



Jesse Geller, Chair  
Mark G. Zuroff  
Johanna Schneider

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2021-000079

Petitioner Joseph Turk applied to the Building Commissioner for permission to construct a roof deck on the single-family dwelling at 1059 Beacon Street. The application was denied and an appeal was taken to this Board.

On October 26, 2021, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed March 31, 2022 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 December and December 2021, 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 the following petition:**

Address: 1059 Beacon Street  
Petitioner: TURK, JOSEPH E JR & AMY L  
Zoning District: M-2.0 Apartment House Zone  
Precinct: 1  
Description: Construct a roof deck

**Date, time, and location of the public hearing are as follows:**

Date: 3/31/22  
Time: 7:00 pm  
Location: Virtual Meeting (see below)

Register for this virtual hearing:  
<https://bit.ly/35NMOVX>

*After registering you will receive a confirmation email containing information about joining the hearing.*

Our Virtual Meeting Guide for Applicants and the Public can be found here:  
<https://bit.ly/30wRoY3>

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

§5.62 - FENCES AND TERRACES IN SIDE YARDS

§8.02 - ALTERATION OR EXTENSION

***QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:***

*Advanced submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations or questions be sent before the hearing to Polly Selkoe ([pselkoe@brooklinema.gov](mailto:pselkoe@brooklinema.gov)).*

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. Public testimony will be taken during the hearing as normal.*

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters by mail or in the papers. Questions about hearing schedules may be directed to the Planning and*

Community Development Department at [vpanak@brooklinema.gov](mailto:vpanak@brooklinema.gov), or by checking the Town meeting calendar at: [www.brooklinema.gov](http://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 **Assistive Listening Devices**, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Mark G. Zuroff  
Johanna Schneider*

**Publish: 3/17/2022 & 3/24/2022**

This Board held a public hearing on March 31, 2022. Present at the hearing was Chairman Mark G. Zuroff and Board Members Johanna Schneider and Neil Wishinsky. Attorney Jacob Walters, business address 27 Harvard Street, Brookline, MA presented the case for the petitioner.

Mr. Walters began his remarks by stating all the relief required for the proposed roof deck could be granted by three (3) Special Permits. The first Special Permit would be required under **Section 5.09.2.a and 5.09.K, Design Review**. Because the property is located on Beacon Street Design Review is required. Mr. Walters stated that the proposed roof deck will not be visible from Beacon Street, and the Planning Board felt that the deck would have no impact on the neighborhood and approved the design. Mr. Walters stated that the second Special Permit for side yard setback violations could be granted pursuant to **Section 5.43** of the Zoning By-Law. Under **Section 5.43** the Zoning Board may provide relief from setback requirements if an applicant can provide adequate a counterbalancing amenities that mitigate the negative impact arising from the requested deviation from the setback requirements. The applicant is offering to

provide a number of planters in and/or around the perimeter of the deck as a counterbalancing amenity. Mr. Walters added that the applicants would work with the Assistant Director of Regulatory Planning to provide counterbalancing amenities that meet the **Section 5.43** requirements. The final Special Permit needed would be under **Section 8.02, Alteration and Extension**. The existing structure is in violation of the side setback requirements and the deck would be an extension of the same. Mr. Walters went on to say that the requested Special Permits conform to the requirements of **Section 9.05** of the By-Law in that the location of the proposed deck is appropriate, the deck structure would have no adverse effect on the neighborhood, no nuisance or hazard to vehicles or pedestrians would be created and the proposed roof deck would have not have an adverse effect on the supply of housing for low and moderate residents. Mr. Walters concluded his remarks by saying the relief required is modest and the Planning Board's unanimous approval of the proposal warrant this Board granting the Special Permits.

The Chairman then asked if anyone in attendance wished to speak in support or in opposition to the petitioner's proposal. No members of the public requested to be heard. Maria Morelli delivered the findings of the Planning Department. Ms. Morelli stated that the Planning Board was supportive of the applicants' proposal, which will not be visible from the street and will have no impact on the neighborhood.

**Section 5.09 - Design Review**

**Section 5.62 - Fences and Terraces in Side Yards**

**Section 8.02 - Alteration and Extension**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard Setback - Left</b>	6'	N/A	0.8"	Special Permit
<b>Side Yard Setback - Right</b>	6'	N/A	2'	Special Permit


Under Section 5.43 – Exceptions to yard and setback requirements, the Zoning Board may permit the substitution of such other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the By-Law.

Ms. Morelli concluded by saying the Planning Board felt the proposed deck was well designed and the proposed counterbalancing amenities sufficient under **Section 5.43**. The Planning Board unanimously recommended approval of the Applicant’s proposal.

**Therefore, the Planning Board recommends approval of the plans by AGA Designs dated 2/24/22 and site plan by Land Mapping, Inc. dated 9/28/21 subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall electronically submit floor plans and elevations stamped and signed by a registered architect and a final site plan, signed and stamped by a registered engineer or land surveyor, to the Assistant Director for 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. The counterbalancing amenities must be executed in accordance with the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) the site plan, floor plans and elevations displaying the approval

stamp of the Assistant Director for 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.

The Chairman then called upon Paul Campbell, Building Inspector, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department has no objections to the request for relief and stated if the Board grants relief the Building Department will ensure compliance with the Building Code.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Sections 5.09.2.a, 5.09.K, 5.43 and 8.02 and 9.05 of the Zoning By-Law and made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- 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.

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 plans and elevations stamped and signed by a registered architect and a final site plan, signed and stamped by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.

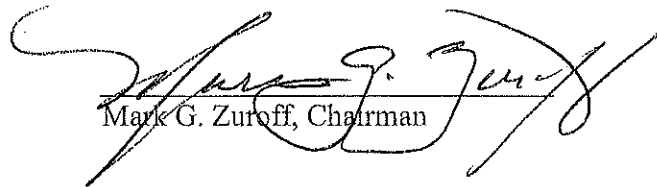
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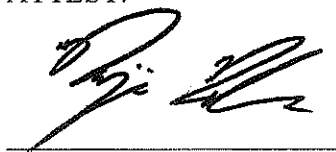
Unanimous Decision of

The Board of Appeals

Filing Date: **MAY 09 2022**

  
Mark G. Zurloff, Chairman

A True Copy  
ATTEST:

  
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Clerk, Board of Appeals