



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. 2010-0017

Petitioners, James and Harriet Kessler applied to the Building Commissioner for permission to construct an addition to their home at 66 Risley Road. The application was denied and an appeal was taken to this Board.

On 15, April 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 and fixed 3, June 2010, 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 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 13 and 20, May 2010 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:

Petitioners: Kessler, James E and Harriet D
Owner: Kessler, James E and Harriet D

Location of Premises: 66 Risley Road
Date of Hearing: 06/03/2010
Time of Hearing: 7:00 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.b.1)b; Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, special permit required.
3. 5.22.3.c; 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. 6.04.5.c.2; Design of All Off-Street Parking Facilities, variance required.
7. 8.02.2; Alteration or Extension, special permit required

of the Zoning By-Law to add an addition requiring BOA relief per plans at 66 RISLEY RD BRKL.

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 Mark Zuroff. Mr. Kessler presented his case before the Board.

Mr. Kessler described his home as a two-story clapboard cape-style home that was constructed in 1940. There currently is a single-story bump-out (which measures 21'2.5" x 8'4")

with a shed roof on the rear of the house that stands on stilts which have structural issues that need to be addressed. The lot slopes downward from the street and there is a walkout basement underneath the single story bump-out. He said there was a driveway on the south side of the lot, which ends at a 181 s.f. shed which is slated for demolition.

Mr. Kessler said that due to the size of his growing family, he is seeking to construct a two-story addition to the rear of the house. The addition will incorporate 11' of the length the single story bump-out on the rear of the house, and he will create a new foundation underneath the entire bump-out to address structural issues. The addition will extend 8' 8.5" x 12' 2.5" beyond the existing bump-out; essentially making the house "L" shaped. The basement level of the new addition will be 106.1 s.f. of unfinished space and will not provide access to the main house. He said that he is intending to utilize that space in lieu of the shed that will be demolished, and the space will be fitted with double barn doors on the rear. The first floor of the addition will also be about 106 s.f. and will be used as a breakfast nook. As the existing bump-out is only a single story, Mr. Kessler said he wanted to build a second story above it and incorporate it into the new addition to create a new 208.6 square foot bedroom. Mr. Kessler said he will be constructing a new entrance on the basement level of the side façade of the house (as part of the foundation for the existing single story bump-out) that will be recessed and provide a covered entry into the basement. Finally, he is looking to construct a 4' x 8' 10" addition to the front of the house to enclose the front porch. The new entry will accommodate benches with shoe cubbies on either side of the door. The porch will be covered and will extend an additional 3' x 8' 10" beyond the front door. The applicant is also proposing to extend a stair on the north side of the property to allow access to the rear yard from the front yard. The new additions will total 349.9 additional square feet of floor area and will be clad in materials consistent with the existing house.

Mr. Kessler said that he needed relief under: §5.09.2.j of the Zoning By-Law (Design Review), because he was requesting FAR relief, §5.22.c.3 of the Zoning By-Law (Floor Area Ratio) for an addition up to 150% of the allowed FAR but not greater than 350sf, §5.60 (Side Yard Requirements), 5.61 (Projections into Side Yards) and §5.43 (Exceptions to Yard and Setback Regulations) of the Zoning By-Law, a waiver of side yard dimensional and setback requirements subject to provision of a suitable condition not otherwise required that will counterbalance the proposed reduction in the required side yard and setback (counterbalancing amenities) and §8.02.2 to alter a pre-existing, non-conforming structure.

Board Member Book asked for a description of the counterbalancing amenities to be provided under Section §5.43 of the Zoning By-Law. Mr. Kessler responded that he is proposing to make improvements to the patio in the rear yard, demolish the existing shed and install extensive landscaping.

The Chairman then asked whether anyone in attendance wished to speak in favor or in opposition to the proposal before the Board. No one rose to speak. Mr. Kessler noted that he had letters of support from neighbors at 53 and 67 Risley Road as well as 29 Payson Road.

Courtney Synowiec, planner, delivered the findings of the planning staff

Section 5.09.2.j - Design Review

A special permit for design review is required for any exterior additions to a structure which require a special permit. All of the design standards in paragraph (d) have been met and comments on the most relevant follow:

- a. Preservation of Trees and Landscape – The additions should not disturb any existing plantings as the yard is not currently well landscaped. The most substantial plantings on the property are trees near the rear lot line, which will not be impacted.
- b. Relation of Buildings to Environment – The new addition should not represent a substantial departure from the design of the existing structure or have any detrimental impact on any surrounding natural features. While the increased mass of the addition will likely create some amount of new shadows, the most impacted neighbor has submitted a letter supporting this proposal.

c. Relation of Buildings to the Streetscape and Neighborhood – The design of the proposed additions are consistent in scale and design with the existing structure, and the more substantial addition in the rear yard will not be visible from the street. The neighborhood is comprised of modestly sized single family homes, many of which have been altered with similarly sized additions, and these additions should blend nicely with the neighborhood.

Section 5.20 – Floor Area Ratio

Section 5.60 – Side Yard Requirements

Section 5.61 – Projections into Side Yards

Section 6.04.5.c.2 – Design of Off-Street Parking Facilities

Dimensional Requirements	Allowed	Existing	Proposed	Relief
Floor Area Ratio	.35 100%	.30 88%	.38 110%	Special Permit*
Floor Area (s.f.)	1,641.5	1,448.4	1,798.3	
Side Yard Setback (Stairs)	7.5'	7.7'	Est. 2'	Special Permit**
Driveway Setback	5'	Est. 1'	Est. 1'	Pre-existing Nonconforming ^o

* Under Section 5.22.c.3 the Board may allow by special permit an exterior addition up to 150% of the permitted gross floor area provided the addition does not exceed 350 square feet. The applicant is proposing to construct a 349.9 s.f. addition.

** 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 make improvements to the patio in the rear yard, demolish their shed and install extensive landscaping as counterbalancing amenities.

^o The applicant is not proposing any alterations to the driveway, and the driveway setback is a pre-existing nonconforming condition.

Section 8.02.2 – Alteration or Extension

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

Ms. Synowiec said that the Planning Board was supportive of this proposal to construct front and rear additions at the property. The front addition should increase the functionality of the front entry for the growing family who currently resides in the home and for those who will in the future. The Planning Board believed the rear addition will improve the visual appearance of the house; however, they requested the applicant submit an additional elevation showing the side of the addition to fully understand how it incorporates existing elements of the house. The Planning Board did not find the encroachment of the additional stairs (on the side of the house)

into the setback to be detrimental to the property, particularly as it will not extend as far into the yard as the existing deck but would like to see the additional decking shown on a site plan. The Planning Board believed the applicant is providing sufficient counterbalancing amenities to ameliorate the additional encroachment with the additional landscaping and the removal of the shed. Therefore, they recommend approval of the plans by Tuck & Tuck Architects, dated 4/29/10, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans, including a site plan indicating the proposed deck and stair configuration, and final elevations, including existing and proposed north elevations and 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: 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 Board then heard from Mr. Michael Shepard, Building Commissioner. Mr. Shepard reported that the houses along this section of Risley Road are all very similar, of the same vintage and may have been constructed by the same developer. Over the years, he said, the other homes have been expanded considerably leaving this home as one of the smallest in the neighborhood. Mr. Shepard noted that the addition appears attractively designed and will make the house more in keeping with others in the neighborhood. Commenting on the petitioner's intent to remove the existing shed, Mr. Shepard reported that the petitioner will actually be increasing useable open space. Mr. Shepard said that the Building Department had no issue with the conditions recommended by the Planning Board and said his Department was supportive of the proposal before the Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it is desirable to grant special permits under §5.09.2.j, §5.22.c.3, §5.43 and §8.02.2 of the Zoning By-Law and made the following 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, including a site plan indicating the proposed deck and stair configuration, and final elevations, including existing and proposed north elevations and 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.
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RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2010 JUN 18 PM 1:01

Unanimous Decision of
The Board of Appeals


Jesse Geller, Chairman

Filing Date: June 18, 2010

A True Copy
ATTEST:
RECEIVED
TOWNSHIP CLERK
TOWNSHIP OF BROOKFIELD
2010 JUN 18 P 12:00

George J. Ward
Clerk of Board of Appeals

Richard J. Ward