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Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff

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. 2019-0027
67 ELIOT STREET LLC
67 ELIOT STREET, BROOKLINE, MA

Petitioner, 67 Eliot Street LLC, applied to the Building Commissioner for permission to construct an addition and enclose rear porches. 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 20, 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 June 6, 2019 and June 13, 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:

67 ELIOT STREET, BROOKLINE, MA 02467 - Construct addition and enclose rear porches in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on June 20, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 14

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:

§5.43 - 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.

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: 6/6 & 6/13

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 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 L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was representative for the Petitioner, Josh Danesh, and the architect for the proposal, Peter Bartash.

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 Petitioner proposes to construct an addition and enclose existing porches to be included as finished gross floor area. He noted that the Petitioner worked to avoid triggering demolition for the addition and porch enclosure. He noted that the Petitioner also proposed to retain the existing garage. Mr. Allen stated that the proposed addition and enclosure of the porches would add 2,627 square feet of gross floor area. He noted that the proposed floor area ratio would be at 1.0, which is allowed in the T-5 District. Attorney Allen then introduced Peter Bartash to present the plans. Peter Bartash, Port One Design LLC, 207 Marion St #3, Boston, Massachusetts, presented the plans to the Board.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from Section 5.50 under Section 5.43 for pre-existing non-conforming front yard setbacks, and from Section 8.02.2 for alteration/ extension of a non-conforming use or structure, all pursuant to Section 9.05. He also noted that the proposal received the support of the Planning Board. He further stated that abutters attended the Planning Board meeting and voiced their support for the proposal.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed addition and enclosure of porches as the proposal stays below the allowed floor area ratio of the district and the two-family use is allowed in the district; the use will not adversely affect the neighborhood because the addition and porch enclosure will respect the allowed height and floor area ratio and landscaping will be provided as a counterbalancing amenity; there will be

no nuisance or serious hazard to vehicles or pedestrians because on-site circulation will not change except that one more car will be garaged out of site; four parking spaces will be utilized as is required; adequate and appropriate facilities will be provided for the proper operation of two-family dwelling with parking; 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 Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe noted the following:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Setback	Allowed	Existing	Proposed	Finding
Front Yard	15 feet	9.9 feet	9.9 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 to alter this non-conforming structure.

PLANNING BOARD RECOMMENDATION

The Planning Board agrees with the Planning Department that the relationship of the new addition and garage to the existing garage is very awkward and queried why the garage was not being demolished. The applicant stated that although he did not appear before the Preservation Commission, he did not want to take a chance that a one-year demolition stay would be put on the garage. The Planning Board suggested that if the existing garage were demolished, it would provide the opportunity to make the new drive less

steep, better align the roof of the addition with the roof of the existing house, and allow the garage to be wider. The applicant's attorney agreed to meet again with the Preservation Commission staff, who are all new since his previous meeting, to discuss the possible demolition of the garage. However, if the applicant chooses not to demolish the garage, the Planning Board was supportive of the additions as proposed.

Therefore, the Planning Board recommends approval of the site plan by Gerry Holdright dated 3/19/19 and the floor plans and elevations by Port One Design LLC dated 3/7/2019 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.

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, Chairman Zuroff opined that the proposal represented a significant improvement to the neighborhood and should be approved. Board Members Schneider and Meiklejohn agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.50 under Section 5.43 for pre-existing non-conforming front yard setbacks, and from Section 8.02.2 for alteration/ extension of a non-conforming use or 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 and the two-family use is allowed in the T-5 zoning district. The proposed addition will respect the character of the home.

- b. The use as developed will not adversely affect the neighborhood because the height and floor area ratio will meet the requirements of the T-5 District and the proposal is consistent with the character of the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as the on-site circulation will not change. Four parking spaces will be provided; as is required, and one additional car will be garaged out of sight.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- 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:

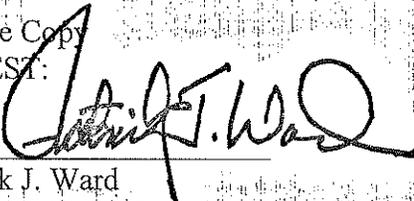
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Unanimous Decision of
The Board of Appeals


Mark G. Zurloff

Filing Date: 7/12/19

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals