



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. 2010-0042**

Petitioners, Julie and David Saltzman, applied to the Building Commissioner for permission to construct an addition to the rear of their home and expand their existing garage at 43 Circuit Road. The application was denied and an appeal was taken to this Board.

On July 22, 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 September 23, 2010 at 7:00 p.m. in the Selectmen's Hearing Room, 6th floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the 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 September 2 and 19, 2010 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

**LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
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: Julie and David Saltzman
Owner: Julie and David Saltzman
Location of Premises: 43 Circuit Road
Date of Hearing: September 23, 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. 5.43; Exceptions to Yard and Setback regulations, special permit required.**
- 2. 5.63; Accessory Buildings or Structures in Side Yards, variance required.
(garage)**
- 3. 5.70; Rear Yard Requirements, variance required.**
- 4. 5.72; Accessory Buildings or Structures in Rear Yards, variance required.
(garage)**
- 5. 8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to construct an in-fill addition of approximately 6X9 feet at the rear of your home at 43 CIRCUIT ROAD BRKL

Said premise located in a S-10(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.

**Enid Starr
Jesse Geller
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members, Jonathan Book and Christopher Hussey.

The petitioners, were represented by Jacob Walters of Goldenberg & Walters at 7 Harvard Street in Brookline.

Mr. Walters stated that the applicants propose to construct a one story addition to the rear of the dwelling and also wish to extend the garage structure by five (5') feet to better accommodate two vehicles. Mr. Walters stated the relief could be granted by two Special Permits under Sections 5.43 and 8.02.2. Mr. Walters continued by saying that Section 5.43 relief was called for because the rear portion of the proposed addition would be 29'3" and the rear setback requirement was 30'. Mr. Walters pointed out that under Section 5.43 the Zoning Board could waive dimensional requirements if the applicant provided counterbalancing amenities. In this instance, Mr. Walters pointed out that the amenities being offered were new plantings along the rear lot line of the property, plantings along the driveway, plantings along the terrace and a new trellis behind the garage structure. A landscape plan was submitted to the Board, with a final plan to follow. Mr. Walters added that the garage renovations could also be considered an amenity, as the present cinder block structure will be covered in shingles to match the house with a new door installed as well. Mr. Walters then stated that because the existing house and garage violated the set back requirements, and were pre-existing non-conforming structures, relief under Section 8.02.2 was called for. Mr. Walters then addressed the requirements of Section 9.5 of the Zoning By-Law suggesting that there were no impediments to the granting of the relief sought. Mr. Walters stated that if approved, the applicants would not begin work on the garage unless and until the Preservation Commission approved the 5' extension of the garage structure. Mr. Walters went on to say that the Preservation Commission had already approved the garage design but since that time the applicants and their architect realized the garage was too small to comfortably accommodate two vehicles and are seeking to extend the garage an additional five (5') feet. Mr. Walters

concluded his remarks by noting that most if not all of the abutters had submitted letters of support, and asked the Board to grant the relief sought.

The Chair asked if any members of the public wished to speak either in favor or in opposition to the applicants' proposal. There was no one who wished to be heard.

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

Ms. Synowiec reported that on June 8, 2010, the Preservation Commission reviewed and approved the proposed alterations to the main house and the garage. A Certificate of Appropriateness was issued July 12, 2010.

Section 5.63 – Accessory Buildings or Structures in Side Yards

Section 5.70 – Rear Yard Requirements

Section 5.72 – Accessory Buildings of Structures in Rear Yards

Setbacks	Required	Existing	Proposed	Finding
Side Yard (Garage)	6'	0'	0'	Preexisting Nonconforming/SP
Rear Yard (Garage)	6'	5'4"	5'4"	Preexisting Nonconforming/SP
Rear Yard (House)	30'	24.6'	24.6'/29.3'*	Special Permit

*Under **Section 5.43** of the Zoning By-Law, the Board of Appeals may waive dimensional requirements if a counterbalancing amenity is provided. The applicant is proposing to install landscaping as a counterbalancing amenity.

** The existing bump out on the rear façade of the house measures 24.6', the new addition will be located 29.3' from the rear lot line and also requires relief.

Section 8.02.2 – Alteration or Extension: A special permit is required to alter or extend a non-conforming structure.

Ms. Synowiec reported that the Planning Board was supportive of the proposed addition and garage extension. The rear addition is largely screened by the existing projections from the house and has been approved by the Preservation Commission. The garage extension should create a more functional parking arrangement on the property as the applicants find the existing garage to be too narrow to adequately accommodate parking for two cars. Finally, the Planning Board believed cladding the garage in shingles will give the garage a more attractive appearance. Therefore, the

Planning Board approved the plans by Noury-Ello Architects, dated June 21, 2010 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations subject to the review and approval of the Preservation Commission.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to 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 the decision has been recorded at the Registry of Deeds.

The Chair then called upon the Building Commissioner to deliver the comments of the Building Department. Mr. Shepard reported that the petitioners are doing extensive work remodeling the residence. He said that the relief regarding the set-back of the kitchen extension was minimal, particularly since there are other portions of the structure that are more non-conforming. Mr. Shepard, regarding the garage relief requested, commented that the existing garage does not meet the set-back requirements for accessory structures, 6 feet. He said otherwise he could issue a building permit for the extension by right. Mr. Shepard said the renovations are of high quality and the finished residence will be an asset to the neighborhood. He said that the Building Department is supportive of the relief requested as well as the recommended conditions of the Planning Board.

The Board then began its deliberations. Mr. DeVries asked if the interior chimneys were being removed and wondered if Preservation Commission had granted approval. The applicants responded that the interior chimneys were being removed and the Preservation Commission had indeed given approval for that change. The remaining two chimneys were to remain in place.

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 Sections 5.43, 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 the issuance of a building permit, the applicant shall submit final plans and elevations subject to the review and approval of the Preservation Commission.**
2. **Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to 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 the decision has been recorded at the Registry of Deeds.**

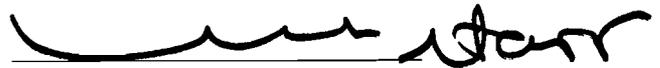
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TOWN OF BROOKLINE
TOWN CLERK

5:50

Unanimous Decision of the

Board of Appeals

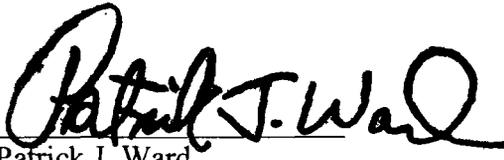
2010 OCT 13



Enid Starr, Chairman

Filing Date: October 13, 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 long, sweeping underline.

Patrick J. Ward
Clerk, Board of Appeals