



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zaroff

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0091
LINDSEY BADEN
201 SUMMIT AVENUE, BROOKLINE, MA

Petitioners, Lindsey Baden and Sara Fazio, applied to the Building Commissioner for permission to construct an addition to expand the second story of an existing single-family dwelling. 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 scheduled February 21, 2019 at 7:00 p.m. in the Selectmen'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 February 7, 2019 and February 14, 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:

201 SUMMIT AVENUE, BROOKLINE, MA 02446 - Construct addition to expand second floor in a(n) S-7 SINGLE-FAMILY on February 21, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioners/Owners: Lindsey Baden and Sara Fazio) 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

§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 Zuroff*

Publish: 2/7 & 2/14

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Jesse Geller and Board Members Kate Poverman and Steve Chiumenti. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Brookline, Massachusetts 02445. Assistant Director of Regulatory Planning, Polly Selkoe, was also present. Also in attendance was the Petitioner, Lindsey Baden.

Chairman Geller called the hearing to order at 7:00 p.m. Attorney Dopazo Gilbert waived the reading of the public hearing notice.

Attorney Dopazo Gilbert stated that in 2016 the Board had granted relief for this project. She noted that the plans had not changed since the prior approval. She indicated that a one-year extension had been granted, but that the work had not proceeded due to an unfortunate accident suffered by the

Petitioner's wife. The Petitioners are back with the same proposed project, which again has been approved by the Planning Board. She noted that the sitting members that approved the relief in 2016 were Steve Chiumenti, Jonathan Book and Chris Hussey. The Petitioner's wife is now recovered from her injuries and the Petitioner seeks to move forward with the project. The project requires relief from to Section 5.20 to increase the existing non-conforming floor area and 8.02.2 to alter a pre-existing nonconforming structure or use. Attorney Dopazo Gilbert stated that the Petitioner requests to expand the floor area ratio (FAR) in a manner that does not alter the existing footprint of the structure. Attorney Dopazo Gilbert noted that the relief can be granted under Massachusetts General Laws Chapter 40A, Section 6 as a special permit under the Bellalta and Deadrick line of cases, because the proposed project is an existing pre-existing non-conforming structure as to floor area ration and expansion thereof will not be substantially more detrimental to the neighborhood. She also noted that the proposal also meets the Zoning By-Law Section 9.05 criteria for a Special Permit. Attorney Dopazo Gilbert stated that the property is pre-existing non-conforming as to FAR and that the proposal is to expand the second floor by adding 890 square feet of living space and noted that the allowed FAR in this district is .35, the existing FAR is .37 and the proposed addition would result in an FAR of .45 or a GFA of 4,903 s.f. She indicated that a survey of homes in the zoning district indicated a FAR range from .28 to .46 and noted that this proposal would not increase the foot print of the home or need relief for height.

In response to a question from Chairman Geller, Attorney Dopazo Gilbert responded that no new conformities were being created. Attorney Dopazo Gilbert then reviewed the standards for special permit relief under Section 9.05 of the Zoning By-Law, opining that both Massachusetts General Laws Chapter 40A, Section 6 and Section 9.05 of the Zoning By-Law were satisfied because: (1) the specific site is an appropriate location in the S-7 District because the additional floor area is not unique to the neighborhood and the reconstruction will make the roof more consistent with the surrounding homes; (2) there will be no adverse effect on the neighborhood where there are other larger homes in the area and a forty-two (42) unit condominium complex directly abuts the single family home and the proposed FAR

falls within the residential floor area ratios which ranges from .28 to .46; (3) there will be no nuisance or serious hazard to vehicles or pedestrians since it will remain a single-family dwelling; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Chairman Geller then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal. Chairman Geller asked if anyone wished to speak in opposition to the project. No one spoke in opposition.

Chairman Geller and Ms. Poverman noted concerns raised by a neighbor about drainage issues identified in a letter from Mr. Inbal, just below at 106 Jordan Road. He requested installation of a proper drainage system in connection with the project. Ms. Selkoe, in response, noted that the Engineering Department would review the drainage plans prior to a building permit being issued.

Attorney Dopazo Gilbert also noted for the record that the Petitioner was working with another abutter on the landscaping plans.

Polly Selkoe, Assistant Director of Regulatory Planning, delivered the findings of the Planning Board and the Building Department:

FINDINGS

Section 5.20 – Floor Area Ratio

	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.37 (106%)	.45 (129%)	Special Permit*/ Variance
Floor Area (s.f.)	3,794 s.f.	4,013 s.f.	4,903 s.f.	

** 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 a pre-existing non-conforming structure

PLANNING BOARD COMMENTS

The Planning Board felt that this proposal, which has not changed in any way since it was originally approved in 2016, is still worthy of zoning relief to expand a one-story dwelling to two stories. Although the Board heard from the direct abutter that the proposal will be detrimental to the character of the row of three similar houses along Summit, the majority of the Board felt that this should not prevent the applicant from being able to expand their house in a modest way.

Therefore, the Planning Board recommends approval of the site plan submitted by Brice Bradford, dated 5/12/14, and the architectural plans by Linda Hamlin, dated 1/27/2016, 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.

Ms. Selkoe noted that the Building Department will work with the Applicant to ensure that all conditions are satisfied prior to issuing the Building Permit.

Ms. Poverman was in favor of granting the relief.

Mr. Chiumenti stated it was a smaller house on Summit Ave and that most of the neighboring homes were taller and bigger. Mr. Chiumenti commented that since there is no expansion of the footprint or roof there should not be any increased water run-off problem. He believes the project does not impact the neighborhood and is in favor of approving it.

Chairman Geller went over the Bellalta and Deadrick analysis and opined that there is nothing about this project that creates a nuisance or hazard and did not result in a substantial detriment to the neighborhood.

For the reasons stated by the Applicant's attorney, the Board agreed that the standards for the grant of a special permit under Section 9.05 of the Zoning By-Law had been met and the Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.

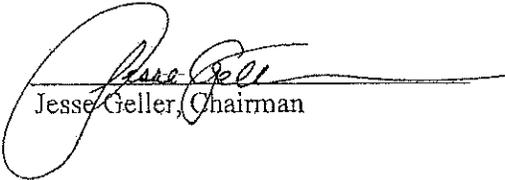
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any effect on the supply of housing available for low and moderate income people.
- f. The project will not result in a substantial detriment to the neighborhood.

The Board voted unanimously to grant the requested special permit relief for the project as identified in the foregoing referenced plans subject to the following conditions:

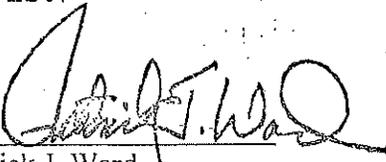
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Unanimous Decision of
The Board of Appeals

Filing Date: 04/05/19


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals