



# *Town of Brookline*

## *Massachusetts*

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

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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. 2010-0035

Petitioners, Felix and Yelena Lander applied to the Building Commissioner for permission to construct a rear addition and deck to their home at 367 South Street. The application was denied and an appeal was taken to this Board.

On 24, June 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 26, August 2010, 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 29, July and 5, August 2010, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

### **NOTICE OF HEARING**

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**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: **LANDER, FELEX & YELENA**  
Owner: **Elena Lander**  
Location of Premises: **367 South Street**  
Date of Hearing: **August 26, 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 variance and/or special permit from:

1. **5.09.2.j; Design Review, special permit required.**
2. **5.10; Minimum Lot Size, variance required.**
3. **5.13; Lot Width, variance required**
4. **5.22.3.b.1).b; Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, special permit required.**
5. **8.02.2; Alteration or Extension, special permit required**

of the Zoning By-Law to **EXTERIOR ADDITION REQUIRING BOARD OF APPEALS RELIEF at 367 SOUTH ST 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. Yefim Massarsky of YM Design, 302 Winchester Street, Newton, MA presented the case on behalf of the petitioners, Felix and Yelena Lander.

Mr. Massarsky said that 367 South Street is a two-and-a-half story single-family dwelling in a residential neighborhood just north of the Brookline town line near the intersection of South Street and the VFW Parkway. Surrounding houses are typically also single-family dwellings of similar size and general style. This dwelling has a single-car garage at the basement level accessed from the front, and at the rear there is a single-story addition and deck.

He said that his clients would like to construct a new rear addition and deck, replacing the existing single-story addition. The proposal includes adding 239 s.f. of floor area at the first floor, and 307 s.f. at the second floor, for a total of 546 s.f. A portion of the new addition would be two stories with a gable roof, while another portion would consist of bumping out the back wall at the second level and adding a single-story addition with a shed roof. A new deck would extend the width of the addition.

Mr. Massarsky said that he believed his clients needed relief from Section 5.22.3.b.1.b, Exceptions to Maximum Floor Area Ratio Regulations for Residential Units, and Section 8.02.2, Alteration or Extension because the lot is pre-existing non-conforming with respect to minimum lot size and lot width.

Chairman Geller asked whether anyone in attendance wished to speak in favor or against the proposal. No one rose to speak.

Lara Curtis-Hayes delivered the findings of the Planning Board

**Section 5.09.2.j – Design Review:** All proposals for exterior additions that require FAR relief under *Section 5.22*, also require a special permit for design review. The applicant has submitted a statement reviewing the applicable Community and Environmental Impact and Design standards listed in *Section 5.09.4.a-n*. The applicable standards are as follows:

*Preservation of Trees and Landscape:* The rear yard is primarily landscaped with grass, with large trees on the perimeter. The addition will not require the removal of trees or a change in grade.

*Relation of Buildings to Environment:* The addition is consistent with the rest of the building’s massing, and is not expected to cause significant shadows on neighboring properties.

*Relation of Buildings to the Form of the Streetscape and Neighborhood:* Since the addition is in the rear, and below the building’s existing roof peak, it will not be very visible from the street.

*Open Space:* The property will continue to have a large landscaped rear yard after the addition is completed. Both the addition and deck are outside of the rear yard setback.

**Section 5.10 – Minimum Lot Size:** The lot is undersized for the S-7 zoning district, however this is a pre-existing, non-conforming condition, and under *Section 5.15, Exception to Minimum Lot Size & Lot Width Requirements*, single-family dwellings on such lots may be altered if the lot was lawful under zoning and subdivision regulations in effect when it was created, the yard requirements are observed, and the lot has at least 4,000 s.f. in area.

**Section 5.13 – Lot Width:** The lot does not have sufficient width for the S-7 zoning district. Please reference *Section 5.15*, as previously explained above.

**Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units**

	Minimum	Max by Ord	Existing Treatment	Proposed	Finishing
Floor Area Ratio	0.35	0.42 120%	0.30 86%	0.41 117%	Special Permit*
Finished Floor Area	1,750 s.f.	2,100 s.f.	1,508 s.f.	2,054 s.f.	

\*Under Section 5.22.3.b.1.b, the Board of Appeals may by special permit allow an increase in floor area for an exterior addition that is less than or equal to 20% above the permitted gross floor area.

**Section 8.02.2 – Alteration or Extension:** A special permit is required to expand this dwelling that is non-conforming with respect to minimum lot size and lot width.

Ms. Curtis-Hayes reported that the Planning Board was not opposed to the proposed rear addition to this single-family dwelling. The addition has been designed to respect yard and setback requirements, and will not be especially visible from the street. The addition is a reasonable size, allows for a better floor plan, and meets the needs of the property’s owners.

Therefore, the Planning Board recommended approval of the proposal and the revised plans, prepared by YM Design, and dated 16, August 2010, subject to the following conditions:

1. Prior to issuance of a building permit, final elevations of the addition shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final site plan, indicating any revisions or modifications, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by registered engineer or land surveyor; 2) final elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard said that the relief requested was relatively minor. He said the lot is pre-existing, non-conforming in two respects, minimum lot size and lot width. He did state however, that **Section 5.15** of the Zoning By-Law provides that these non-conformities shall not prevent the alteration of a single family dwelling. Mr. Shepard stated that the addition appeared well designed and that the Building Department was supportive of the proposal as well as the conditions proposed by the Planning Board. He stated that his Department will enforce the provisions of the State Building Code and that the original certificate of occupancy for the subject property had been issued well in excess of the ten years required in the Zoning By-Law.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under **Section 5.22.3.b.1.b** and **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 issuance of a building permit, final elevations of the addition shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. **Prior to issuance of a building permit, a final site plan, indicating any revisions or modifications, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
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RECEIVED  
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TOWN CLERK

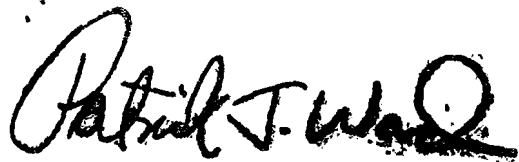
2010 SEP 3 A 8 45

unanimous Decision of  
the Board of Appeals

  
Jesse Geller, Chairman

Filing Date: **September 03, 2010**

A True Copy  
ATTEST:

A handwritten signature in black ink, appearing to read "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