



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2011-0022

Petitioners, Elisabeth Lighthart and James Mitchell, applied to the Building Commissioner to demolish an existing one-story addition at the rear of their home at 16 White Place and construct a two-story addition in its place. The application was denied and an appeal was taken to this Board.

On March 3, 2011, 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 May 19, 2011 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 May 5 and 12, 2011, 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: **ELISABETH LIGTHART & JAMES MITCHELL**  
Owner: **Exarhoulakos Life Estate Demetrious c/o Kalos Aglaia Eileen**

Location of Premises: **16 WHITE PL**  
Date of Hearing: **MAY 19, 2011**  
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. 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 2. 5.50\*; Front Yard Requirements, variance required.**
- 3. 5.60; Side Yard Requirements, variance required.**
- 4. 5.70\*; Rear Yard Requirements, variance required.**
- 5. 5.72\*; Accessory Buildings in Rear Yard, variance required.**
- 6. 5.74; Fences and Terraces in Rear Yards, variance required.**
- 7. 5.91; Maximum Usable Open Space, variance required.**
- 8. 8.02.1&2; Alteration or Extension, special permit required.**

of the Zoning By-Law to Demolish addition to south (rear) elevation of house at **16 WHITE PLACE**.

Said premise located in a **T-5 (two-family and attached 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, Jonathan Book and Christopher Hussey. The case was presented by the Petitioner Elisabeth Lighthart. Due to a scheduling conflict, the hearing was moved to the Selectmen's conference room, immediately adjacent to the hearing room. Appropriate notice of the change in location was posted throughout Town Hall.

Ms. Lighthart said that since her home is located in the White Place National Register District, she appeared before the Preservation Commission to request permission for the demolition and new construction. She reported that the Commission reacted favorably asking only that wooden gutters should be used to replace those that currently exist.

Ms. Lighthart described her property as a 2 ½ story single family home that was constructed in 1830 with timber from the Punch Bowl Tavern. The home was moved to White Place in 1854 by Samuel Walker, the developer of White Place. There is a single-story rear addition that was subsequently constructed in what appears to be several different phases and is currently experiencing some structural issues. There is also a single car garage on the property that was constructed in 1922 and also has structural issues and is unsafe to use. The property is surrounded primarily by single family homes and smaller multifamily structures and the MBTA trolley tracks about the property to the rear.

Ms. Lighthart, said that she is proposing to demolish the garage and single-story rear addition and construct a new two-story addition. The two-story addition will be in roughly the same footprint as the existing addition but will extend slightly further into the yard. The new addition will encompass approximately 800 square feet of new gross floor area and with an additional 400 square feet in the basement to accommodate a recreation room. The addition will contain two bedrooms and a bathroom on the second floor and a new kitchen on the first floor. It will be clad in wood shingles with an asphalt roof to match the existing house. She will also be constructing a new rear deck that will measure roughly 18' x 14' and will be 2' above grade. Finally, she said, they are proposing to refurbish and insulate the walls of the original section of the house, rebuild the chimney, install new gutters, patch and paint the siding, paint and repair the windows, replace the storm windows and patch and paint the front stair. In addition to the work on the house, they plan to make improvements to the site. She said they are proposing to demolish the existing garage and replace it with usable open space. Ms. Lighthart said that

they planned on installing a new fence in the rear yard, partly due to the fact that there is no fence behind the garage and there will be gap when it is removed. She would like to install a ten foot wood fence to screen the MBTA tracks and wires, in the same style as the neighboring fences at 20 White Place and 12-14 White Place which will connect to portions of the new rear deck. Finally, since she has only one car they eventually intend to remove some of the paved driveway that currently exists and replace the pavement with a vegetative strip.

Addressing a question from the Board regarding counterbalancing amenities to receive dimensional relief, Ms. Lighthart responded that the extensive exterior renovations to their home, removal the existing chain link fence in the front yard, installation of landscaping throughout their property and removal of some pavement paved surface from their driveway and corresponding addition of usable open space are the proposed counterbalancing amenities. Ms. Lighthart noted that the Preservation Commission has granted permission for demolition of the garage as well.

Board Member Book noted that the requested height of the fence along the rear property line exceeds the maximum height allowed by three feet and requires a zoning variance. He asked the petitioner what irregularities, shape or topography, made her lot unique in the neighborhood. Ms. Lighthart responded that the proximity of the MBTA tracks and the steep slope especially near the garage made the wires dangerously close to anyone on her lot. She said that the fence was desired particularly in this section to provide an increased level of protection for her children than would be available otherwise. Her immediate abutter at #14 White Place also spoke about the dramatic slope at this area of the tracks. Mr. Hussey inquired whether the fence had to be ten feet high in the area of the deck and the petitioner responded that it could be lower.

Chairman Geller asked whether anyone in attendance wished to speak in favor of or against the proposed relief.

Seth Kaplan, an immediate abutter at 14 White Place, said that he was generally in favor of the project, however, he had concerns about the height of the six foot fence planned along their shared property line along the side yard of the petitioner’s property. He said a fence of this height would cause shadows which would make his garden non-productive. Also, he said that a gate should be installed in the fence to afford an extra margin of safety for his family and that of the owners of 12 White Place to the rear in the event a fire prevented egress at the driveway. Mr. Kaplan suggested that the Board consider providing conditions to this effect should they consider approval of the requested relief.

Two other neighbors appeared and expressed support for the proposed relief indicating that the proposal would fit well with the neighborhood. No one spoke against the proposed relief.

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

**Section 5.50 – Front Yard Setback**

**Section 5.60 – Side Yard Setback**

**Section 5.62 – Fences and Terraces in Side Yards**

**Section 5.70 – Rear Yard Setback**

**Section 5.74 – Fences and Terraces in Rear Yards**

<b>Dimensional Requirements</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Front Yard Setback	15'	2.6'	2.6'	Pre-Existing Nonconforming
Side Yard Setback (addition)	7.5'	1.4'	1.4'	Special Permit*/Variance
Rear Yard Setback	30'	14.6'	14.6'	Special Permit*/Variance
Deck Setback (rear)	15'	n/a	Est. 1'	Special Permit*/Variance
Deck Setback (side)	6'	n/a	Est. 1'	Special Permit*/Variance
Fence Height	7'	n/a	10'	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 do extensive exterior renovations to their home, remove the chain link fence in the front yard, install landscaping throughout their property and remove paved surface from their driveway as counterbalancing amenities.

**Section 8.02.2 – Alteration or Extension**

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

Ms. Synowiec reported that the Planning Board was supportive of this proposal to construct a new rear addition and make improvements to the site. The Planning Board believed the proposed addition is sensitive to the context of the existing structure without having an overly “faux-historic” appearance and that the improvements to the building envelope should help ensure this home will last for many years to come. The Planning Board was also supportive of the construction of the rear deck; while it is close to the side lot line it abuts a garage wall and as the rear abutter is the MBTA, it appears the deck will not have a detrimental impact on neighboring properties. Finally, the Planning Board felt the applicant met the grounds for a variance to construct a 10’ high fence due to the steep slope of the lot and the presence of the MBTA trolley tracks below. Therefore, the Planning Board approved the plans by James Carr, dated 4/1/11, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations indicating all salient dimensions and materials shall be submitted 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 the location and species of new plantings, the locations and heights of any new fencing, and the location of any removed paved areas 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 receive all necessary approvals from the Preservation Commission for demolition.
4. 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 Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard stated that the petitioner was working on the home in two phases. Knowing that relief was required for the planned addition, they started working on the front section,

gutting the plaster, installing new insulation, wiring and plumbing before re-plastering the walls. During demolition, he said, they found many artifacts which they gave to the Preservation Commission. They also decided to leave the original beams in the ceiling exposed, he said. He reported that they have been doing a great job and this home that recently had fallen on hard times was becoming a genuine asset to the neighborhood. Speaking about the proximity of the planned rear deck to the property line, Mr. Shepard said he would prefer they did not make it any closer than the eighteen inches enjoyed by the addition. This, he said would provide enough area to plant bushes and or be able to maintain the space. Mr. Shepard said that the Building Department was supportive of the relief requested and would insure that the work is prosecuted in accordance with the requirements of the Building Code.

During deliberations, the Board agreed that the irregular topography and proximity of the MBTA tracks, especially the wires, satisfied the requirements for the grant of a variance for the fence as provided in Section 10 of M.G.L. ch. 40A. Also, all agreed that the proposed deck should not encroach on the side setback any more than the proposed addition (i.e. no closer than 18 inches to the side lot line). As to the suggested condition requested by the abutter regarding the height and provision for a gate along the side lot line, the Board stated they could find no nexus between the fence which could be constructed by right and the requested additional conditions. They stated that it was a private property issue that should be settled by the neighbors themselves.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant the requested relief 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.

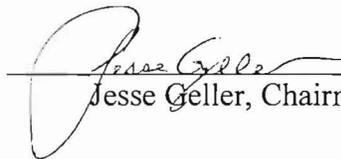
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. **The rear deck shall be no closer to the westerly side lot line than the rear addition and gutters, if provided, shall be of wood.**
2. **Prior to the issuance of a building permit, final plans and elevations indicating all salient dimensions and materials shall be submitted 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 a final landscape plan indicating all proposed counterbalancing amenities, including the location and species of new plantings, the locations and heights of any new fencing, and the location of any removed paved areas subject to the review and approval of the Assistant Director of Regulatory Planning.**
4. **Prior to the issuance of a building permit, the applicant shall receive all necessary approvals from the Preservation Commission for demolition.**
5. **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

Filing Date: June 17, 2011

A True Copy  
ATTEST:

  
\_\_\_\_\_  
Jesse Geller, Chairman

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK

2011 JUN 17 A 8:56

A handwritten signature in black ink, reading "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a distinct "Q" at the end.

Patrick J. Ward  
Clerk, Board of Appeals