



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Christopher Hussey

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Town of Brookline
BUILDING DEPT.
TOWN OF BROOKLINE
Massachusetts

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0011

Petitioner Elizabeth Billowitz Lewis applied to the Building Commissioner for permission to construct three additions to her home at 240 Aspinwall Avenue. The application was denied and an appeal was taken to this Board.

On January 23, 2012, 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 June 7, 2012 at 7:30 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 his 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 May 17 and 24, 2012, 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: **BILLOWITZ ELIZABETH &SNYDER STEPHEN**

Owner: **BILLOWITZ ELIZABETH &SNYDER STEPHEN**

Location of Premises: **240 ASPINWALL AVE**

Date of Hearing: **JUNE 7, 2012**

Time of Hearing: **7:30 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

5.43; Exceptions to Yard and Setback Requirements, special permit required.

5.50; Front yard Requirements, variance required,

5.60; Side Yard Requirements, variance required, and

8.02/2 Alteration or Extension, special permit required.

of the Zoning By-Law to construct additions on the northwest and southeast sides of your home.

Said premise located in a **M-1.0 (Apartment House) 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.

**Enid Starr
Jesse Geller
Mark Zuroff**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr, Board Members, Jonathan Book and Mark Zuroff. The petitioner was represented by Attorney Jacob Walters of 27 Harvard Street, Brookline, MA 02445. Mr. Walters described the home at 240 Aspinwall Avenue as a very small dwelling on an

unusual lot, containing a significant slope to the rear of the property. Mr. Walters stated that the applicant Elizabeth Billowitz proposes to create small additions to the dwelling at the front and either side, resulting in an additional 218 Square feet. The addition on the east side of the dwelling would consist of enclosing the existing porch to create additional living space. The second addition would be to the west side of the dwelling and would be constructed partially in the same location as an existing shed. The final addition would be the creation of a new front entryway.

The east addition would provide for an additional 85 square feet of floor area, the west addition 83 additional square feet and the new front entryway 50 square feet of floor area. Mr. Walters said the relief sought would consist of a variance from Section 5.50 of the Zoning By-Law and Special Permits pursuant to Sections 5.43 and 8.02.2. In addressing the variance, Mr. Walters pointed out that the topography of the lot in question, particularly the severe slope from front to rear, made it impossible to construct an addition to the rear of the property and the very small lot area (2,292 sq. ft.) made it impossible for the applicant to enlarge her home other than by the proposed design before this Board. Mr. Walters stated that due to the size, shape and topography of the lot, which was unique in the zoning district, a literal enforcement of the Zoning By-Law would create a substantial hardship for the applicant. With regard to the remaining relief, Mr. Walters indicated that pursuant to Section 5.43 the Board could substitute dimensional requirements for the side yards and stated that the applicant was proposing additional landscaping on the lot as a counterbalancing amenity. Mr. Walters then added that the final special permit under Section 8.02.2 was required since the nonconforming side yards are being extended. Mr. Walters added that the applicant and her architect worked closely with the Planning Board staff to reduce the front yard setback and modified the overall design pursuant to

suggestions from the Planning Board. Mr. Walters concluded by saying that the applicant has reached out to her neighbors regarding the proposed additions and is not aware of any opposition to the proposed work.

The Chairman asked whether anyone in attendance wished to speak in favor or opposition to the proposal. No one rose to speak..

Courtney Synowiec then spoke on behalf of the Planning Board.

FINDINGS

Section 5.43 – Exception to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 8.02.2 – Alteration or Extension

	Required	Existing	Proposed	Finding
Front Yard Setback	15'	10'	5'11"	<u>Special Permit*/Variance</u>
Side Yard Setback	7.5'	4'3"	1'8"	<u>Special Permit*/ Variance</u>

* Under Section 5.43, the Board of Appeals may by special permit waive yard and setback requirements if the applicant provides counterbalancing amenities.

Ms. Synowiec said the Planning Board is not opposed to the proposed additions, as they allow for a reasonable and modest expansion of the dwelling. The Board is pleased the applicant was able to rework the design so that the additions do not come as close to the front lot line as before, and the new entryway is an attractive addition to the applicant’s proposal. The options for adding floor area to this dwelling are limited because of the undersized lot and dramatic change in

grade. The applicant does need to provide a new site plan to accurately reflect the revised proposal.

Therefore, the Planning Board recommends approval of the proposal and the plans prepared by Jonathan Raisz and last dated 4/23/2012, subject to the following conditions:

1. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final updated site plan, indicating all setbacks and dimensions for the proposed additions, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, final elevations, indicating all materials and salient dimensions, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, for the report from the Building Department. Mr. Yanovitch said that he was supportive of the proposed additions and indicated that the Building Department had no objections to the applicant's proposal. Mr. Yanovitch did indicate that there was a building code matter that would need to be discussed with the applicant's architect, but any modifications to conform to the Building Code would have no impact on the relief sought.

The Board then deliberated and each of the members signified his or her approval of the applicant's proposal, each indicating that he or she believed the grounds for relief had been met. The Board specifically found that due to the topography of the Petitioner's lot, which did not affect the zoning district generally, a literal enforcement of the Zoning By-Law would involve substantial hardship and that such relief could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-Law. The Board also found that grounds for a Special Permit had also been met.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a variance from Section 5.50 Front Yard Requirements and Special Permits pursuant to Sections 5.43 and 8.02.2. The Board also 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 issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final building elevations, stamped and signed by a registered architect; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.
2. Prior to issuance of a building permit, a final updated site plan, indicating all setbacks and dimensions for the proposed additions, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, final elevations, indicating all materials and salient dimensions, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision and all outstanding building code issues: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deed.

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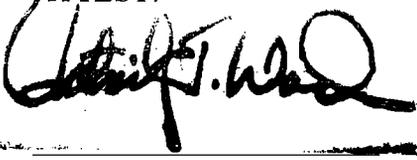
Unanimous Decision of
The Board of Appeals


Enid Starr, Chair

Filing Date: June 22, 2012

A True Copy

ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward", written over a horizontal line.

Patrick J. Ward
Clerk, Board of Appeals