



Board of Appeals
Jesse Geller, Chair

Town of Brookline

Massachusetts

Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Board of Appeals Virtual Public Hearing Minutes
Thursday, February 4, 2021
7:00 p.m.
Via ZOOM

ZBA DECISIONS can be found at: <https://www.brooklinema.gov/Archive.aspx?AMID=76>

Board Members Present: Chair Johanna W. Schneider, Lark Palermo, and Kate Poverman

Staff Present: Monique Baldwin (*Zoning Coordinator/Planner - Regulatory Planning*), and Joseph Braga (*Deputy Building Commissioner*)

Chair Johanna W. Schneider opened the meeting.

2020-0065 11 White Place – Construct a second-story rear addition and dormer on the left side

Cheryl Snyder, the applicant and owner, waived the reading of the public hearing notice and provided an overview of the project. Project architect, Lee Silverstone, provided an overview of the design.

Ms. Snyder stated that the Preservation Commission and the Planning Board were supportive of the project.

Chair Schneider asked if the landscaping depicted on both sides of the proposed structure would be the counterbalancing amenity for the setback relief, and Ms. Silverstone confirmed it was.

Board Member Palermo asked for clarification on how the project would impact usable open space.

Joseph Braga, Deputy Building Commissioner, stated he had not seen the plans and was confused on the need for a side yard setback relief.

Ms. Snyder stated that the plans had not been revised.

Ms. Snyder requested a variance be granted for the proposed scope of work stating that the property has a smaller lot size than the average along the street, and that it is a financial hardship if they are prohibited from a modest second floor edition, because the property currently exceeds the minimum open use open space

Monique Baldwin, Zoning Coordinator Planner, provided the Planning Board Report. The Planning Board supported the project.

Joseph Braga, Deputy Building Commissioner, stated the Building Department had no objections to the proposals.

Board Member Kate Poverman agrees that the property is uniquely small, however she stated that there is insufficient proof that there is a hardship. Board Member Poverman noted that variances are granted for hardships rather than inconveniences, such as inability to build where you want.

Chair Schneider opined that the property does appear to meet the qualifications for granting a variance due to the uniquely small lot. She noted that the proposed scope of work is not changing the footprint of the existing building, but rather adding a modest vertical addition of 217 square feet. As a result of the open space calculations determined by the Zoning By-Laws, there is a unique violation of open space requirements.

Board Member Lark Palermo stated that the property is at a disadvantage due to compliance under Diedrich, whereas other properties that are not in compliance can seek relief. Board Member Palermo concurs with Chair Schneider, and opines there is enough evidence to grant the variance.

Board Member Kate Poverman opines that the proposed scope of work does not meet the variance requirements.

Ms. Snyder requests to continue the case.

Ms. Baldwin states that the applicant has three options: continue the case, withdraw the case without prejudice and allows the applicant to reapply with the same concept, or withdraw the case with prejudice meaning that the applicant may not reapply again with the same content.

Ms. Snyder requests to withdraw the application without prejudice.

Board Member Poverman votes in favor to grant the withdrawal.

Board Member Palermo and Chair Schneider concur.

The Board unanimously granted the request to withdraw without prejudice.

2020-0058 148 Kent Street – Add front porches and expand rear decks on the first and second floors; raise roof slightly and add dormers on each side of the roof; add bump out to driveway

Attorney Robert Allen, on behalf of the applicant, waived the reading of the public hearing notice and provided an overview of the project. Project architect, Ralph Kilfoyle, provided an overview of the design.

Mr. Allen stated that the rear deck has been reduced in size at the request of neighbors, and that the Planning Board unanimously supported this proposal and found that it was an appropriate renovation of the house.

Mr. Allen then stated that relief is sought for a preexisting nonconforming FAR to increase from a .59 to a .69, and argued that there were no new nonconformities being created. He noted that many abutters wrote in support of the project, and suggested that the proposal meets the standards for a special permit and requested that the Board grant the requested finding.

Chair Schneider then asked whether anyone was present to speak in favor or opposition of the proposal. No one spoke.

Monique Baldwin, Zoning Coordinator Planner, provided the Planning Board Report. The Planning Board supported the project.

Joseph Braga, Deputy Building Commissioner, stated the Building Department had no objections to the proposals.

Board Member Palermo stated that the proposal was modest, noted that it met the criteria for the grant of special permit relief, and that it appears that the proposal would be an improvement to the neighborhood considering the updated building and fire codes. She stated that five neighbors are in support and no opposition has been submitted to the board.

Board Member Poverman concurred.

In deliberation, Chairman Schneider was satisfied that the proposal met the standards of Massachusetts General Laws Chapter 40A Section 6, as established by Section 9.05 of the Zoning By-Law.

The Board unanimously granted the request with conditions.

2020-0060 228 Pleasant Street – Legalize the construction of dormers; finish basement; interior changes to the first and second floors; construct a second-story deck; install two air conditioning condensers on the left side

Attorney Robert Allen, on behalf of the applicant, waived the reading of the public hearing notice and provided an overview of the project. Project architect, Matthew Francke, provided an overview of the design.

Attorney Allen stated that the home is located in a Local Historic District, a block away from Commonwealth Avenue. Mr. Allen noted that the project went to two full Preservation Commission meetings, three subcommittee meetings, three site visits, and one extra meeting to talk about the look of the railings. Mr. Allen stated that the proposal still needs final approval regarding the stucco on the exterior of the house. He also stated that the Preservation Commission appreciated the lengths the Petitioners were willing to go to bring the house back to its former historic glory, and approved the design that is before the ZBA. Mr. Allen added that the Planning Board unanimously supported the proposal and was impressed with the design.

Attorney Allen opined that relief is available by a finding by the ZBA under the case law pursuant to M.G.L. ch. 40A Section 6, (*Deadrick v. Board of Appeals of Chatham*, 85 Mass. Appt Ct 539) to allow for the extension of a preexisting nonconforming FAR, which will increase from .42 to .61, where a maximum allowed FAR is .35.

Mr. Allen stated that the proposal will not create a new nonconformity or be detrimental to the neighborhood.

Mr. Allen stated that special permit relief is also requested on a separate matter for the side yard setback to install HVAC condensers. Mr. Allen opined that this relief was unrelated to the FAR increase and therefore could be granted pursuant to Section 5.43 as counterbalancing amenities are being provided. The counterbalancing amenity includes a 4' IPE wood fence to screen the air conditioning condensers.

Chair Schneider asked if there was anyone present to speak in favor or opposition. No one spoke.

Monique Baldwin, Zoning Coordinator Planner, provided the Planning Board Report. The Planning Board supported the project.

Joseph Braga, Deputy Building Commissioner, stated the Building Department had no objections to the proposals.

In deliberation, Chair Schneider was satisfied that the proposal met the standards of Massachusetts General Laws Chapter 40A Section 6, as established by Section 9.05 of the Zoning By-Law.

The Board unanimously granted the request for special permit.

Other Business

The Zoning Board of Appeals is asked to vote on whether or not to sign Mass Housing “ZBA Acknowledgment Form” for 1180 Boylston Comprehensive Permit (ZBA 20), that the subsidizing agency’s Regulatory Agreement shall have control over any conflict provision of the Comprehensive Permit.

Maria Morelli, Senior Planner in Regulatory Division, states that the forms were run by Jonathan Simpson and that it was agreed upon to have Mass Housing specifically site the conditions that they felt they had jurisdiction.

Ms. Morelli recommends modification to the form that states that the condition shall not be waived for the units that are affordable. Ms. Morelli states that the Town wants affordable housing units to be held affordable in perpetuity.

Chair Schneider recommends to vote to authorize signature given these are matters within the Subsidizing Agency’s jurisdiction and not within the Town’s jurisdiction, and given that there is precedent for the Town to have signed similar documentation in the past.

Board Member Lark Palermo and Kate Poverman concurred.

The Board unanimously granted the request to sign the ZBA Acknowledgement Form.

Chair Schneider would coordinate with Ms. Morelli to sign the form at the Planning Department for notarizing purposes.

The meeting was adjourned.