



BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0043
1443 BEACON LLC
1443 BEACON STREET, BROOKLINE, MA

Petitioner, 1443 Beacon LLC, applied to the Building Commissioner for permission to expand the previously approved patio. 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:

1443 BEACON STREET, BROOKLINE, MA 02446 - Extend patio in a(n) M-2.5 APARTMENT HOUSE on May 30th, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: ROBERT L. ALLEN, JR.) Precinct 10

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.A – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR 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 the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at 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 L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was representative for the Petitioner, Andy Martineau.

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 expand the previously approved patio. He noted that the Petitioner had undertaken a substantial renovation program on the property and that most of the work was interior, with the exception of replacing an exterior deck and storage area at the rear of the building with a new fitness room and a deck above. Mr. Allen stated that the Planning Board approved this as a façade review in July 2018. Attorney Allen explained that the Petitioner now seeks approval to square off the corner of the previously approved rear patio. He explained that as a result of the change, the Petitioner would need setback relief.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from Section 5.09.2.a design review for frontage on Beacon Street, from Sections 5.60 and 5.70 under Section 5.43 for side and rear yard setbacks, and from Section 8.02.2 for alteration/ extension of a non-conforming use or structure, all pursuant to Section 9.05.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed expanded exterior design of the back patio; the use will not adversely affect the neighborhood because the use of the building as an apartment building with commercial units and parking will continue and the patio is minimally visible from the street; as a counterbalancing amenity, the Petitioner will provide additional landscaping and remove invasive vines;

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 an apartment building with commercial units and parking; and there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen suggested that the building, as a rental building, has a positive impact on housing.

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

Sections 5.09.2.a – Design Review: Frontage on Beacon Street requires a special permit subject to the design review standards listed under *Section 5.09.4(a-1)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – The proposal requires the removal of three deciduous trees that are dead and one small evergreen tree. These trees will be replaced to the extent practicable and planter boxes will be installed around the perimeter of the expanded patio.
- b. Relation of Buildings to Environment – The existing patio area is minimally visible from Beacon and Marion Streets and well screen from all nearby properties.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Due to heavy screening, there is little to no impact on the streetscape.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Setback

Section 5.70 – Rear Yard Setback

Setback	Allowed	Existing	Proposed	Finding
Side Yard	10 feet	20' 7"	7' 8"	Special Permit*
Rear Yard	15 feet	13' 10"	6' 4"	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 Planning Board was supportive of this proposal and felt that it would be minimally visible. The Board encouraged the applicant to install appropriate landscaping and specifically requested that they remove invasive vines that are growing on the trees at the rear of the patio.

Therefore, the Planning staff recommends approval of the site plan by Stantec dated 9/13/18, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan 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 and b) 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.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.09.2.a design review for frontage on Beacon Street, from Sections 5.60 and 5.70 under Section 5.43 for side and rear 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.


- b. The use as developed will not adversely affect the neighborhood because the proposed expansion will be heavily landscaped and the patio is minimally visible from Beacon and Marion Streets and well screened from nearby properties.
- 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 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:

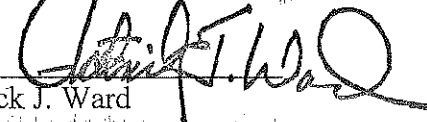
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Unanimous Decision of
The Board of Appeals

Filing Date: 7/12/19


Mark G. Zuroff

A True Copy
ATTEST


Patrick J. Ward
Clerk, Board of Appeals