



BOARD OF APPEALS
Johanna Schneider
Mark Zuroff
Randolph Meiklejohn

Town of Brookline *Massachusetts*

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2020 MAR -4 P 4: 19

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
Phone: (617) 730-2010
Fax: (617) 730-2043

Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0078
Owner: Albert S. Gordon

Petitioner, Albert S. Gordon, applied to the Building Department for a building permit to construct two small additions and extend the deck at 53 Jordan Road. 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 February 6, 2020 at 7:00 p.m. in the 6th Floor Hearing Room at Town Hall as the time, date, and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 January 23, 2020 and January 30, 2020 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:

53 JORDAN ROAD, BROOKLINE, MA 02446 - Expand house and deck into rear yard setback in a(n) S-7 SINGLE-FAMILY on February 6, 2020 at 7:05 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Gordon, Albert) Precinct 11

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

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.70 - REAR YARD REQUIREMENTS

§5.74 - FENCES AND TERRACES IN REAR YARDS

§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
Johanna Schneider
Mark Zuroff***

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Johanna Schneider, and Board Members Mark Zuroff and Randolph Meiklejohn.

Bond Worthington, on behalf of petitioner, Albert S. Gordon, waived the reading of the public notice and presented the case. Mr. Worthington stated that Mr. Gordon has lived in the house at the subject property for 20 years. He further stated that in 2003, Mr. Gordon obtained relief from the Board in order to convert the attic of the house to habitable square footage. The applicant had three letters of support from neighbors on Jordan Road.

Board Member Zuroff asked whether the applicant had spoken with all of their direct abutters. Petitioner Gordon stated that he had not spoken with the neighbor directly to the rear because that neighbor would not be impacted due to the very significant drop in grade behind the Petitioner's property.

Board Chair Schneider asked about the Petitioner's proposed counterbalancing amenity needed as a requirement of **Section 5.43**. Petitioner Gordon responded that the Planning Board asked for landscaping amenities which he intended to provide.

Board Chair Schneider noted that the variance request requires the applicant to provide evidence indicating the structure or topography of the land is substantially different due to soil conditions,

topography, or lot shape. She asked the applicant to clarify what unique circumstance is applicable to this property.

Petitioner Gordon responded that the lot is the smallest on the street and that there is a jog at the rear property line, resulting in an irregular shape. .

Board Chair Schneider asked if anyone wished to speak in favor or in opposition of the proposal. No one was present to speak.

Board Chair Schneider called upon representative of Planning Department, Planner Victor Panak, to deliver the findings of the Planning Board:

FINDINGS

ZONING: S-7	Required/ Allowed	Existing	Proposed	Relief
Use		Single family	Single family	None
Lot Size	7,000sf	5,236sf	5,236sf	None
Floor Area Ratio	0.35 / 100% 1,833 sf	0.62 / 177% 3,238 sf	0.64 / 184% 3,369 sf	Modification of Variance¹
Lot Width	65'	55'	55'	None
Height	35'	34.5'	34.5'	None
Setbacks: F/S/R (in feet)	30 7.5/7.5 30	22 7.5/7.7 26.2	22 7.5/7.7 22.5	Special Permit, Section 5.43²
Parking Spaces	2	At least 2	No change	None

¹**Modification of Variance:** This property is not a pre-existing nonconforming structure with respect to Floor Area Ratio. The currently nonconforming FAR was allowed by Variance in 1980 and then again extended in 2003. Therefore, it does not benefit from grandfathering and must be granted a modification to the previous Variance to further extend the FAR.

²**Section 5.43 – Exceptions to Yard and Setback Regulations:** The addition on the rear-right corner of the structure will further encroach into the required rear yard setback and the extension of the deck will extend the deck further into the required setback than allowed by Section 5.74

(see below). Relief from both of these setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

Other Zoning Requirements

Section 5.74 – Fences and Terraces in Rear Yards: This section states, among other things, that decks may not extend further into the required setback area more than 50% of that required setback. The required rear yard setback for this property is 30 feet and the proposed deck extension would bring the deck to 10 feet. Relief from this Section can be granted by Section 5.43, as noted above.

PLANNING DEPARTMENT COMMENTS

The Planning Department is supportive of this proposal. The additions are minimal and will have little to no impact on the public way or the neighbors. The criteria for a Variance were met when the Variance was originally granted in 1980, and regular improvement of the building requires that the Variance must periodically be modified to accommodate such improvements.

PLANNING BOARD RECOMMENDATION

The Planning Board is supportive of this proposal given its minimal scope and lack of impact on the public way or abutters.

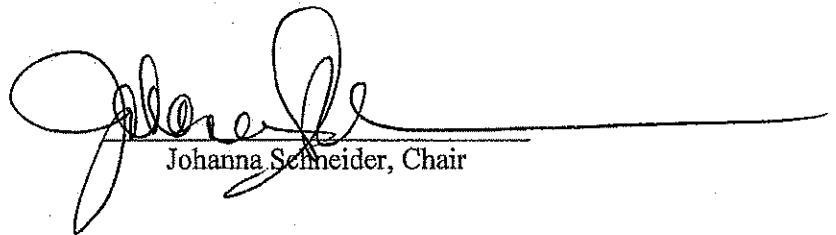
Board Chair Schneider called upon Joe Braga, Chief Building Inspector, to deliver the comments of the Building Department. The Building Department had no objection to this proposal.

The Board deliberated on the merits of relief as requested. Board Member Meikeljohn observed that the housing stock in this neighborhood is relatively old, such that additions may be necessary for the occupants. He further observed that the small size of the Applicant's lot is unusual for the neighborhood and that Applicant was seeking a modest addition to floor area which does not significantly change the footprint of the house. Board Member Zuroff observed that the requested relief was modest. The Board voted unanimously that the requirement have been met for the issuance of a special permit under Sections 5.20, 5.43, 5.70, 5.74, and 8.02.2 of the Zoning By-Law and that the requirements have also been met for the granting of a modification to the prior Variance.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions: The Planning Board recommends approval of the plans by Bond Worthington dated 10/21/19 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 electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning.**
3. **Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for their review and approval 1) 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



Johanna Schneider, Chair

Filing Date: 03/04/2020

Pat Ward, Town Clerk

