



**Board of Appeals**  
Jesse Geller, Chair

# *Town of Brookline*

## *Massachusetts*

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### **Board of Appeals Virtual Public Hearing Minutes**

**Thursday, April 8, 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 Jesse Geller, Lark Palermo, and Randolph Meiklejohn

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

Chair Jesse Geller opened the meeting.

### **2021-0009 895 Hammond Street – Construct second-story addition and make interior renovations**

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

Mr. Allen stated that the proposal is to construct a second story addition to an existing ranch style single-family home. He further stated that the second story addition would add a total of 1,131 square feet of gross floor area, for a total floor area ratio (FAR) of 108% of the total maximum allowed FAR.

Mr. Allen opined that under **Section 5.22** of the Zoning By-Law, a special permit may be granted by the ZBA to allow for an increase of up to 120% of the total allowable FAR. Mr. Allen noted that in lieu of seeking to maximize the FAR for the home, the design approach was to create an addition that was appropriate in scale and complemented the existing house.

Mr. Allen stated that a letter of support was provided from the owner of 905 Hammond Street and no other abutter reached out until the Planning Board meeting.

Mr. Allen noted that the Planning Board was unanimously supportive of the addition and commented that one of the Planning Board members described the addition as “modest and reasonable.”

Mr. Allen then stated that subsequent to the Planning Board meeting and at the suggestion of the Planning Board due to the concerns raised by the rear abutter, Mr. Burke conducted a shadow study, which evidenced no new shadow will be cast on the rear abutter’s property.

Mr. Allen noted that many of the surrounding homes have completed additions in recent years and cited a ZBA case from 2017 that granted special permit relief for the rear abutter at 30 Aston Road to exceed the maximum allowable FAR by 12%. Mr. Allen noted that the Petitioner is seeking relief pursuant to the same section to allow the home at 895 Hammond Street to exceed the maximum allowable FAR by 8%.

Mr. Burke reviewed the shadow study for the Board, and noted that the existing structure to the rear casts a shadow on the Petitioner’s property.

In describing the counterbalancing amenity required under the Zoning By-Law for the requested rear yard setback relief, Mr. Burke stated that the primary amenity will be a stonewall along the front of the property which will provide some street line continuity as well as some additional landscaping at the front of the house. He noted there were several large mature trees on the property that would be protected.

Upon inquiry from Board Member Meiklejohn, Mr. Burke stated that there is an existing stone wall, but noted that the height of the wall will be increased to be consistent with the side abutter’s stone wall.

Upon inquiry from Board Member Palermo, Mr. Burke stated that the Petitioner’s property is approximately 13 feet lower than the rear abutter.

Chair Geller confirmed with Mr. Burke that all new FAR will be to the exterior to the home and that there will be no interior conversion of any basement or attic space.

Mr. Allen explained that at the rear of the property there exists a lot of ledge which would make it difficult to plant any additional screening, and therefore the focus of the counterbalancing amenity is along the frontage.

Mr. Allen stated that there will be no change to the footprint of the existing home.

Mr. Allen opined that the proposal meets all of the requirements for a special permit under **Section 9.05** of the Zoning By-Law.

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

Mr. Allen noted a letter in support was provided to the Board.

Chair Geller then asked whether anyone was present to speak in opposition to the proposal.

Attorney Glenn Kramer stated that he represented the abutters residing at 30 Aston Road to the rear, who are opposed to the proposal due to the decrease in light into their home. Mr. Kramer noted that he had not had adequate opportunity to review the shadow study and alleged that the required design review did not adequately take into account the reduced sunlight caused by the proposal.

Karen Chavez, Planner and Zoning Coordinator, provided the Planning Board Report. The Planning Board supported the project.

Paul Campbell, on behalf of the Building Department, stated that the Building Department had no objection to the proposal.

Board Member Palermo stated that in her review of the plans and familiarity with the site, the proposed addition is appropriate and meets the requirements for the grant of special permit relief. Specifically, she noted that there will not be a detrimental impact to the surrounding neighborhood and that the new addition would make the house more consistent with the neighborhood.

Board Member Meiklejohn stated that he was familiar with the evolution of the neighborhood moving from ranch style houses to two-story houses. He noted that the proposed addition is comfortably within the range of other structures in the neighborhood. Board Member Meiklejohn further stated that while some of the addition is within the rear setback, most of the addition is located within the middle of the house.

Chair Geller stated that he agreed with Board Member Meiklejohn. He commented that **Section 5.43** of the Zoning By-Law requires that a counterbalancing amenity be provided to offset the impact of the rear yard setback relief. He noted that ordinarily the counterbalancing amenity must be designed to offset the specific impacts for which the relief is sought, in some cases this is not a feasible option and the Board has instead accepted a more general counterbalancing amenity. Chair Geller noted that testimony was provided by the Petitioner's counsel that the bedrock in the rear yard would prevent additional plantings and therefore the counterbalancing amenity to provide additional landscaping at the front of the home and a stone wall is acceptable. He also noted that in terms of relief under **Section 5.09**, the

proposal has fulfilled the design review requirements for the reasons recited in the Planning Board report.

The Board unanimously granted the request for special permit.

### **219 Gardner Road – Modify ZBA decision of 1989 to account for discrepancy on survey**

Attorney Robert Allen, on behalf of the owner, provided an overview of the project. Project surveyor, Joe Porter, provided an overview of the plot plan.

Mr. Allen stated that Mr. Porter was contracted to survey the property at 219 Gardner Road, and stated that while Mr. Porter was reviewing the historic records of the property he discovered an error that was made in the 1989 survey that was subsequently carried over to the 2009 survey.

Mr. Allen stated that the source of the discrepancy is due to the distance along Rawson Path, which should be 50 feet based on the 1885 and 1888 plans; the 2009 plan by Boston Survey shows the distance as 57 feet.

Mr. Allen stated that the impact of this discrepancy is twofold: 1) The property line that bounds 189 Tappan Street to the northeast runs through the existing home on the lot at 120 Rawson Path and 2) The Zoning By-law requires that flag-shaped lots must maintain a 25-foot-wide corridor of land beyond the frontage to where the lot widens.

Mr. Allen stated that by adjusting the property line to have the correct 50 feet Rawson Path dimension, the property line between 120 Rawson Path and 189 Tappan Street to the south narrows a portion of the corridor, creating a 2.5-foot deficiency.

Mr. Allen stated that this error is relied upon in two ZBA decisions: 1) In 1989, by decision #2983, the ZBA approved a subdivision at 219 Gardner Road and 189 Tappan Street. The decision resulted in the subdivision of a carriage house from what was the main single-family home on the property. The ZBA decision was based on an ANR that provided a 25-foot-wide frontage along Tappan Street. 2) In 2009, by decision #090017, the ZBA approved zoning relief to permit a common driveway between the carriage house lot at 189 Tappan Street and the main house at 219 Gardner Road.

Mr. Allen stated that a zoning analysis of the impact of this change showed that it does not appear to create any infectious invalidity on either lot.

Mr. Allen stated that based on the Assessor's records, while the 189 Tappan Street lot would be reduced by approximately 188 square feet, there would be approximately 1,408 square feet available before the maximum allowed FAR would be met.

Upon inquiry from Chair Geller, Mr. Allen clarified that the modification request is not to allow a reduction of the corridor to 22.5 feet, but to modify the prior decisions by substituting the revised survey dated December 9, 2020 that provides for the correct distance along Rawson Path, and adjusts an existing interior lot line between 219 Gardner Road and 189 Tappan Street to provide a conforming 25-foot-wide corridor.

Mr. Allen stated that that the owners of both 189 Tappan Street and 219 Gardner are supportive of this administrative remedy to bring both lots into conformance with the ZBA's prior granted relief.

Board Member Palermo clarified that as far as Mr. Allen is aware, the survey for 120 Rawson Path is correct and it was the survey that subdivided 189 Tappan Street from 219 Gardner Road that is creating an overlap that would be rectified with the new ANR.

Mr. Allen affirmed this to be the case.

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

Chair Geller then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the comments of the Planning Department. Ms. Selkoe stated that it is the appropriate course of action to first bring the request before the ZBA and then provide the ANR to the Planning Board for signature.

Board Members Palermo and Meiklejohn were supportive of the request.

Chair Geller was supportive and stated that the modification the Board was approving would delete the previous references to the subdivisions that were approved in 1989 and 2009, and substitute the December 9, 2020 subdivision plan.

The Board unanimously granted the request for special permit.

## **Minutes**

The Board unanimously approved the Minutes for 12/17/20 and 01/07/21.

**The meeting was adjourned.**