ children as well as add an addition on top of a current deck, a kitchen addition at the first floor and expansion into the basement. Mr. Hresko stated that the parking will now be on the street but explained that because City View Road is a private way, cars are allowed to park on the street overnight.

Chairman Geller asked Mr. Hresko to discuss the counterbalancing amenities that will be provided under Section 5.43 of the Zoning By-Law. Mr. Hresko responded that more planting will take place on the site and that screening from the neighbor to the right will be provided. He specified that he will plant arborvitae trees or rhododendrons that will prevent the need for a fence. Mr. Meiklejohn noted that the kitchen addition is the one most in need of screening from the neighbor.

Chairman Geller called upon Karen Martin to deliver the findings of the Planning Board. Ms. Martin noted the following:

**FINDINGS**

Section 5.20 – 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>	.35 (100%)	.42 (120%)	.64 (183%)	Special Permit*
<b>Floor Area (s.f.)</b>	1,769	2,153	3,215	

*\* 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 5.50 – Front Yard Requirements**

	Required	Existing	Proposed	Finding
Front Yard (Dormer - Summit Ave)	20 feet	10.5 feet	10.5 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 for alterations to a non-conforming structure.

**PLANNING BOARD COMMENTS**

The Board had no issues with the modifications to this proposal for which they had previously recommended approval.

**THEREFORE, the staff recommends approval of the site plan dated 4/5/2018 by Thomas P. Bernardi and the floor plans and elevations dated 2/7/2019 by Hresko Associates, Inc., 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 Geller then called upon Deputy Building Commissioner Joseph Braga to deliver the comments of the Building Department. Mr. Braga stated that the Building Department has no objections to this proposal.

Mr. Meiklejohn stated that the proposal is reasonable within the neighborhood context and that he has no objections. Ms. Poverman stated that she does not generally support the high density and increase to 183% of allowable FAR but given the neighborhood and that the changes will not be obtrusive to the neighborhood or substantially detrimental under Deadrick, she would support this under Deadrick. Mr. Meiklejohn noted that the FAR increase is large but a lot of it is being done within the existing footprint. Chairman Geller stated that he is in favor of granting relief under Deadrick because he does not find any substantial detriment presented by this proposal. Chairman Geller stated for the record his general objection, to converting garage space into livable area resulting in vehicles parking within the driveway or on the street.

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, Section 6, Section 5.50 for front yard setback under Section 5.43 for setback requirements and Section 9.02.2 for alternation and extension, 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 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 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

  
Jesse Geller, Chairman

Filing Date: \_\_\_\_\_

A True Copy  
ATTEST:

\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
2019 MAY 29 P 2:00