



Town of Brookline Massachusetts

BOARD OF APPEALS
Jessd Geller, Chairman
Mark Zurek
Johanna Schneider

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0046
290-292 TAPPAN ST, BROOKLINE, MA

Petitioner, 290-292 Tappan St LLC, applied to the Building Commissioner for permission construct a construct a third story addition to the existing two family home. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected November 14, 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 October 31, 2019 and November 7, 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 on **11/14/2019 at 7:00PM** in the **6th Floor Select Board's Hearing Room, Town Hall, 333 Washington Street, Brookline**, on the following:

290-292 TAPPAN STREET, BROOKLINE, MA 02445. *Petitioner – ALLEN ROBERT JR* 3rd floor addition that will add 2,027 s.f. to existing structure. T-6 TWO-FAMILY & ATTACHED SINGLE-FAMILY Zone. Precinct 12.

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.62 – FENCES AND TERRACES IN SIDE YARDS

§8.02 - 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

Mark Zuroff

Johanna Schneider

Publish: 10/31/2019 & 11/07/2019

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested to continue the hearing to return to the Planning Board. The hearing was continued to December 12, 2019 at 7:00 p.m. in the 6th Floor Conference Room. At the hearing, due to Town Meeting, the matter was continued to December 19, 2019 at 7:30 p.m. in Room 103 of Town Hall. Present at the public hearing were Chair Johanna Schneider and Board Members Kate Poverman and Randolph Meiklejohn. Also present at the hearing were Zoning Coordinator & Planner, Charlotte Leis, 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 were the Petitioner, Michael Schneider, and the architect for the proposal, Kecia Lifton.

Chair Schneider called the hearing to order at 7:35 p.m. Attorney Allen waived the reading of the public notice.

Board Member Poverman disclosed for the record that she previously lived at the subject property, but she believed she would still be able to decide the case impartially. Attorney Allen stated the Petitioner agreed with Board Member Poverman and saw no issue with her sitting on this Board.

Attorney Allen then introduced the proposal by noting that the Petitioner went to the Planning Board four times and held numerous meetings with the neighbors. He then explained that the property was located in a T-6 Zoning District, and he stated that the proposal triggered partial demolition and the Preservation Commission upheld Staff's initial determination of significance at their September 10, 2019 Hearing and imposed a stay of one year on the property; the Petitioner intends to return to the Preservation Commission to request a lift of that stay with this plan set, should this Board grants the requested relief. Attorney Allen summarized some of the major changes from the original proposal which included: reduction of originally proposed FAR of 1.09 to 0.98, which is one hundred and thirty percent of the allowed FAR, reduction of overall width of the gable, minimization of rear dormers, and elimination of second floor deck. He stated that the proposal received the unanimous support of the Planning Board at their fourth meeting and noted that the neighborhood support has increased and the opposition has been drastically reduced based on the process and the Petitioner's willingness to meet with the neighbors and listen to the Planning Board's feedback.

Attorney Allen then stated that the Petitioner seeks relief from **Section 5.20** of the by-law for FAR, which is available under **M.G.L. ch. 40A, Section 6**, the Deadrick line of cases. The applicant also

seeks to obtain approval relief from Section 5.62 under Section 5.43 for a pre-existing non-conforming deck. He noted that all relief is available by special permit and pursuant to Section 9.05. With respect to Section 6, Mr. Allen noted that the existing FAR is 0.77, which is already over the allowed of 0.75. The proposed FAR is 0.98, but Mr. Allen emphasized that of the additional square is primarily a conversion of interior space, which would arguably be counted by this Board. With respect to the deck, Mr. Allen articulated that the existing deck extended to the lot line and the proposed deck has been lowered by a level and does not extend all the way to the lot line; he added that the Petitioner would provide a counterbalancing amenity to screen the deck from the neighbor. He then stated that the architect, Kecia Lifton, was available to answer any questions.

Chair Schneider asked about the levels at the front and rear of the property. Kecia Lifton, Finespaces Architecture, LLC, 175 Maple Street, Sherborn, Massachusetts, responded. Mr. Lifton noted that the overall slope of the lot provides space at the rear that is not visible from the street.

Board Member Meiklejohn asked a few clarifying questions regarding entrances on the site plan. Ms. Lifton explained the entrances and the proposed stairway associated with the deck which has been moved down and further from the lot line.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed use, which will continue to be a two-family, as is allowed in the T-6 zoning district; the use will not adversely affect the neighborhood because the proposed structure will be consistent with the surrounding structures and provide landscaping as counterbalancing amenity for the side yard deck setback; furthermore, the Petitioner worked with the neighborhood to develop this revised proposal; there will be no nuisance or serious hazard to vehicles or pedestrians as current parking conditions will be remain and the structure will be improved; adequate and appropriate facilities

will be provided for the proper operation of a two-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

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

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

Chair Schneider then called upon Charlotte Leis, Zoning Coordinator & Planner, to deliver the findings of the Planning Board. Ms. Leis noted that the following is the relief that is requested:

FINDINGS

Section 5.20: Floor Area Ratio

Floor Area Ratio	Maximum	Existing	Proposed	Relief
T-6; 2-family dwelling	0.75	0.77 (4,828 s.f.)	0.98 (6,104 s.f.)	Special Permit*
	100%	103%	130%	

*As a pre-existing nonconformity, the FAR may be extended if the altered structure is found to be not substantially more detrimental to the neighborhood than the existing structure.

Section 5.62: Fences and Terraces in Side Yards

Section 5.43: Exceptions to Yard and Setback Regulations

The proposed deck in the left-side yard requires a Special Permit under Section 5.43 because it extends further into the side yard (~3 ft. setback) than half of the required setback area (5 ft.). If a counterbalancing amenity is provided, such as landscaping, a Special Permit may be granted. The applicant has not explicitly designated a counterbalancing amenity.

Section 8.02: Alteration or Extension

The existing structure is nonconforming and therefore may be altered as allowed by §8.02.

She then gave the Planning Board recommendation.

PLANNING BOARD RECOMMENDATION

The Planning Board is supportive of this proposal. The Planning Board was originally opposed to the proposal when it was first presented at the August 8, 2019 Planning Board meeting due the excessive additional mass and the elimination of many of the architectural features that make the existing house distinctive. The current proposal incorporates several months of changes and refinements that have successfully addressed the Planning Board's, and many of the abutter's, concerns. The Planning Board set a goal of 130% of the allowed FAR for the applicant to achieve and they ultimately met that request. The altered structure as currently designed faithfully reflects the architectural style of the existing building and several other buildings in the neighborhood and mitigates the sense of scale with hipped and clipped rooflines and the use of dormers, while simultaneously providing the expansion in living area needed for an economically feasible renovation and expansion of the building. For these reasons, the Planning Board believes the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

The Planning Board therefore recommends approval of the site plan by Peter Nolan and Associates LLC, dated June 6, 2019, and architectural plans by Finespaces Architecture, LLC dated December 3, 2019, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan showing proposed 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 1) electronically submit the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and 2) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Chair 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, Board Member Poverman stated that she had no issues with the proposal, she believed that the requested special permit relief was reasonable, and she was supportive of granting the relief requested. Board Member Meiklejohn noted his support as well and commended the applicant on working with the neighbors and developing the proposal, particularly the roof and eave design elements.

Chair Schneider agreed and stated that there were no new non-conformities created and that the increased FAR was not substantially more detrimental to the neighborhood; counterbalancing amenities proposed by the applicant were appropriate; and the standards of 9.05 were met.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for relief from Section 5.20 for FAR under M.G.L. 40A, section 6, and from Section 5.62 under Section 5.43 for a pre-existing non-conforming deck. He noted that all relief is available by special permit and 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 use is appropriate for the T-6 district. The proposed structure will comply largely with the by-law and the special permits requested are reasonable.
- b. The use as developed will not adversely affect the neighborhood because the proposal was revised many times based on discussions with neighbors and the comments of the Planning Board, remains consistent with many of the surrounding structures, and the Petitioner will provide a landscape plan as a counterbalancing amenity to screen the deck from the abutter.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as the use as a two-family will remain, and the circulation and parking will continue to be in the rear.
- d. Adequate and appropriate facilities will be provided for the proper operation of two-family dwelling.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

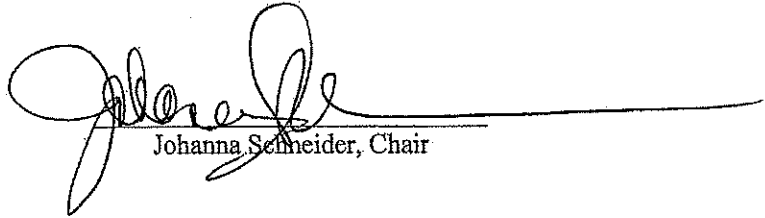
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of Regulatory Planning for review and approval.

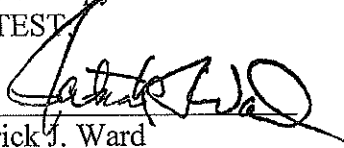
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3. Prior to the issuance of a building permit, the applicant shall 1) electronically submit the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and 2) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 01/14/2020


Johanna Schneider, Chair

A True Copy
ATTEST


Patrick J. Ward
Clerk, Board of Appeals