



Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Christopher Hussey

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Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0049

Petitioners, Robert and Amy Weinberg, applied to the Building Commissioner for permission to construct two single story additions on the rear of their home at 25 Copley Street. The application was denied and an appeal was taken to this Board.

On August 2, 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 August 23, 2012, at 7:15p.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 August 9 and August 16, 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: **ROBERT WEINBERG AND AMY WEINBERG**

Owner: **ROBERT WEINBERG AND AMY WEINBERG**

Location of Premises: **25 COPLEY ST.**

Date of Hearing: **August 23, 2012**

Time of Hearing: **07:15 PM**

Place of Hearing: **Selectmen's hearing room, 6th floor**

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

1. **5.20; Floor Area Ratio, variance required**
2. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
3. **5.70; Rear Yard Requirements, variance required**
2. **8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to Construct a new addition requiring BOA relief
at **25 Copley Street.**

Said premise located in an **S-7 (Single Family)** residence 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 Lisa Sarafin and Mark Zuroff.

Attorney Jacob Walters, Business address 27 Harvard Street, Brookline, MA presented the case for the petitioners.

Mr. Walters described the property at 25 Copley Street as a large single family house that was constructed in 1909. The surrounding uses are primarily single family residences.

Attorney Walters said his clients are proposing to add two small additions at the rear of the property, one to create a mud room and the other to enlarge the kitchen. The two additions would add a total of 61.2 square feet of additional living space. Mr. Walters said that his client's home is pre-existing, non-conforming as it is a large home on a small lot and exceeds the allowable Floor Area Ratio.

Mr. Walters said, as originally constructed, the structure exceeds the allowable FAR. Attorney Walters said a literal enforcement of the Zoning By-Law would result in a substantial hardship for the petitioner. He went on to say that this situation is the kind of situation a variance was designed to solve. He said the intent is to take a house from another era and bring it more closely into the 20th century and make it easier for the family to age in place. Attorney Walters pointed out two cases in support of his clients' request for a variance, 22 Borland Road and 16-18 Hawes Court, each of which the Zoning Board of Appeals approved.

Chairman Geller asked for a clarification of the FAR calculations. Michael Yanovitch, Chief Building Inspector, said that based on the FAR calculations made and submitted by the petitioners' architect, the petitioner's structure is over the allowable FAR. The additional FAR would further exacerbate the existing non-conformity.

The Chairman then asked if anyone in attendance wished to speak in support of the petitioners' proposal. Tom Wellington, of 18 Elba Street, Brookline, spoke in favor of the proposal.

Chairman Geller asked if anyone wished to speak in opposition. No one rose to speak.

Lara Curtis Hayes, Planner, delivered the findings of the Planning Department.

FINDINGS

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio	.35	.53	.54	Variance
(% of allowed)	100%	151%	154%	
Floor Area (s.f.)	2,450	3,711	3,772	

Section 5.70 – Rear Yard Setback

Dimensional Requirements	Required	Existing	Proposed	Relief
Rear Yard Setback	30'	31.3'	28.3'	Special Permit*

* 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 provide 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. Hayes said the Planning Board is supportive of this proposal to construct two rear additions. The additions are modest in size and appropriately scaled for the building and would improve the functionality of the existing kitchen. The Planning Board notes that the home currently exceeds the maximum floor area that could be allowed for the property but finds an additional 61.2 square feet of floor area to be rather de minimis.

Therefore, should the Board of Appeals find the proposal meets the statutory grounds for a variance, the Planning Board recommends approval of the plans by I-Kanda Architects, dated 6/27/2012, 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 Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no issue with the request for relief. The structure is designed well and if the Board grants relief the Building Department will ensure compliance with the Building Code.

During deliberation Board Member Serafin expressed concern that the requirements to grant a variance have not been met. Board Member Zuroff agreed with Board Member Serafin.

Chairman Geller said he believes the case meets the requirement under **Section 5.43** of the Zoning By-Law and **Section 9.05** of the Zoning By-Law but that it does not seem to meet the requirements necessary to grant a variance. Lara Curtis Hayes, planner, suggested that the applicant recalculate the FAR to determine whether it is possible to grant relief solely based on special permits. Chairman Geller asked Attorney Walters if he wanted to request a continuance to give his client time to re-calculate the FAR. Mr. Walters requested a continuance, which was granted by the Chairman.

October 11, 2012 7:00PM 25 Copley Street continued:

Present at the hearing was Chairman, Jesse Geller and Board Members Lisa Sarafin and Mark Zuroff. Attorney Jacob Walters, Business address 27 Harvard Street, Brookline, MA presented the case for the petitioners.

Attorney Walters said he is happy to report that the architect was able to revise his calculations through careful re-measurement and reading of the Zoning By-Law. He said the result is the proposal would qualify for a special permit under Section 5.22.3.c of the Zoning By-Law in that the increased floor area is less than 350 square feet and is not more than one hundred fifty (150%) percent of the permitted Gross Floor Area. Mr. Walters stated that all other relief could be granted by Special Permits, under Section 5.43 of the Zoning By-Law and Section 8.02.2 of the Zoning By-Law. In this case the petitioners are proposing additional landscaping at the rear of the property as a counterbalancing amenity under Section 5.43 of the Zoning By-Law. Mr. Walters went on to say that the requested Special Permits conformed to the requirements of Section 9.05 of the By-Law in that the location of the additions are appropriate, no nuisance would be created and traffic would in no way be affected. Mr. Walters concluded his remarks by saying that all the abutters have sent letters of support for the petitioners' project and urged the Zoning Board of Appeals to grant the requested Special Permits.

Board Member Zuroff asked what the petitioners would provide for counterbalancing amenities. Mr. Walters confirmed there would be additional landscaping provided at the rear of the property. Chairman Geller said that he believes the proposal meets the requirements under Section 9.05 of the Zoning By-Law for the reasons specified by Mr. Walters, and is worthy of a special permits under Section 5.43 of the Zoning By-Law and Section 8.02 of the Zoning By-Law. Board Member Serafin agreed with Chairman Geller.

The Zoning Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits as requested by the petitioners and that the petitioners have satisfied the requirements necessary for relief under Sections

5.22.3.c, 5.43, 8.02.2, 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.

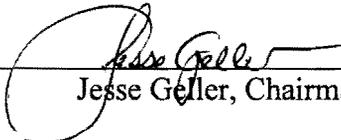
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall 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

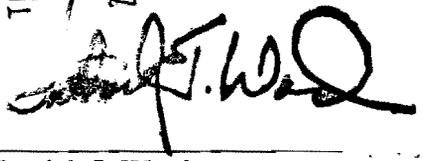
The Board of Appeals

Date: November 5, 2012



Jesse Geller, Chairman

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Patrick J. Ward
Clerk, Board of Appeals