



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

Town of Brookline *Massachusetts*

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TOWN OF BROOKLINE

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0037

Petitioner, Jacob Murray and Jennifer Azzara, applied to the Building Commissioner for permission to construct an addition and bulkhead to their home at 17 Henry Street. The application was denied and an appeal was taken to this Board.

On May 10, 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 July 5, 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 June 21 and 28, 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: **JACOB MURRAY & JENNIFER AZZARA**
Owner: **JACOB MURRAY & JENNIFER AZZARA**

Location of Premises: **17 HENRY STREET**
Date of Hearing: **July 5, 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 from:

1. **5.09.2.j; Design Review, special permit required.**
2. **5.22.3; Exceptions to Maximum Floor Area Ratio (FAR) for Residential Units, special permit required.**
3. **5.43; Exception to Yard and Setback Regulations, special permit required.**
4. **5.60; Side Yard Requirements, variance required.**
5. **5.61; Projection into side yard, variance required.**
6. **5.70; Rear Yard Requirements, variance required.**
7. **5.90; Minimum Landscaped Open Space, variance required**
8. **5.91; Minimum Useable Open Space, variance required.**
9. **8.02.2; Alteration or Extension, special permit required**

of the Zoning By-Law to construct an addition in the rear yard and move a bulkhead to the side yard of their home at **17 HENRY STREET**

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**

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 Jonathan Book and Christopher Hussey. The case was presented by the Attorney for the petitioner, Robert L. Allen, Jr., of 300 Washington Street, 2nd floor, Brookline, MA 02445.

Attorney Allen introduced the Petitioner Jake Murray and his architect Chris Hosford. The Petitioner and his wife live at 17 Henry Street and have two kids in the Lincoln school. 17 Henry Street is a 2.5 story single family home that was constructed in 1900. The home is located on a pre-existing nonconforming lot that is undersized and also does not meet the minimum lot width for the M-1.0 zoning district. There is an enclosed porch and a bump out on the rear of the house and a narrow driveway to the side of the house. The property is near the intersection of Cypress and Henry Streets and the surrounding uses are primarily residential with some commercial on Cypress Street. The Petitioner is proposing to construct a 150 square foot single story addition on the rear of their home, replacing the existing rear vestibule and bump out, which will allow them to enlarge the kitchen and create a new mudroom. The project came about after the Petitioner detected the rear portion of the kitchen was sinking and some structural upgrades were going to be needed. The existing kitchen is about 90 sf and the proposed is 160 sf. In order to accomplish this addition the bulkhead leading down to the unfinished basement would need to be moved from the rear yard to the side yard. Attorney Allen informed the Board that there was neighborhood support and unanimous support from the Planning Board.

At this point in the hearing, the architect Chris Hosford went through the design and answered any technical questions the Board had, and then turned it back to Attorney Allen who informed the Board that the Petitioner was cited under the following section of the Town of Brookline Zoning By-Law: 5.09.2.j Design Review; 5.20 Floor Area Ratio; 5.60 & 5.70 Side and Rear Yard Setbacks respectively; Section 5.91 Minimum Useable Open Space and 8.02.2 Alteration or Extension.

Attorney Allen began explaining that pursuant to Section 5.09.2.j, Design Review, any exterior addition for which a special permit is requested pursuant to Section 5.22 requires a special permit

subject to the design review standards listed under Section 5.09.4(a-1). Attorney Allen suggested that, as outlined in the Planning Board Report, the relevant conditions have been met.

Regarding the increase of the Floor Area from the existing 97% to 104%, Attorney Allen reminded the Board that pursuant to *Section 5.22.3.c*, the Board of Appeals may grant a special permit for an increase in floor area up to 150% of the allowed FAR provided that the addition is less 350 square feet. Here the addition is 150 sf. Attorney Allen clarified that the side yard setback, which is currently 1.5 ft, is a pre-existing non-conforming condition and will not change. The rear yard, which requires 30 ft, is currently 14 ft and will change under this proposal to 6.8 ft. Attorney Allen suggested that under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant is proposing to install additional landscaping as a counterbalancing amenity and he will also be replacing a portion of the existing asbestos shingles in the rear of the house, which was supported by the Planning Board.

Attorney Allen suggested that the conditions of Section 8.02.2 which requires a special permit to alter a pre-existing non-conforming structure or use have been met since: (1) The addition is in the rear of the property and the moving of the bulkhead is not visible to anyone and there is no change to streetscape, so the specific site is an appropriate location for such a use; (2) the small addition, will not adversely affect the neighborhood and has support from immediate abutters; (3) no nuisance or serious hazard to vehicles or pedestrians would be created; (4) the counterbalancing amenities soften any impact, and; (5) adequate and appropriate facilities are being provided for the proper operation and proposed use.

Finally, with respect to Useable Open Space, Attorney Allen reminded the Board that it has consistently held that the open space required under the code, here 20%, should be directly related to the additional floor area being added, here 150 sf. Board member Book confirmed that the Board has

looked only at compliance with the required percentage for the additional FAR and asked the architect to clarify the useable open space. Mr. Hosford reviewed a plan that showed an existing 12% or 227 SF of useable open space and the proposed plan which would have 18% or 405 sf. Based on this, Attorney Allen suggested that a variance is not needed, and the Useable Open Space is in compliance.

Chairman Starr asked whether anyone in attendance wished to speak in favor of or against the proposal. No one rose.

Courtney Synowiec, Planner, delivered the findings of the Planning Board.

Section 5.09.2.j – Design Review: Any exterior addition for which a special permit is requested pursuant to *Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations)* requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – The addition is replacing an existing vestibule and bump out on the rear of the home and should not disturb any significant plantings.
- b. Relation of Buildings to Environment – The new addition is a single story and should not cause any shadowing on neighboring properties.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The addition will not be visible from the street and will have no impact on the streetscape.
- d. Open Space – The addition will result in the loss of 189 s.f. of landscaped open space and 34 s.f. of usable open space. The landscaped open space will still comply, but the usable open space, which is currently nonconforming will be slightly more nonconforming.

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio	1.0	.97	1.04	Special Permit*
(% of allowed)	100%	97%	104%	
Floor Area (s.f.)	2,159	2,097	2,247	

* Under *Section 5.22.3.c*, the Board of Appeals may grant a special permit for an increase in floor area up to 150% of the allowed FAR provided that the addition is less 350 square feet.

Section 5.60 – Side Yard Setback

Section 5.61 – Projections into Side Yards

Section 5.70 – Rear Yard Setback

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Useable Open Space

Dimensional Requirements	Required	Existing	Proposed	Relief
Side Yard Setback	7.5'	1.5'	1.5'	Pre-Existing
Side Yard Setback (bulkhead)	4'	n/a	4'	Complies
Rear Yard Setback	30'	14.1'	6.8'	Special Permit*
Landscaped Open Space	225 s.f.	596 s.f.	407 s.f.	Complies
Usable Open Space	450 s.f.	261 s.f.	227 s.f.	Variance

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant is proposing to install additional landscaping as a counterbalancing amenity.

Section 8.02.2 – Alteration or Extension

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

Ms. Synowiec reported that the Planning Board is supportive of this proposal. The addition is modest in size, will help improve the functionality of the home and is complementary to the existing structure. The new addition will have no impact on the streetscape and should have minimal impacts on neighboring properties as the addition is only a single story and many of the surrounding structures are also built very close to the lot lines.

Therefore, should the Board of Appeals find the statutory grounds for a variance are met, the Planning Board recommends approval of the plans by Helios Design Group, dated 5/3/2012, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final 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 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 stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovich, Chief Building Inspector, for the report from the Building Department. Mr. Yanovitch stated that the Building Department is supportive of this modest proposal and that should the Board grant the requested relief that he would ensure that the project is completed in accordance with the approved plans and the requirements of the State Building Code.

The Board, having heard all the testimony, deliberated on the merits of the application. The Board discussed the addition and found that 150sf was reasonable and felt that any impact would be minimal. They questioned whether the Petitioner discussed this with all the abutters and that was confirmed. The Board found that no relief was needed for the Useable Open Space as the Petitioner was able to provide the required percentage of Useable Open Space for the requested increase in the FAR.

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 outlined by Attorney Allen. Also, 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.

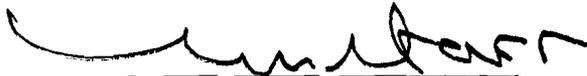
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations 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 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 stamped and signed by a registered architect; 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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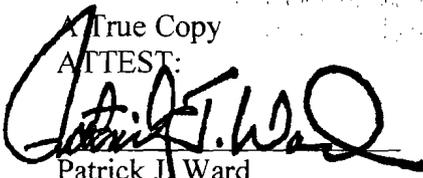
Filing Date: July 23, 2012



Enid Starr, Chairman

A True Copy

ATTEST:



Patrick J. Ward
 Clerk, Board of Appeals