



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. 090005

Petitioners, Michael Klepikov and Sofia Gertsberg, applied to the Building Commissioner for permission to construct additions and renovations to their home at 59 Wallis Road. The application was denied and an appeal was taken to this Board.

On 29 January 2009, 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 5 March 2009, at 7:30 p.m. in the Selectmen's Hearing Room, sixth floor, Town Hall 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 12 and 19 February 2009 in the Brookline Tab, a newspaper published in Brookline. 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: **KLEPIKOV, MICHAEL AND GERTSBERG, SOFIA**

Location of Premises: **59 WALLIS RD BRKL**
Date of Hearing: **03/05/09**
Time of Hearing: **7:30 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) **5.20, Floor Area Ratio, Variance Required.**
- 3) **5.22.3. b.1.b, 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) **8.02.2; Alteration or Extension; Special Permit Required of the Zoning By-**

Law to construct additions and renovations per plans at **59 WALLIS RD BRKL.**

Said Premise located in a S-7 (Single Family) 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. Due to a scheduling conflict the hearing location was moved to room 103, on the first floor of the Town Hall. Notice of the change in location was posted at all entrances to the building as well as in the entry to the Selectmen's Hearing Room. Present at the hearing was Chairman, Jesse Geller and Board Members, Mark Allen and Jonathan Book. Mr. Klepikov presented the case before the Board.

Mr. Klepikov described his home at 59 Wallis Road as a ranch style single-family house with an attached one car garage below grade with living area above it. The home is clad in brick on the first floor, and wood shingles on the attic half story. He said that the house was constructed in 1950, and is situated on a sloping lot and partially sunk into a hill. The house located behind 59 Wallis Road is 40' above the subject residence and is two stories tall with a walk out basement, giving it the appearance of a much larger three story structure. The neighborhood is comprised of similar fairly modern single-family homes.

Mr. Klepikov, said that he is proposing to raise the roof of the attic to create a second floor bedroom area and reframe the roof. In addition, he is proposing to partially enclose the front porch. The additions will not change the foot print of the existing house, and will add a total of 900 new square feet of gross floor area. Mr. Klepikov said that he proposes to to clad the second story addition in stucco, and put a brick veneer over the exposed basement foundation.

Chairman Geller asked the petitioner what counterbalancing amenities he proposed to qualify for relief under Section 5.43 of the Zoning By-Law. Mr. Klepikov responded that there was a tree on the property in declining health, that they proposed to replace the tree as well as provide additional plantings as the counterbalancing amenity.

The Chairman asked whether anyone wished to speak in favor or against the proposal. No one spoke in favor or against the petition.

Courtney Synowiec, planner, delivered the findings of the Planning Department.

Section 5.09.2.j – Design Review: Any exterior addition for which a special permit is requested pursuant to Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations) requires a special permit subject to the design review standards listed under Section 5.09.4(a-l). The most relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape

The proposed additions will not encompass any area outside of the existing footprint and is not anticipated to impact any of the surrounding trees or landscaping.

b. Relation of Buildings to Environment

The increase in building height is not anticipated to have a negative impact on the neighborhood. Since many of the houses are built into a hill, the houses above the homes on Wallis Road tend to have a towering effect, that if anything, an increase in height should help balance this effect.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood

Many of the homes on Wallis Road are ranches or small tudors that were built during the twentieth century and are on the smaller side of single family homes in Brookline. Several of the homes in the neighborhood have been altered to be made larger. While the proposed addition will dramatically alter an otherwise characteristic post-war ranch to a more modern split level home, this change is unlikely to be detrimental to the neighborhood.

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	0.35 100%	0.30 85%	0.42 120%	Special permit*
Floor Area (s.f.)	2,635	2,262	3,162	

* Under §5.22.3.b.1.b a special permit may be issued by Board of Appeals to allow up to 120% percent of the permitted gross floor area.

Section 5.60 – Side Yard Setbacks

Dimensional Requirements	Required	Existing	Proposed	Finding
Right Side Yard Setback	7.5 ft.	6.8 ft.	6.8 ft.	Special Permit*

* Under §5.43 a special permit may be issued by the Board of Appeals to waive setback requirements if a counterbalancing amenity is provided. The applicant has indicated they will be providing landscaping as a counterbalancing amenity.

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 generally supportive of this proposal. The applicants and their designer have worked extensively with staff to improve elements of this design, particularly with respect to materials. The Planning Board has some concerns about whether or not the second story windows on the front façade will have three panes or four panes, and the applicants have indicated they are flexible about which windows are installed. Finally, additional landscaping on site would improve the overall appearance of the property and will be a benefit to the neighborhood. Therefore, the Planning Board recommends approval for the plans titled “Gertsberg-Klepikov Residence” by Copper Beach Design dated 12/15/08, subject to the following conditions:

- 1. Prior to the issuance of a building permit, final elevations indicating all materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 2. Prior to the issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 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 elevations stamped and signed by a registered architect; 3) a final FAR analysis stamped and signed by a registered architect, and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, delivered the comments of the Building Department. He reported that the FAR relief requested was within the percentage allowed for one and two family homes under Section 5.20 of the Zoning By-Law. He also said that the side yard set back relief requested was for a pre-existing, non-conforming condition and that the proposal did not exacerbate the non-conformity. Mr. Shepard said that the Building Department was supportive of the project, the relief requested, and the conditions proposed by the Planning Board.

Both Jonathan Book and Mark Allen stated that the project was modest and when completed would improve the appearance of the property. Chairman Geller asked the Building Commissioner whether Section 5.22.3.b.1.b or Section 5.22.3.b.1.c was the appropriate section of the Zoning By-law in this instance. Mr. Shepard responded that given the project description that Section 5.22.3.b.1.b was the appropriate section. He said that subsection c of the by-law dealt with interior renovations to an attic or basement that also included exterior additions such as dormers. Chairman Geller asked how the maximum gross floor area was determined. Ms. Synowiec responded that the 120% allowed by special permit was based upon the permitted gross floor area as opposed to that which is existing. She said that this proposal fell several feet short of the maximum allowed by special permit. Mr. Geller also asked for clarification of what square footage was used for purposes of calculation of the maximum square footage allowed. Ms. Synowiec responded that the calculation was based upon the lot size of 7,528 sf and not the 7,000 sf minimum lot size.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements of Sections 5.09.2.j, 5.22.3.b.1.b, 5.43, Section 8.02.2 and Section 9.05 of the Zoning By-Law have been satisfied and it is desirable to grant Special

Permits in accordance with the relief requested. The Board makes 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.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

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

- 1. **Prior to the issuance of a building permit, final elevations indicating all materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 2. **Prior to the issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 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 elevations stamped and signed by a registered architect; 3) a final FAR analysis stamped and signed by a registered architect, and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

7009 MAR 27 A 10:55

Unanimous Decision of
The Board of Appeals

Filing Date: March 27, 2009



Jesse Geller, Chairman

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 "W".

Patrick J. Ward
Clerk, Board of Appeals