



BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark G. Zuroff

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# Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0021  
119 PAYSON ROAD, BROOKLINE, MA

Petitioners, Joseph Allen and Mary Kenda, 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 May 30, 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 16, 2019 and May 23, 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:

**119 PAYSON ROAD, BROOKLINE, MA 02467 - Construct basement and second floor addition to existing footprint in a(n) S-7 SINGLE-FAMILY on May 30<sup>th</sup>, 2019 at 7:00 pm in the 6<sup>th</sup> 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:

**§5.09.2.J – DESIGN REVIEW**

**§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 G. Zuroff*

**Publish: 5/16- & 5/23**

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested that the hearing be continued. The hearing was continued to June 20, 2019 at 7:00 p.m. in the Select Board's Hearing Room. Present at the continued hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider 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 E. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the architect for the proposal, Steve Sousa of Sousa Design Architects.

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 stating that the Petitioners propose to construct an addition at the rear of the home. He noted that the proposal would add 854 square feet with a proposed floor area ratio of .47, which is over the allowed .35 in the S-7 Zoning District. He also pointed out that the existing floor area ratio of .36 was over the allowed. He noted that the proposal was determined to trigger partial demolition and the Preservation Commission found the structure to be significant and imposed a twelve month stay on the property. Attorney Allen stated that the proposal had the unanimous approval of the Planning Board and the approval of the Preservation Commission to lift the stay based on this plan set. He also noted that Julian Hyman of 107 Payson Road, Brookline, Massachusetts, attended the Preservation Commission Hearing in strong support of the proposal.

Attorney Allen then stated that the Petitioners seek 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 no new non-conformities are created and that the increase is not substantially more 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 use, which will remain a single-family dwelling; the use will not adversely affect the neighborhood because the proposed addition is consistent with the surrounding properties and there has been no opposition through the public process with multiple hearings; the entire addition is at the rear of the home; there will be no nuisance or serious hazard to vehicles or pedestrians because on-site circulation will not change; 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 of 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 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 (% of allowed)</b>	.35 (100%)	.36 (103%)	.47 (134%)	Special Permit*/ Variance
<b>Floor Area (s.f.)</b>	2,535	2,572	3,426	

*\* 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 supports this proposal for this rear addition. It felt that the design was well-designed to fill in existing empty space under the house's existing footprint. The Board asked that dimensions be added to the floor plans and that the Building Commissioner verify these dimensions because the Board felt the existing FAR numbers are only very slightly over the allowable FAR to qualify for Deadrick.

**Therefore, the Planning Board recommends approval of the site plan by Thomas P. Bernardi dated 9/19/2013 the floor plans and elevations by SOUSA design Architects dated 5/21/2019 subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, dimensioned floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning and to be verified by the Building Commissioner.
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.

Chairman Zuroff 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, Board Member Meiklejohn commented on the trends in the neighborhood and noted that the proposal is consistent with the trends. He stated that he had no objections to approval of the application. Board Member Schneider and Chairman Zuroff agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit 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 of the Zoning By-Law, respectively, were met, finding specifically under said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition as the existing use will not change.

- b. The use as developed will not adversely affect the neighborhood because the proposed addition and renovations to the residence are consistent with the surrounding structures.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as the on-site circulation will not change.
- d. Adequate and appropriate facilities will be provided for the proper operation of a single-family home.
- 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 special permit relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, dimensioned floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning and to be verified by the Building Commissioner.
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.

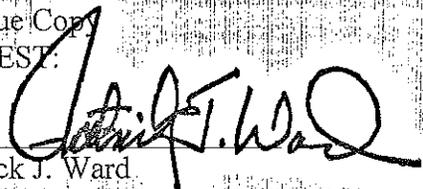
Unanimous Decision of  
The Board of Appeals



Mark G. Zurloff

Filing Date: 7/12/19

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals