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# Town of Brookline Massachusetts

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

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff  
Christopher Hussey

2019 JUN 20 12:30 PM

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0025  
27 WOLCOTT ROAD, BROOKLINE, MA

Petitioner, Lisa Sousa, applied to the Building Commissioner for permission to construct an addition at the rear of the existing home. 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 June 13, 2019 at 7:00 PM., in the Select Board'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 May 30, 2019 and June 6, 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:

**27 WOLCOTT ROAD, BROOKLINE, MA 02467 - Construct addition in a(n) S-10 SINGLE-FAMILY on June 14, 2019 at 7:00 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 16**

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**

**§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 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 Zuroff*

**Publish: 5/30 & 6/6**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing were Assistant Director of Regulatory Planning, Polly Selkoe, 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 present at the hearing was Steve Sousa, representative for the Petitioner and architect for the proposal.

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

Mr. Allen then described proposal stating that the Petitioner proposes to construct an 899 s.f. addition at the rear of the home. He noted that the home is located in the S-10 Zoning District. He further noted the proposal was determined to meet the threshold for demolition per the Preservation Commission, but the structure was deemed to be not significant. He stated that the proposal received the unanimous support of the Planning Board. He then had Steve Sousa, Sousa Design Architects Inc., 81 Boylston Street, Brookline, Massachusetts, present the plans.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 5.20** for floor area ratio, under M.G.L. ch. 40A, sec. 6, 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. ch. 40A, sec. 6, the current floor area ratio, which is over the allowed, was a non-conformity that could be increased further, provided that there are no new non-conformities were created and that the increase is not substantially detrimental to the neighborhood.

Regarding relief for the floor area ratio under M.G.L. ch. 40A, sec. 6, Attorney Allen noted that there are no new non-conformities and no substantial detriment to the neighborhood. He argued that the Board could look to the fact that there is no opposition to the proposal, a letter of support from one of the rear abutters, and to the standards of **Section 9.05** to illustrate that there is no substantial detriment. He then described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed addition because the proposed addition will be consistent with other homes in the neighborhood, will be located at the rear of the home, and will not change the use of the property; the use will not adversely affect the neighborhood because the home will continue to be used as a single-family dwelling, 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 an additional garage space will be provided; 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.

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

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

Chairperson Schneider then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe 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<br/>(% of allowed)</b> | .30<br>(100%)  | .41<br>(136%)   | .48<br>(160%)   | Special<br>Permit*/<br>Variance |
| <b>Floor Area (s.f.)</b>                    | 4,131          | 5,651           | 6,550           |                                 |

*\* 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 8.02.2 – Alteration or Extension**

A special permit is required to alter this non-conforming structure.

**PLANNING BOARD COMMENTS**

The Planning Board had no concerns with this proposal. They felt that the increase in FAR was reasonable and that the additions had minimal visibility or impact on neighbors due to its location at the rear.

**Therefore, the Planning Board recommends approval of the site plan by Stephen Desroche dated 9/5/2018 and the floor plans and elevations by SOUSA design Architects dated 5/30/2017 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 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.

Chairperson Schneider then called upon Joseph Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated that the Building Department had no objections to the relief requested.

During deliberation, Chairperson Schneider stated that she believed the criteria for the requested relief were met. Board Members Meiklejohn and 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. ch. 40A, sec. 6, and from Section 8.02.2 for alteration or extension of a non-conforming structure, pursuant to Section 9.05 of the Zoning By-Law were met, finding specifically under said Section 9.05:

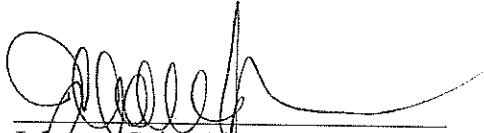
- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed addition will be consistent with other homes in the neighborhood and will not change the use of the property.
- b. The use as developed will not adversely affect the neighborhood because the home will continue to be used as a single-family dwelling and the addition is at the rear of the home.
- 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:

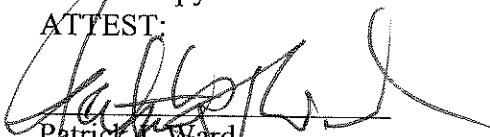
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2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: a) a final site plan stamped and signed by a registered engineer or land 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.

Unanimous Decision of  
The Board of Appeals

  
Johanna Schneider, Chairperson

Filing Date: 6.20.2019

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

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2019 JUN 21 12:00 PM  
REGISTRY OF DEEDS