



Jesse Geller, Chair
Mark G. Zuroff

Town of Brookline

Massachusetts

Mark G. Zuroff

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
420 WARREN STREET
CASE NO. 2019-0024

Petitioners Michael Klepikov and Sofia Gertsberg applied to the Building Commissioner for permission to construct a new staircase inside an existing breezeway to provide access to storage space above the existing garage. The building permit 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed June 6th, 2019, at 7:05 p.m. in the Selectmen's Hearing Room on the 6th floor of Brookline Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 23rd and May 30th, 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:

420 WARREN STREET, BROOKLINE, MA 02446 – Construct a new staircase inside the existing garage in an S-40 district, on 06/06/2019 at 7:05PM in the 6th Floor Select Board’s Hearing Room (Petitioner/Owner: Michael Klepikov and Sofia Gertsberg.

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 OR 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
Johanna Schneider
Mark G. Zuroff*

Publish: 05/23/2019 & 05/30/2019

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Mark G. Zuroff, Lark Palermo and Stephen Chiumenti. Attorney Jacob Walters, of Walters, Shannon & Jensen of 27 Harvard Street, Brookline, Massachusetts presented the case for the petitioners.

Mr. Walters stated that all the relief needed could be accomplished by two (2) Special Permit, pursuant to Section 5.22 3 (b) (1) and Section 8.02.2. Mr. Walters gave a brief history, explaining that the applicants were before this Board in 2016, and obtained relief for an addition

to their home at 420 Warren Street. Mr. Walters stated that the original plans included a storage area above the garage with access via a drop-down stair. After construction was completed, the Brookline Fire Department required, prior to its final approval, that the 2nd floor garage storage space be accessed through a permanent staircase rather than the drop-down stairway. The applicants were then advised by the Building Department that only a rough stair would be allowed as a matter of right, and a finished stairway would make the storage area habitable living space, in accordance with the Zoning By-Law requiring Floor Area Ratio relief. Mr. Walters concluded his history by stating that the applicants felt the rough staircase as unsafe for their young children as well as unsightly. Accordingly, the applicants decided to pursue relief to allow them to construct a finished staircase.

Mr. Walters stated that relief could be granted pursuant to Section 5.22.3(b)(1) of the Zoning By-law, which permits additional habitable living space up to 130% of the allowed Floor Area. Mr. Walters pointed out that the additional 502 square feet would bring the total living space to 126% which is within the allowable excess space.

Floor Area	Allowed	Existing	Proposed	Relief
Floor Area Ratio	0.15 (100%)	0.17 (113%)	0.19 (126%)	Special Permit*
Floor Area Sq. Ft.	4,525	5,208	5,711	Special Permit*

Mr. Walters added that a special permit was also needed pursuant to Section 8.02.2 as the applicants were proposing to extend a pre-existing nonconforming structure.

Mr. Walters continued by stating that the requested Special Permit conformed with the requirements of Section 9.05 of the Zoning By-Law in that the location of the additional was

appropriate, no nuisance would be created, traffic would in no way be affected and the supply of housing in Brookline would not be diminished or harmed. Mr. Walters concluded his remarks by saying that there were no objections from any of the abutters and that the applicants had no issues with the proposed conditions suggested by the Planning Board.

The Chair then asked if anyone in attendance wished to speak in support of or in opposition to the petitioner's proposal. No one asked to be heard.

Maria Morelli delivered the findings of the Planning Department. Ms. Morelli stated that the Planning Board is supportive of this proposal and had voted unanimously to recommend approval. Therefore, Ms. Morelli stated, the Planning Board recommended approval of the site plan by Michael Paul Antonio dated 2/15/2019, and floor plans and elevations by Nicholaeff Architecture and Design dated 5/17/2019, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building 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.

The Chair then called upon Joseph Braga representing the Building Department, to deliver the comments of the Building Department. Mr. Braga stated that the Building Department has no

objections to the request for relief. He concluded by stating that the Building Department will work with the applicant to ensure compliance with the Building Code.

The Chair opened discussions by proposing an additional condition to any grant of relief, the condition being that the garage storage area not be used as habitable living space in the future. Mr. Zuroff stated that it has been the intent of the applicants to use the area above the garage solely for storage and even though the By-Law counts the 502 square feet as living space, he felt it should remain as a storage area. Mr. Zuroff inquired as to whether the applicants could live with such a condition and their counsel, after consultation with Mr. Klepikov, answered in the affirmative.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the petitioners have satisfied the requirements necessary for relief from Sections 5.22.3(1)(b) and Section 8.02.2 of the Zoning By-Law, pursuant to Section 9.05 of the Zoning By-Law and made the following specific findings pursuant to said Section 9.05 of the Zoning By-Law:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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 final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of

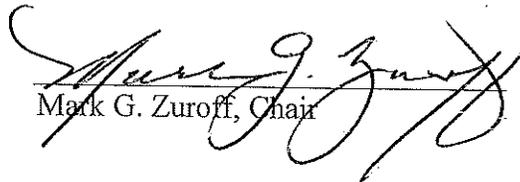
Regulatory Planning.

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 building elevations stamped and signed by a registered architect; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds, and
3. The area above the existing garage shall remain as storage space and shall not be used as living space.

Unanimous Decision of

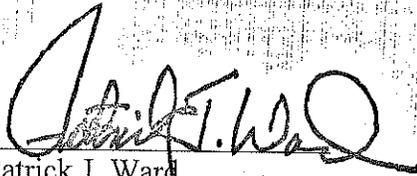
The Board of Appeals

Filing Date: 6/20/19


Mark G. Zuroff, Chair

A True Copy

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

2019 JUN 20 PM 3:47