



Board of Appeals
Jesse Geller, Chair

Town of Brookline

Massachusetts

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Board of Appeals Virtual Public Hearing Minutes

Thursday, April 1, 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 Schneider, Mark Zuroff, and Kate Poverman

Staff Present: Karen Chavez (*Zoning Coordinator/Planner - Regulatory Planning*), and Paul R. Campbell (*Deputy Building Commissioner*)

Chair Johanna Schneider opened the meeting.

2021-0008 16 Harrison Street - Demolish existing detached garage and construct addition to include attached garage and mudroom

Attorney Robert Allen, on behalf of the owner, provided an overview of the project. Project architect, Monika Zofia Pauli, provided an overview of the design.

Mr. Allen stated that the proposal is to demolish the existing garage, construct a new garage, and construct a rear addition. Mr. Allen stated that as a result of neighbor concerns that were raised at the Planning Board meeting, the Petitioners revised the original proposal to remove a connector addition between the main house and the garage.

Mr. Allen noted that the proposed FAR is well below the allowed maximum of 1.0, at .69, a reduction from .73. He stated that the total new square footage is about 205 square feet, and that the setback relief required is available under M.G.L. ch. 40A, Sec. 6.

The Board noted that since the revised proposal no longer connected the garage to the main house, the required setback remains 6 feet and does not increase. The required side yard setback for the main house remains 7.5 feet.

Mr. Allen stated that the side yard setback of the existing garage is 1.5 feet, and the proposed side yard setback is 1.4 feet. For the main house, Mr. Allen noted, a 30-foot rear yard setback is required and the existing rear yard setback is 25.3 feet. The proposed rear setback is 21.3 feet. For the side yard of the main house, Mr. Allen stated, 7.5 feet are required and the existing is 6.3 feet. He noted the addition would extend this nonconformity of 6.3 feet, but would not move closer to the side yard property line.

Mr. Allen stated that under M.G.L. ch. 40A, Sec. 6, the Board of Appeals may allow for an extension of an existing non-conformity if they find that there is no additional non-conformity and if they find that the extension is not substantially detrimental to the neighborhood, and Mr. Allen argued that there will be no substantial detriment to the neighborhood.

Mr. Allen opined that the proposed scope of work met the requirements under Section 9.05.

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

Polly Selkoe, Assistant Director of Regulatory Planning, delivered the findings of the Planning Board. The Planning Board supported the project.

The Board discussed with Joe Braga, on behalf of the Building Department, the change from the side yard setback and impact to the required relief.

The Board Members concurred that the published notice was broad enough to encompass the changes, since less relief is needed as an accessory structure.

Board Member Zuroff noted that the change in the garage itself has not changed and so stated that nothing in the original notice would mislead the public.

Board Member Zuroff stated that the relief requested is minimal and noted that the modification of the proposal was laudable. He opined that as the Petitioner is amenable to providing a counterbalancing amenity, Section 5.43 of the Zoning By-Law would be the appropriate section to grant relief as landscaping is proposed.

Board Member Poverman concurred.

Chair Schneider concurred with Board Members Zuroff and Poverman, and stated that Section 5.43 of the Zoning By-Law would be appropriate to grant the requested setback relief, and noted the plan set is March 30, 2021.

The Board unanimously granted the request for special permit.

2021-0003 191 Davis Avenue – Convert two-family building to a single-family and construct an attached single-family building to the rear connected by a covered walkway

Attorney Robert Allen, on behalf of the owner, provided an overview of the project. Project architect, Lee Silverstone, provided an overview of the design.

Mr. Allen stated that the Petitioners worked really closely with their neighbors to work through concerns that they heard, and that ultimately the neighbors felt comfortable supporting the proposal.

Mr. Allen stated that there was no opposition voiced at the Planning Board meeting. According to Mr. Allen, some neighbors expressed relief that this was not going to be a teardown and rebuild development.

Mr. Allen stated that the Planning Board was unanimously supportive and enthusiastic about the project.

Mr. Allen stated that the proposal is to take an existing two-family, convert it to a single-family and build a new single-family unit to the rear. He noted that the homeowners will move to the smaller cottage to the rear.

Mr. Allen stated that in this T-6 Residential Zoning district, a special permit is required to allow the use – an attached dwelling.

Mr. Allen stated that setback relief is needed for the side yard, since 10 feet are required. He stated that the proposal complies with the side yard setback on the right side, however, the left side of the addition will keep the existing condition of 1.8 feet.

Mr. Allen stated that the proposal also requires relief for the rear yard setback. He stated that 30 feet are required, and the proposal is for a rear yard setback that is 26.4 feet. Mr. Allen stated that the home was designed to minimize the impact on the rear abutter as much as possible.

Mr. Allen noted that special permit relief under Section 8.02 to alter the usable open space is needed because the existing rear yard is almost entirely gravel and used as an open car parking lot, and there is currently no usable open space. He noted that through working with the landscape architect, an addition of 1,207 square feet of usable open space will be provided by the removal of the parking lot, and a reduction the area dedicated to parking.

Mr. Allen stated that the Petitioners are providing significant landscaping to mitigate the impact to the abutters, which fulfills the counterbalancing amenity requirement under Section 5.43 of the Zoning By-Law. Mr. Allen opined that the proposal met the requirements under Section 9.05 of the Zoning By-Law.

Mr. Allen noted that the plan of record set is March 18, 2021, which includes the updated usable open space calculation and the landscape plans.

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

Polly Selkoe, Assistant Director of Regulatory Planning, delivered the findings of the Planning Board. The Planning Board supported the project.

Joe Braga, on behalf of the Building Department, stated that the Building Department had no objections to the proposal.

Upon inquiry from Board Member Zuroff, Mr. Braga stated that the new structure will need to meet the requirements of the 2015 9th Edition Building Code. He noted that the front building does not need to be brought up to code if no work is being done to it.

Upon inquiry from Board Member Poverman, Mr. Braga stated that the code does not apply unless 50% or more work is done, and noted that the kitchen in the basement will need to be removed to be converted to a single-family.

Board Member Poverman stated that the plans are great as well as the landscaping plans and would vote in support.

Board Member Zuroff concurred with Board Member Poverman, and noted that it is an interesting conversion and meets the requirements under the requested zoning relief.

Chair Schneider concurred.

The Board unanimously granted the request for special permit.

2021-0006 143 Tappan Street – Construct a rear addition

Attorney Robert Allen, on behalf of the owner, provided an overview of the project. Project architect, Will Ruhl, provided an overview of the design.

Mr. Allen noted that the proposal is to construct a 300 square foot single-story addition, and construct a new dormer that would add approximately 63 square feet to the FAR. He stated that the changes would have minimal to no impact on the streetscape, and relief for the proposal is sought pursuant to M.G.L. ch. 40A, Section 6. Specifically, Mr. Allen stated that zoning relief was required to allow the extension of a preexisting nonconforming FAR and rear yard setback.

Mr. Allen stated that there will be no new nonconformity created.

Mr. Allen noted that letters of support were submitted by the abutters from both sides, as well as an abutter directly across the street from 143 Tappan Street.

Mr. Allen noted that the Planning Board was unanimously supportive of the proposal, and stated that the Planning Board Members found the proposal to be nicely designed and considered the addition was done in a sensitive way that respects the historic nature of the home.

Mr. Allen stated that the proposal would increase the preexisting nonconforming FAR from 164% to 170%, or by about 6%.

Mr. Allen noted that the proposal would increase a preexisting nonconforming rear yard setback by less than one foot. He stated that the existing rear yard setback is 20.7 feet and would be reduced to 19.8 feet. All other dimensional criteria will conform.

Mr. Allen opined that under Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. App. Ct. 539), the ZBA may allow for the extension of a preexisting nonconformity as long as no new nonconformities are created, and there is no substantial detriment to the neighborhood. He noted the support from the abutters as evidence that no detriment would be created.

Mr. Allen noted that the Board has analyzed substantial detriment to the neighborhood in reference to lack of opposition and to the special permit requirements under Section 9.05. He opined that the proposal met the requirements under Section 9.05 of the Zoning By-Law.

Mr. Allen noted that counterbalancing amenities should not be required, as recommended in the second condition of the Planning Board report, as all zoning relief required falls under *Deadrick*.

Chair Schneider then called for public comments in favor and in opposition of the proposal. No one spoke.

Polly Selkoe, Assistant Director of Regulatory Planning, delivered the findings of the Planning Board. The Planning Board supported the project.

Joe Braga, on behalf of the Building Department, stated that the Building Department had no objections to the proposal.

Board Member Zuroff stated that the relief requested for the rear yard is minimal and stated that he was in favor of granting the requested relief.

The Board discussed the impact of Section 5.43 of the Zoning By-Law, when setback relief is sought under M.G.L. ch. 40A Section 6. The Board concurred that a Section 6 finding would cover both the FAR and setback relief sought.

The Board noted that a Section 6 finding could be available for any dimensional requirement that is preexisting nonconforming, should the criteria otherwise be met.

The Board unanimously granted the request for special permit.

2021-0007 10 Shailer Street – Convert existing two-family building to a three-family building

Attorney Robert Allen, on behalf of the owner, provided an overview of the project. Project architect, Mike McKay, provided an overview of the design.

Mr. Allen stated that the proposal is to convert an existing two-family to a three-family dwelling, with minimal changes to the exterior. He noted that there will be no changes to the existing envelope of the building, however, an existing enclosed porch will be modified.

Mr. Allen stated that the Planning Board suggested that the window wells that are currently boarded up should be restored, in order to provide light into the basement. He noted that the plans were revised subsequently to the Planning Board meeting to satisfy this request.

Mr. Allen stated that there are six existing parking spaces and noted that there is no change to the existing parking lot layout as a result of this conversion.

Mr. Allen opined that all zoning relief required for the conversion is available under Section 5.05, and noted that this section does not require a counterbalancing amenity and does not rely upon Section 5.43.

Mr. Allen did note, however, that refurbishing of additional window wells that are currently boarded up are a benefit that the Petitioner will comply with.

Mr. Allen opined that the proposal met the requirements under Section 9.05 of the Zoning By-Law.

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

Attorney Allen stated that the plan set dated March 26, 2021 shows the new window wells in compliance with the Planning Board request.

Polly Selkoe, Assistant Director of Regulatory Planning, delivered the findings of the Planning Board. The Planning Board supported the project.

Joe Braga, on behalf of the Building Department, stated that the Building Department had no objections to the proposal.

Board Member Poverman was satisfied with the conditions recommended by the Planning Board and voted to support the project.

Board Member Zuroff stated that Section 5.05 is sufficient to provide the relief and noted that Section 5.43 was not required. He stated the proposal meets the criteria and was supportive.

Chair Schneider concurred.

The Board unanimously granted the request for special permit.

The meeting was adjourned.