



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

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0032

Petitioners, Moosa A. Moosa, applied to the Building Commissioner for permission to construct additions at the rear of 9 Reservoir Road. The application was denied and an appeal was taken to this Board.

On May 3, 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 21, 2012 at 7:15 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 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 May 31 and June 7, 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: **MOOSA E MOOSA**
Owner: **MOOSA E MOOSA**

Location of Premises: **9 RESERVOIR RD**
Date of Hearing: **June 21, 2012**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

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

- 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 5.60; Side Yard Requirements, special permit required**
- 8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to construct additions to their home

at **9 RESERVOIR RD**

Said premise located in a T-6 (**Two-family and attached 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, Enid Starr, and Board Members, Christopher Hussey and Jonathan Book. The case was presented by Clifford Freeman, attorney for the petitioner, whose business address is 7 Harvard Street Suite 230 Brookline, MA.

Attorney Freeman described the property as is a two-story brick two-family dwelling with a hip roof. The property is located right at the intersection of Heath Street and Reservoir Road. Two driveways serve the property, one on each side of the dwelling; the one to the east is shared with the neighboring property at 45 Heath Street. The rear yard immediately behind the dwelling is paved for parking, and there is a two-car garage at the dwelling's basement level. The far end of the rear yard is lawn. The neighboring uses are primarily two-family and single-family residential structures.

Attorney Freeman said his client is seeking relief for a rear addition. He said his client lives next door to the subject property and has lived there for 15 years; he has owned the subject property for 7 or 8 years. Attorney Freeman said the property is in need of upgrades to make the property more appealing to prospective tenants as well as improving the aesthetics of the property for the neighbors. He said the property is existing non-conforming and the addition will not increase the non-conformance. Attorney Freeman said the Planning Board had concerns regarding the extension of the occupancy of the dwelling from a two-family to a three-family. He said Mr. Moosa has no intention of extending the occupancy.

Chairman Enid Starr asked Attorney Freeman to confirm that there is no increase in the non-conformance. Attorney Freeman verified this to be accurate. The Chairman asked if the Board granted relief; what counterbalancing amenities would be provided. Attorney Freeman said Mr. Moosa will be submitting a landscape plan detailing various plantings in front of and on the side of the property.

The Chairman asked if anyone would like to speak in opposition of the request. No one rose to speak. The Chairman then asked if anyone wished to speak in favor of the request. No one rose to speak. It was noted that there were multiple letters supporting the request for relief.

Polly Selkoe, Assistant Director of Regulatory Planning , delivered the findings of the Planning Board.

FINDINGS

Section 5.60 – Side Yard Requirements

	Required	Existing	Proposed	Finding
Side Yard Setback	10'	8.7'	8.7'	Special Permit*

* Under §5.43, the Board of Appeals may by special permit waive dimensional requirements for yard and setback requirements if counterbalancing amenities are provided.

Section 8.02.2 – Alteration or Extension

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

Ms. Selkoe said the Planning Board is not opposed to this proposal, although some changes should be made. The addition’s overall appearance could be improved with more architectural detail, such as including corner boards, and the plans should be made consistent throughout, particularly regarding material and window details. Otherwise, the proposed location is reasonable, and the addition should not be a significant detriment to neighbors. The relief needed is minimal. Adequate counterbalancing amenities need to be provided, however, either by replacing the west-side driveway with landscaping, or with the installation of additional significant landscaping elsewhere on the lot.

During deliberations, Board Member Book noted that the relief requested seemed de minimis and he would consider favorable action on the request; Board Member Hussey agreed. Chairman Starr reported that the counterbalancing amenities seemed appropriate and she would be supportive of the requested relief.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that all the requested relief could be granted by special permit. The Board found that the petitioner has satisfied the requirements necessary for relief under **Sections 5.60**, to waive the dimensional requirements of the Zoning By-Law. Also the requirements of **Section 8.02.2**, and **9.05** of the Zoning By-Law were satisfied, and the Board 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:

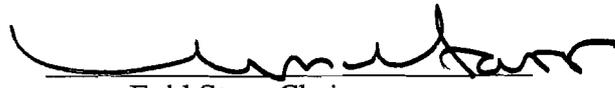
1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations, including all salient dimensions and material details, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping 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

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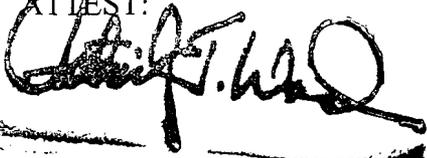
Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Filing Date: July 5, 2012

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals