



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

# Town of Brookline

## Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2013-0028  
**Owner: Donald and Cheryl Warner**

Petitioners, Donald and Cheryl Warner, applied to the Building Commissioner for permission to construct a 180 square foot addition at the rear of 45 Willow Crescent. The application was denied and an appeal was taken to this Board.

On March 14, 2013 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 May 9, 2013 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, to its 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 April 18 and April 25, 2013 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Donald and Cheryl Warner

Owner: Donald and Cheryl Warner

Location of Premises: 45 Willow Crescent

Date of Hearing: **May 9, 2013**

Time of Hearing: **07:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor.**

A public hearing will be held for a variance and/or special permit from

**5.09.2.j; Design Review**

**5.22.3.c; Exceptions to Maximum Floor Area Ratio (FAR) for Residential Units**

**5.43; Exceptions to Yard and Setback Regulations**

**5.60; Side Yard Requirements**

**8.02.2; Alteration or Extension**

Of the Zoning By-Law to construct a 180 square foot addition at the rear

At 45 Willow Crescent

Said Premise located in a S-10 (Single-Family) residential district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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

Don Warner, petitioner, presented the case on his own behalf.

Mr. Warner described 45 Willow Crescent as a single-family dwelling that was built in 1930. The neighborhood is comprised of single-family dwellings that are similar in overall size. The property is located to the south of Cleveland Circle and in the Fisher Hill area.

Mr. Warner, said he is now proposing to construct a 168 square foot addition at the rear of the dwelling, requiring side yard setback relief. The addition will increase the allowed floor area and requires relief. The proposal also requires relief for design review due to the increased floor area. There will be a copper roof installed on the proposed addition that will connect to an existing roofline, which will also be replaced with matching copper roofing materials.

Chairman Geller asked what the petitioner is proposing for counterbalancing amenities under **Section 5.43** of the Zoning By-Law. Mr. Warner said he will provide additional landscaping in the form of plants and shrubs.

The Chairman asked if anyone in attendance would like to speak in favor of the petition. No one spoke. The Chairman asked if anyone in attendance would like to speak in opposition to the proposal. No one spoke in opposition.

The Chairman called upon Timothy Richard, Planner, to deliver the comments of the Planning Board.

## **FINDINGS**

### **Section 5.09.2.j – Design Review**

Section 5.22.3.c – Exceptions to Maximum Floor Area Ratio (FAR) for Residential Units

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Floor Area Ratio</b>	.30	.37	.39	Special
<b>Floor Area Percentage</b>	100%	123%	130%	Special
<b>Total Floor Area</b>	2,487 s.f.	3,534 s.f.	3,702 s.f.	Special

\* Under *Section 5.22.3.c*, the Board of Appeals grant a special permit to increase the floor area of a dwelling by less than 350 square feet, provided the resulting floor area is not more than 150% of the permitted floor area.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard Setback</b>	10'	8'	6.67'	Special

\* Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 8.02 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure.

Mr. Richard said the Planning Board supports the requested relief to increase the floor area by 168 square feet. The area of the proposed addition is largely shielded by a row of trees from the affected properties. The design of the construction is compatible with the design of the rest of the

dwelling and is expected to be an attractive addition. The roof of the addition will be a standing seam copper roof and will extend to cover an existing roof. The Planning Board recommends that the applicant install additional landscaping to serve as a counterbalancing amenity required for a special permit.

**Therefore, the Planning Board recommends approval of the plans by Warner Project Management LLC, dated 2/14/13, and site plan by Medford Engineering & Survey dated 2/28/13 subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit final 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 a final site and landscape plan indicating all 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch said the Building Department has no objection to the requested relief. He said the relief could be issued by special permit and satisfactory counterbalancing amenities have been proposed. Mr. Yanovitch said if relief were to be granted the Building Department would ensure compliance with the Building Code as well as any conditions of the grant.

Board Member Zuroff asked Tim Richard if the Planning Board commented on the proposed counterbalancing amenities. Mr. Richard said there was not a significant discussion. Chairman Geller asked Mr. Yanovitch if the calculation of FAR was accurate given submission of a revised site plan. Mr. Yanovitch said the revision was for a dimension that was cited wrong but does not affect the FAR.

The Board deliberated on the merits of the special permit relief requested. The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 5.43, 5.22.3.c and 8.02** of the Zoning By-Law. 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.

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 submit final 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 a final site plan certifying the size of the parcel of land and a landscape plan indicating all 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

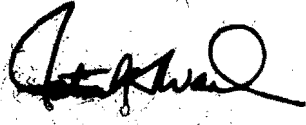
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Jesse Geller, Chairman

Filing Date: June 19, 2013

A True Copy

ATTEST:



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Patrick J. Ward  
Clerk, Board of Appeals

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