



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

RECEIVED  
2013 MAR 13 AM 11:03  
TOWN OF BROOKLINE

# Town of Brookline Massachusetts

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0064

Petitioner, Kenneth C. Chan, applied to the Building Commissioner for permission to convert an existing deck above the garage to a three season room. The application was denied and an appeal was taken to this Board.

On November 15, 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 January 24, 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 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 January 3, 2013 and January 10, 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: Kenneth C. Chan**

Owner: **Kenneth C. Chan**  
Location of Premises: **709 Boylston Street**  
Date of Hearing: **January 24, 2013**  
Time of Hearing: **7:00 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:

1. **5.09.2.a; Design Review**
2. **5.20; Floor Area Ratio**
3. **5.43 – Exceptions to Yard and Setback Regulations**
4. **5.70 – Rear Yard Requirements**
5. **8.02.2; Alteration or Extension**

of the Zoning By-Law to construct a parking area **to convert an existing deck above the garage to a three season room**

Said premise located in a **S-15 (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.***

**Enid Starr  
Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Starr and Board Members Book and Zuroff. The case was presented by the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Kenneth C. Chan, the owner of 709 Boylston Street.

The hearing was brought to order at 7:00pm. Attorney Allen stated that the structure on the property is a brick Colonial Style single family dwelling, built in 1925 and located on the corner of Boylston Street and Chestnut Hill Avenue. Mr. Chan has lived there with his wife and two children since 1996. The Chan's have redone the entire interior of the house and made numerous repairs to the open patio above the garage in an attempt to stop the leaking into the garage. Mr. Chan has several antique cars in the garage that have suffered damage as a result of the leaks. As a result, he is proposing to convert an existing deck above the garage to a three season room but really a greenhouse.

The proposed deck is 270 square feet and is located on the part of the dwelling closest to the property line with Chestnut Hill Avenue furthest away from any neighbor. The Planning Board met last month and unanimously supported the applicant's proposal. There has been no opposition or objections to this proposal.

The petitioner was cited for design review under zoning by-law Section 5.09.2.a, which states that any exterior addition for which a special permit is requested on a lot located within 100 feet of Beacon Street, Commonwealth Avenue, Boylston Street, Harvard Street, Brookline Avenue, or Washington Street, requires a special permit subject to the design review standards listed under Section 5.09.4(a-1). 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 – There will be no disruption to any landscaping.
- b. Relation of Buildings to Environment – The new three season room is a brick structure with storm windows and should not cast significant shadows on neighboring properties, public open space, or streets.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The three season room will be on the front side of the dwelling to the east, and will be primarily visible from Chestnut Hill Avenue. The proposed addition will be constructed with matching brick, and storm windows.

d. Open Space – The proposal will not have any effect on the usable or landscaped open space on the property.

The petitioner was cited under Section 5.43 and Section 5.70 for Exceptions to Yard and Setback and Rear Yard Requirements, respectively. While the petitioner could seek relief under Section 5.43, which states that the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided, nothing in the petitioner's request requires a change in setbacks and zoning relief is not required.

Member Zuroff questioned how a variance standard could possibly be met when the existing dwelling is already considerably over the allowable FAR. Attorney Allen did point out that the petitioner was cited for Floor Area Ratio under Section 5.20, however, Mr. Chan's intention is to create a greenhouse, which will not be a heated space and would have removable windows. If Mr. Chan were to put in all screens instead of windows, the addition would be treated as an unenclosed porch and no FAR relief would be required. Attorney Allen suggested that this room will be screened in most of the year, however, storm windows will be put in during the inclement weather in order to protect the plants. Thus, the removable windows were akin to screens and, based on the definition of "Porch" in the Zoning By-Law, should be treated as an unenclosed porch, and thus the additional FAR would not count.

Finally, under Section 8.02.2, a special permit is required to alter a pre-existing non-conforming structure or use. Pursuant to section 9.05, the Petitioner meets the elements required for a special permit. The specific site is an appropriate location for such a use, structure, or condition. The use as developed will not adversely affect the neighborhood. The petitioner intends to build the room out of brick, match the windows, the new roof will blend with the existing roof and additional landscaping will be added for counterbalancing amenities. There will be no nuisance or serious hazard to vehicles or

pedestrians. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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

Timothy Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board, stating the Planning Board is supportive of this proposal. It is not anticipated that the additional floor area will have a negative effect on the surrounding neighborhood. The proposal will not expand the existing footprint of the structure, and will be entirely above the existing two car garage. The new brick will match the existing brick on the dwelling, and will not look out of place. The Planning Board feels that the proposed storm windows would look more appropriate if they matched the eight over eight windows on the rest of the structure. The Planning Board would like to see the new roof, on the three season room, constructed with materials that match or blend with the existing roof on the dwelling. The Planning Board recommends that the applicant provide additional landscaping to serve as a counterbalancing amenity.

Therefore, if the Board of Appeals finds that the statutory requirement for a variance are met, the Planning Board recommends approval of the plans by Choo & Company, Inc., dated 9/25/12, with revisions to the windows, so they match the existing windows, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final elevations and a landscaping plan, indicating the provided counterbalancing amenity, 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 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.

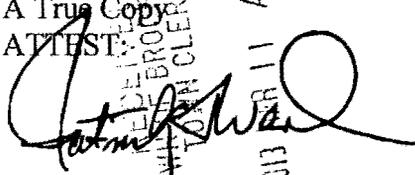
building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals



Enid Starr, Chairman

Filing Date: March 11, 2013

A True Copy  
ATTEST:  
  
2013 MAR 11 A 8  
TOWN CLERK

Patrick J. Ward  
Clerk, Board of Appeals