



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

Town of Brookline

Massachusetts

Town Hall, 1st 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. 2010-0012

Petitioners, Mark Pender and Katie Bacon, applied to the Building Commissioner for permission to construct a two level addition at the rear of the property at 33 Fairmount Street. The addition would enclose an existing porch and create a new bay window projection. The application was denied and an appeal taken to this Board.

On March 11, 2010 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. The Board then fixed the date of May 6, 2010 at 7:15 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of the hearing. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of 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 April 15 and 22, 2010 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

**TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS**

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: Mark Pener

Owner: Mark Pener

Location of Premises: 33 Fairmount Street

Date of Hearing: May 6, 2010

Time of Hearing: 7:15 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th Floor.

A public hearing will be held for a Special Permit from:

- 1. 5.09.2. j; Design Review, special permit required.**
- 2. 5.20; Floor Area Ratio; variance required.**
- 3. 5.22.c.3; Exceptions To Maximum Floor Area Ratio (FAR) Regulations For Residential Units, special permit required.**
- 4. 5.43; Exceptions To Yard And Setback Regulations , special permit required.**
- 5. 5.60; Side Yard Requirements , variance required.**
- 6. 5.61; Projections Into Side Yards , variance required.**
- 7. 8.02.1.a; Alteration or Extension, special permit required.**
- 8. 8.02.2; Alteration or Extension; special permit required**

of the Zoning By-Law to construct a two story addition, enclose a rear porch, and add a bay window in the side yard, per plans at 33 Fairmount Street.

Said premises is located in an S-15 (single family) residential zoning 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 a public hearing was held by this Board. Members

resent were Chairman Enid Starr, Jonathan Book and Lisa Sarafin.

The Petitioner was represented by Attorney Jacob Walters of Goldenberg and Walters of Seven Harvard Street in Brookline. Mr. Walters stated that all the requested relief could be granted by special permits, pursuant to Sections 5.09.2.j, 5.22.c.3, 5.43 and 8.02.2 of the Zoning By-Law. Mr. Walters stated that the petitioners are seeking to add a small addition to the rear of the dwelling to create a larger kitchen and a study. Mr. Walters added that the addition will use historic materials which will bring the look of the dwelling more in character with an 1886 era house. Mr. Walters stated that the Planning Board found that the proposed design was attractive and appropriate and mentioned that there would be no affect on any existing trees or landscaping, that the addition would fit with the existing house and the neighborhood and that there would be little or no impact upon the neighborhood. Mr. Walters mentioned that an environmental impact statement had been submitted for the Board's consideration. Mr. Walters stated that the proposal met the guidelines for bonus floor area ratio in accordance with Section 5.22.c.3, which allows an addition of less than 350 square feet where the end result did not exceed 150% of the allowed gross floor area. Mr. Walters stated that the proposed addition was less than 350 square feet and would not exceed 150% of the gross floor area. Mr. Walters added that the lot was small, containing just over 9,200 square feet in an S-15 zoning district. Mr. Walters added that even with the addition, 33 Fairmount Road would be smaller than many of the other homes in the neighborhood. With reference to the side yard setback violations, Mr. Walters stated they were preexisting conditions and under Section 5.43 could be substituted for other dimensional requirements if the applicants provided counterbalancing amenities. Mr. Walters pointed out that the applicants were proposing to extend the patio at the rear of the premises and were proposing additional landscaping at the rear and side of the dwelling. In addition, the applicants planned to extend their existing driveway which would allow them to move their automobile out of the

front yard area. Mr. Walters then addressed the final special permit, relief from Section 8.02.2 and stated it was needed only because the existing side yards are non-conforming but the non-conformity was not being increased. Mr. Walters then addressed Section 9.05 of the Zoning By-Law and stated that the Special Permits being sought were within the conditions cited by Section 905, specifically the site is appropriate for the proposed addition, the use will not adversely affect the neighborhood and will not create a nuisance to anyone. Mr. Walters concluded by referring to the letters of support received from neighbors that were previously submitted.

The Chairman asked if any members of the public wished to be heard in favor or in opposition to the proposal. No one wished to be heard.

The Chair then called upon Courtney Synowiec, planner. Ms. Synowiec stated that the Planning Board was supportive of the proposed addition, finding it modest, attractively designed and having no impact upon the neighborhood. Ms. Synowiec concluded by stating that the Planning Board recommended approval of the petition, subject to the following conditions:

1. Prior to the issuance of a building permit the applicants shall submit final plans and elevations indicating all materials subject to the review and approval of the Assistant Director of Regulatory Planning,
2. Prior to the issuance of a building permit the applicants shall submit a final landscaping plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning, and
3. Prior to the issuance of a building permit, the applicants shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision, a) a final site plan, stamped and signed by a registered architect or land surveyor, and b) final building elevations stamped and signed by a registered architect, and c) evidence that the Board of Appeals decision has been recorded with the Registry of Deeds.

The Chair then called upon Michael Shepard, the Brookline Building Commissioner. Mr. Shepard stated that the addition was entirely appropriate for the neighborhood, appeared well designed and had the support of the Building Department.

The Chair closed the hearing and the Board began its deliberations. All the members of the Board indicated that the relief sought was appropriate under the circumstances and specifically found that the grounds for issuance of the Special Permits were in compliance with Section 9.05 of the Zoning By-Law.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously, to grant special permits under Sections 5.09.2.j, 5.22.c.3, 5.43 and 8.02.2 to allow the proposed addition with the following conditions:

1. **Prior to the issuance of a building permit the applicant shall submit final plans and elevations indicating all materials 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, a) a final site plan, stamped and signed by a registered architect or land surveyor, and b) final building elevations stamped and signed by a registered architect, and c) 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: _____

A True Copy
ATTEST:

Patrick J. Ward

Patrick J. Ward
Clerk, Board of Appeal

Filing Date:

A True Copy:

RECEIVED
TOWN OF BROOKFIELD
TOWN CLERK

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