



BOARD OF APPEALS  
Jesse Geller, Chair  
Mark G. Zuroff

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TOWN OF BROOKLINE  
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# Town of Brookline

## Massachusetts

Town Hall, 1<sup>st</sup> 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. 2019-0044  
65 CHATHAM STREET, BROOKLINE, MA

Petitioner Jeramiah Foster applied to the Building Commissioner for permission to build a small rear addition at 65 Chatham Street. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 8, 2019 at 7:00 PM., in the Select Board's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, to their 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 July 25, 2019 and August 1, 2019 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**65 CHATHAM STREET, BROOKLINE, MA 02446 - Remove deck off second-floor room and replace with finished space in a(n) S-10 SINGLE-FAMILY on 08/08/2019 at in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Jeremiah Foster) Precinct 1**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

**§5.09.2.J – DESIGN REVIEW**

**§5.10 - MINIMUM LOT SIZE**

**§5.22 - EXCEPTIONS TO FLOOR AREA RATIO REGULATIONS FOR RESIDENTIAL UNITS**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§8.02 - ALTERATION OR EXTENSION**

**Any additional relief the Board may find necessary.**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.*

*If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Mark G. Zuroff*

**Publish: 07/25/2019 & 08/01/2019**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Kate Poverman. Also present at the hearing were Zoning Coordinator/Planner Charlotte Leis, Asst. Director of Regulatory Planning Polly Selkoe, and Deputy Building Commissioner Joseph Braga.

The case was presented by Jeramiah Foster of J Foster Homes. Chairman Zuroff called the hearing to order at 7:00 p.m. Mr. Foster waived the reading of the public notice.

Mr. Foster gave an overview of the relief they are requesting for the project. Their proposal is to remove an existing rear second story deck and replace it with a bathroom. The project requires relief because of existing and unchanging non-conformities for lot size and setbacks, and because the FAR is already non-conforming and increasing slightly.

Chair Zuroff asked if there were any members of the public who wished to speak in favor of or in opposition to the application. There were none.

Chair Zuroff then asked if the FAR calculation includes the basement. Mr. Foster said it does because the basement is already finished. Mr. Foster noted that they have worked with the Preservation Commission on the project to satisfy the Commission’s concerns, and they are planning on redoing the landscaping.

Chair Zuroff asked to hear from the Planning Department. Ms. Leis, Zoning Coordinator / Planner, presented the findings and recommendation of the Planning Board. She noted the following:

**FINDINGS**

Section 5.10: Minimum Lot Size

The subject lot does not meet the minimum lot size from Table 5.01 and therefore requires a Special Permit.

Lot Size	Required	Existing	Proposed	Relief
1-family Detached Dwelling	10,000 SF	9,350 SF	9,350 SF	Special Permit

Section 5.20: Floor Area Ratio

Section 5.22: Exceptions to Floor Area Ratio (FAR) for Residential Units

Section 5.09.2.j: Design Review

The existing structure does not comply with the FAR requirements of the S-10 district laid out in Table 5.01 and the altered structure will intensify this condition, therefore requiring a Special Permit.

Floor Area	Allowed	Existing	Proposed	Finding
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Floor Area Ratio (% of allowed)	.35 (100%)	.51 (146%)	.52 (149%)	Special Permit*
Floor Area (s.f.)	3,273	4,769	4,862	

Because the proposed work is subject to the provisions of §5.22, Design Review is required, as per §5.09. Below are the relevant Community and Environmental Impact and Design Standards from §5.09.4:

- Preservation of Trees and Landscape
- Relation of Buildings to Environment
- Relation of Buildings to the Form of the Streetscape and Neighborhood
- Open Space
- Stormwater Drainage
- Utility Service
- Heritage

The proposed addition maintains the existing footprint of the building so no significant changes to the landscape are proposed. The addition and resulting house are consistent with the scale and style of the neighborhood and are unlikely to have significant impact on abutters. Utilities are unchanged, existing drainage patterns are unlikely to be affected, and no significant heritage-related concerns are present. Staff is of the opinion that the design standards of §5.09.4 are satisfied.

**Section 5.60: Side Yard Requirements**

**Section 5.43: Exceptions to Yard and Setback Regulations**

The existing structure does not comply with the setback requirements of Table 5.01, and therefore requires a Special Permit. A Special Permit may be granted per Section 5.43 if a counterbalancing amenity is provided.

Side Yard Setback	Required	Existing	Proposed	Relief
1-family Detached Dwelling	10 ft.	7.4 ft.	7.4 ft.	Special Permit

As required by §5.43, a counterbalancing amenity must be provided. None have been explicitly offered by the applicant, and staff recommends that landscaping be considered, particularly along the right side property line, where it will be most effective in screening the proposed addition and where sufficient space is available.

**Section 8.02: Alteration or Extension**

The existing structure is nonconforming and therefore may be altered as allowed by §8.02.2, provided that no nonconforming condition is increased. The proposal complies with this section.

**PLANNING DEPARTMENT COMMENTS**

The Planning Department is supportive of this proposal. The proposed alteration is a reasonable extension of the existing dwelling that maintains the character of the home as viewed from the public way. The addition will hardly impact the abutters on either side, and landscaping can be provided to mitigate those impacts. The proposal generally satisfies all of the criteria and standards for Design Review.

**PLANNING BOARD RECOMMENDATION**

The Planning Board reviewed this application at their meeting on July 25, 2019. The Board found the proposed addition to be reasonable and relatively unobtrusive and was therefore supportive of the proposal.

Chair Zuroff asked to hear from the Building Department. Mr. Braga, Deputy Building Commissioner, said the Building Department had no objections to the relief being sought.

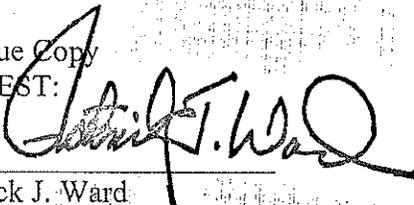
The ZBA members then voted unanimously to approve the special permit relief per the site plan by Charette Land Surveying, dated 6/3/19 and architectural plans by EvB Design, dated 5/30/19, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 8/15/19

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals



Mark G. Zuroff, Chair