



# Town of Brookline

## Massachusetts

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BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark G. Zuroff

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. 2019-0036  
114 RAWSON ROAD LLC  
114 RAWSON ROAD, BROOKLINE, MA

Petitioner, 114 Rawson Road LLC, applied to the Building Commissioner for permission to construct addition and attached garage. The application was denied and an appeal was taken to this Board.

The Board determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed July 25, 2019 at 7:00 PM., in the Select Board's Hearing Room as the date, time and place for the public hearing. Notice of the hearing was mailed to the Petitioners, to their attorney, Robert L. Allen, Jr., 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 11, 2019 and July 18, 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:

**114 RAWSON ROAD, BROOKLINE, MA 02445 - Construct addition in a(n) SC-10 SINGLE-FAMILY & CONVERTED FOR TWO-FAMILY on July 25, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 12**

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**

**§5.09.2.N – DESIGN REVIEW**

**§5.22.3.B.1.B – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS**

**§5.54.2 - EXCEPTIONS FOR EXISTING ALIGNMENT**

**§8.02.2 – ALTERATION AND 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: 7/11 & 7/18**

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested that the hearing be continued to allow time to return to the Planning Board. The hearing was continued to August 29, 2019 at 7:00 p.m. in the Select Board's Hearing Room. Present at the continued hearing were Chairman Mark G. Zuroff and Board Members Steve Chiumenti and

Randolph Meiklejohn. Also present at the hearing were Zoning Planner & Coordinator, Charlotte Leis, and Deputy Building Commissioner, Joe Braga.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, First Floor, Brookline, Massachusetts 02445. Also in attendance were the Petitioner, Ben Saada, the civil engineer for the proposal, Verne Porter, and the architect for the proposal, Ron Jarek of Yovel, Inc.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen then described the proposal at 114 Rawson Road. He noted that the proposal triggered partial demolition and the Preservation Commission put a twelve month stay on the property, which will expire in September 2019. He noted that the proposal had been through many public meetings and that the Petitioner held multiple meetings with the neighbors. Attorney Allen noted that the property is in the SC-10 Zoning District and stated that the proposal involves demolishing the existing garage and constructing an addition with an attached two-car garage. Attorney Allen stated that the Petitioner seeks relief by special permit under Section 5.22.3.b.1.b pursuant to Section 9.05 for floor area ratio, for Section 5.09.2.J for design review and for Section 8.02.2. He noted that the architect provided a community and environmental impact statement as a part of the application. Mr. Allen continued his presentation, stating that the proposal would add 1,943 s.f., which would be 109% of the allowed gross floor area with a proposed FAR of .38. He stated that the existing is .26 and that the allowed in the SC-10 District is .35. Attorney Allen went through changes that resulted through working with the Planning Board and the neighbors, including: maintaining trees along Rawson Path, increasing the side setback next to 104 Rawson Road from 9.6' to 12.6' and most recently to 7.5', altering window locations, moving the garage back 4', reducing the size of the mudroom and the master bedroom,

reducing the driveway size and narrowing the entry width, and reducing the proposed total gross floor area. Attorney Allen handed out a revised survey dated August 21, 2019. He then introduced the architect, Ron Jarek to review the plans in more detail and answer any questions.

Ron Jarek, Yovel, Inc., presented the plans to the Board. Mr. Jarek noted the most recent changes, including: Board asked questions regarding height and dimensions. Mr. Jarek noted that the height was approximately seven feet higher than the existing structure, which Attorney Allen reiterated was within that allowed under the by-law. Verne Porter, the civil engineer for the proposal, of 354 Elliot Street, Newton, Massachusetts, explained the height calculations and site topography. He noted that the proposed slope of the driveway is ten percent for the first twenty feet. Chairman Zuroff asked about drainage on the site. Mr. Porter noted that a trench drain would be used.

Attorney Allen then described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed use as a single-family dwelling. The lot is within an SC-10 zoning district and the surrounding neighborhood consists of many other single-family dwellings; the use will not adversely affect the neighborhood because the proposed addition is within the 120% FAR allowed by special permit and the applicant has met the criteria for a special permit and received the design review approval of the Planning Board. Furthermore, the Petitioner seeks only to go to 109% of the FAR allowed; there will be no nuisance or serious hazard to vehicles or pedestrians as current parking conditions will be improved and two cars can be garaged; the garage will be elevated as to improve the existing slope of the driveway; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. Dan Jacobson, 120 Rawson Road, Brookline, Massachusetts, spoke in opposition to the proposal. Mr. Jacobson stated that the increased height is proposed uphill from his home and noted that he would not be able to see the sky. Ed Blumstein, 119 Rawson Road, Brookline, Massachusetts, stated that he would not be able to see the sky as a result of this proposal. Residents of 90 Rawson Road, Brookline, Massachusetts, voiced concern that the property would become a two-family dwelling. Tim Kasida, 104 Rawson Road, Brookline, Massachusetts, stated that he was generally supportive of the proposal but voiced concern regarding the beech tree in front of his house and the size of the proposed house.

Chairman Zuroff then called upon Charlotte Leis, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Leis noted the following:

**FINDINGS**

**Section 5.22.3.b.1.b – Floor Area Ratio**

**Section 5.09.2.n & j – Design Review**

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.35 (100%)	.26 (74%)	.38 (109%)	<b>Special Permit*</b>
<b>Floor Area (s.f.)</b>	5,453	4,053	5,996	

This altered structure would exceed the maximum allowed FAR (5.09.2.j) and include floor area that could be made habitable without significant exterior alterations where, if finished, would result in the total Gross Floor Area being greater than the maximum allowed under Table 5.01 (5.09.2.n). Both of these conditions make the project subject to Design Review. Relevant sections of the design review standards are described below. See also the applicant’s Impact Statement.

- 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

While the altered structure will be somewhat larger than immediately adjacent houses, it will be reasonably consistent with the scale, style, and siting of other houses in the neighborhood. The expansion of the footprint will necessitate the removal of a number of existing trees. Most of the trees to be removed are within the footprint of the addition and therefore cannot be practicably preserved. The proximity of the driveway and wall to the 40” tree at the front left corner of the lot is of great concern. A number of Norway Maples in the rear yard are being removed; the reason for this is unclear but they are an invasive species, so their replacement with alternative, native species would be welcome. Unfortunately, the applicant’s planting plan is limited. No substantial trees are being proposed that adequately mitigate the removal of the existing trees. The proposed plantings will however provide screening for the proposed house. Minimal regrading is being proposed, thus preserving the existing site layout and having little impact on drainage.

**Section 8.02.2 – Alteration and 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.

**The Planning Board recommends approval of the site plan by Verne T. Porter Jr. PLS, dated 7/31/19, and architectural plans by Yovel Design, dated 7/15/19, 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 review and approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan subject to 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) final floor plans and elevations stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the final decision has been recorded at the Registry of Deeds.

The Board then deliberated. Chairman Zuroff noted his support for the proposal, particularly given the support of the other Boards and the Petitioner’s work with the neighbors. Chairman Zuroff voiced concern about the beech tree previously referenced and drainage. Attorney Allen noted that the Petitioner is willing to make sure the tree is protected and stated that the drainage on the site would be

improved. Chairman Zuroff further noted that the lack of sightlines is not a reason to deny a proposal. Board Members Chiumenti and Meiklejohn agreed.

In reliance on the above referenced revised plans and the reasons stated by the Petitioners counsel, the Board then determined, by unanimous vote, that the special permit should be granted under Section 5.22.3.b.1.b, Section 5.09.2.J, and Section 8.02.2, pursuant to Section 9.05.

Accordingly, the Board voted unanimously to grant the zoning relief 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 review and approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan subject to 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) final floor plans and elevations stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the final decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 09/19/19

  
Mark G. Zuroff, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

