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Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff

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. 2019-0050
95 CLARK ROAD, BROOKLINE, MA

Petitioner Miriam Spear applied to the Building Commissioner for permission to build a second story addition on the right side of the house at 95 Clark Road. 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 September 19, 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 September 5, 2019 and September 12, 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:
95 CLARK ROAD, BROOKLINE, MA 02445 - Proposed 2nd floor building addition over existing one-story building structure required relief for FAR in a(n) S-10 SINGLE-FAMILY on 09/19/2019 at 7:00PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Miriam Tropp Spear) 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

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

§5.40 - WALLS NOT PARALLEL TO LOT LINES

§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.

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.

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

Publish: 09/05/2019 & 09/12/2019

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chair Lark Palermo and Board Members Randolph Meiklejohn and Kate Poverman. Also present at the hearing were Zoning Coordinator/Planner Charlotte Leis and Deputy Building Commissioner Joseph Braga.

The case was presented by Miriam Spear, architect and applicant; the owners Suzi and Glen Fuld were also present. Chair Palermo called the hearing to order at 7:00 p.m. Ms. Spear waived the reading of the public notice.

Board Member Meiklejohn disclosed for the record that he personally knows Miriam Spear but believes he can exercise duties impartially.

Ms. Spear gave an overview of the project. She explained that the owners need to modify the home in order for them to age in place. They plan to remove the rubber roof on the right side addition to the home to construct a 550sf second floor for e a master suite. She said that the project needs FAR and setback relief, and then went over how the projects meets design review standards. She proposed landscaping to screen the MBTA D line overpass which abuts the property as a counterbalancing amenity. She noted that the FAR is a pre-existing non-conformity, as are the setbacks.

The Board and applicant briefly discussed the locations of the three existing curb cuts. Board Member Poverman asked how the owners feel about the Planning Board's suggestion that they remove a curb cut. Mr. Fuld said they would like to avoid removing any of them; two of the curb cuts allow for entering the house at grade and the third curb cut is for the driveway.

Chair Palermo asked if two of the curb cuts were for a semi-circular driveway and Mr. Fuld confirmed that they are, and they provide access to the front door of the house which is at grade. This access is important for them as they grow older.

Chair Palermo asked if anyone was present to speak in support of the project. No one spoke. Ms. Spear noted that 6 abutters had submitted letters in support previously.

Chair Palermo asked if anyone was present to speak in opposition to the project. No one spoke.

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 5.20 – Floor Area Ratio

Section 5.22 – Exceptions to FAR Regulations for Residential Units

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.30 (100%)	.33 (110%)	.38 (127%)	Special Permit*
Floor Area (s.f.)	3,081	3,403	3,925	

**Under Deadrick, the Board of Appeals may allow an extension of an existing non-conformity if it finds there is no substantial detriment to the neighborhood.*

Sections 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-1). The most relevant sections of the design review standards are described below:

- a. **Preservation of Trees and Landscape** – The project preserves all existing trees and landscape. New landscape screening is to be planted so as to be seen by persons passing the site or overlooking it from the T overpass.
- b. **Relation of Buildings to Environment** – The proposed development does not alter existing terrain, trees, landscape, and natural features. The house is situated on a corner lot, so the proposed 2nd story addition will not cause adverse effects of shadows on abutting property or on public open space and public streets.
- c. **Relation of Buildings to the Form of the Streetscape and Neighborhood** – The design is consistent with the architecture of the existing building and with the surrounding neighborhood.

Section 5.40 – Walls Not Parallel to Lot Lines

Section 5.43 – Exceptions to Yard and Setback

The plans also claim that there property has a 15.9’ average right yard setback, but due to the configuration of the property there is no right side lot line; the line that the “right side setback” is being measured from is actually the rear lot line.

Setback	Required	Existing	Proposed	Finding
Rear Yard	30’	Avg: 11.1’ Min: 2.3’	Avg: 11.1’ Min: 2.3’	Special Permit*

**Under Deadrick, the Board of Appeals may allow an extension of an existing non-conformity if it finds there is no substantial detriment to the neighborhood.*

Section 8.02.2 – Alteration or Extension

A special permit is required to alter this non-conforming structure.

PLANNING DEPARTMENT ANALYSIS

The Planning Department is supportive of this project. The addition is compatible with the existing architectural style of the building and with the scale and massing of the property and the neighborhood. While the addition is within the rear yard setback, it is directly next to an MBTA right-of-way and therefore will have little to no impact on abutters. Staff believes that the criteria for Design Review have been met and that the project will not be substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD RECOMMENDATION

The Planning Board is supportive of the proposal. Board members felt that the addition is a reasonable expansion of the building. They noted that the property has 3 curb-cuts and suggested that the applicant consider removing one of the curb-cuts as a counterbalancing amenity but did not feel strongly enough about the curb-cut removal to require it as a condition.

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

Board Member Poverman said the proposal is modest and appropriate for the area, and she is glad the house isn't being torn down. She said that getting rid of the rubber roof could be considered a counterbalancing amenity.

Board Member Meiklejohn said the proposal really won't impact neighbors because the house is next to a large road and the MBTA tracks. He said he was fine with the counterbalancing amenity of screening the MBTA tracks as long as the plantings don't affect traffic visibility.

The ZBA members voted unanimously to approve the special permit relief per the site plan by Frank Iebba, dated 6/8/19, and the floor plans and elevations by Miriam Spear, dated 6/11/2019, 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 showing all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.

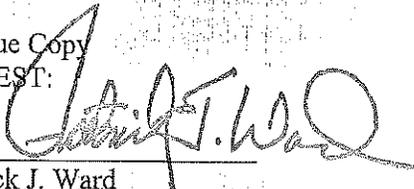
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 9/30/19


Lark Palermo, Chair

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals