



Board of Appeals
Jesse Geller, Chair

Town of Brookline

Massachusetts

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Board of Appeals Virtual Public Hearing Minutes

Thursday, July 15, 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, Mark Zuroff, and Randolph Meiklejohn

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

Chair Jesse Geller opened the meeting.

2021-0032 150 Tappan Street – Two-story addition to single family home

Chair Geller disclosed that an opposition letter submitted for the project was from a client from his former firm, and did not believe it to be a conflict of interest.

The Petitioner's Attorney, Scott C. Gladstone, waived the reading of the public hearing notice and provided an overview of the project. The project architect, Kent Duckham, provided an overview of the design.

Attorney Gladstone stated that 150 Tappan Street is a rear lot accessed through a shared driveway with the front lot, that the MBTA D-Line runs behind the property, and that the home also has a pre-existing nonconforming frontage.

Mr. Gladstone stated that the Petitioners propose to expand the single-family home, that there will be no change in the use, and that the proposal generously complies with the Zoning By-Law with the exception of the nonconforming frontage.

Mr. Gladstone stated that the parameters of the rights to the shared driveway were set forth in a recent decision by Judge Long of the Massachusetts Land Court who ruled that "the shared driveway and its use by the Serrano lot pre-date this section [Section 5.14 of the Town of Brookline Zoning By-Law], and thus is grandfathered."

Mr. Gladstone therefore explained that the standard to be applied to a new or expanded structure on a pre-existing nonconforming lot is to be evaluated under the “not substantially more detrimental” standard of M.G.L. c. 40A, Section 6, and opined that the standard has been met.

Mr. Gladstone explained that while no counterbalancing amenities are required, the Petitioners have provided a landscaping plan showing green screens, raised planting beds have been recently installed with Evergreens of at least ten feet in height, and more trees will be planted.

Mr. Gladstone stated that Planning Staff observed that the current house is not visible from Tappan Street, that the proposal is consistent in size with other structures in the neighborhood, and that there is substantial neighborhood support, with eleven (11) letters in support of the application.

Mr. Gladstone noted that FAR and open space calculations, as well as the driveway placement, have been reviewed and approved by Building Commissioner Dan Bennett. Additionally, Deputy Building Commissioner Paul Campbell did a site visit on July 14, 2021 to confirm compliance with all dimensional zoning requirements.

Mr. Gladstone noted that the project received unanimous support from the Planning Board.

Project Architect Kent Duckham provided an overview of the design to demonstrate how the proposal is dimensionally conforming, that it sits appropriately on the lot, and how it preserves the existing home.

Board Member Meiklejohn inquired whether there were stairs on the existing structure that led from the first floor to the second floor, and Mr. Duckham stated that the existing stairs are located in the den and lead to the second floor office room, and were not depicted on the existing floor plans.

Board Member Meiklejohn inquired whether previous additions to the subject site were depicted on the existing floor plans, and Mr. Duckham confirmed that the plans depict previous additions. The Petitioner, Miguel Serrano, further added that the existing stairs are code-compliant and will be demolished as part of the proposed scope of work, and new stairs would be added.

Board Member Zuroff inquired about the proposed driveway material, and Mr. Duckham stated that the existing and proposed driveway material is asphalt. Mr. Gladstone further added that the driveway will be repaired, if damaged during construction, and will obtain permission from the front abutter.

Mr. Gladstone stated that the proposal would meet all requirements for a special permit under Section 9.05 of the Zoning By-Law.

Chair Geller called for public comments in support of the application. Lakshmana Swainy, 70 Beaconsfield Road, stated that he is in support of the application and noted that construction is always unpleasant for abutters but the end result would elevate the Town of Brookline. Craig Hass, on Clark Road, asked in the chat if any screening would be provided along the rear lot line and Mr. Serrano indicated that there would be.

Chair Geller called for public comments in opposition to the application. Adrian Bignami, owner of 146 Tappan Street, stated that the previous construction was very disruptive and noted safety and livability issues especially when trucks would pass over the shared narrow driveway.

Attorney Jennifer Dopazo Gilbert and Brian Kaplan, representing Adrian and Petra Bignami, spoke in opposition. Ms. Gilbert reviewed the history of two Land Court cases involving her client and the Petitioners, and noted that in one case, the ZBA's prior denial of the Petitioners' request to build a two-family had been upheld. Ms. Gilbert also reviewed the rulings of the Land Court in the other case, in which she reported that the Court ordered that her clients were precluded from parking or turning around on the Petitioner's property, they were no longer allowed to point video or audio equipment towards the Petitioner's lot or the shared driveway, and that the Court ruled that a prior 40 foot right-of-way no longer exists.

Ms. Gilbert stated that the earlier referenced footnote 6 of the Land Court's decision was dicta and should not be taken as a final determination that the Petitioner's lot is pre-existing non-conforming, that the lot was never conforming to any past frontage requirement and therefore could not benefit from M.G.L. c. 40A, Section 6, that the proposal requires a variance, and that some of the proposed usable open space did not meet the requirements of Section 5.91 of the Zoning By-Law.

Board Member Zuroff asked Ms. Gilbert why the frontage is not considered a pre-existing condition when the approval of the variance in 1954 that created the subdivision preceded the institution of the Town of Brookline's Zoning By-Law.

Ms. Gilbert responded that the frontage cannot be pre-existing nonconforming when it never met the requirements for frontage any under any version of the Zoning By-Law. Attorney Kaplan further added that there was a Zoning By-Law in 1954 and the Petitioners' lot did not comply with the requirement for frontage in effect.

Chair Geller inquired why the frontage was not raised as a zoning issue when the variance was approved in 1954. Mr. Kaplan noted that the Appeals Court upheld that the 40-foot wide right-of-way was not constructed and never existed, and therefore the frontage did not exist.

Chair Geller opined that if there was a frontage interpretation made by the then Building Department, and if there are no records indicating there was an appeal of the Building Department's determination, then the frontage would be a pre-existing nonconformity.

Karen Chavez, Planner & Zoning Coordinator, provided the Planning Board Report. The Planning Board is supportive of the proposal.

Board Member Meiklejohn inquired whether the Planning Board relied on specific criteria when recommending that the Petitioner provide a construction management plan and a full-time supervisor. Ms. Gilbert noted that the basis for the condition was issues raised by the abutters during the previous construction.

Chair Geller inquired from Ms. Gilbert whether she was appealing a lack of Building Department determination about compliance with open space requirements, and Ms. Gilbert stated that she was not

in a position to appeal the determination, and opined that the slope and grade on Petitioner's lot is significant and does not meet Section 5.91 of the Zoning By-Law.

Paul Campbell, Deputy Building Commissioner, stated that the Building Department had no objections, and would work with the Petitioner to ensure compliance. Mr. Campbell also indicated that he had done a site visit and observed that the lot was large, and the proposed landscaped and usable open space exceed the requirement of the Zoning By-Law, and recommended amending condition number three to require a resubmission of a landscaped plan to further review the grading and topography.

Board Member Zuroff inquired what the Building Department's position was regarding overseeing the construction to reduce negative impacts on the abutter, and how would it be enforced. Mr. Campbell noted that the subject site is unique, and agreed with condition number two in order to control traffic. He clarified that the onsite supervisor can be a construction supervisor, or his/her designee, and that a construction management plan should be submitted to the Building Department. Mr. Campbell stated that this would be enforced on a complaint-driven basis.

Mr. Gladstone, in his rebuttal, stated that the 1954 ZBA decision approving the subdivision did address frontage by requiring adequate means of ingress and egress, and that this decision was never appealed and therefore the rear lot is pre-existing non-conforming as to frontage. Mr. Gladstone also addressed the Bignamis' concerns saying that the Petitioners offered to help pay for various driveway alternatives and that all of these ideas were rejected.

Board Member Zuroff opined that a preexisting nonconformity for frontage exists, that he agreed with Mr. Campbell's recommendation about having the contractor's designee or designated inspector be present during construction, that an onsite third party inspector is not required, that it be enforced by means of complaints, and that he is not averse to granting the requested relief.

Board Member Meiklejohn noted that the unique circumstance where the two lots share a driveway does not warrant the denial of a special permit, and inquired whether the requirement of a construction management plan fell within the purview of the Zoning Board of Appeals.

Mr. Campbell stated that construction management plans are typically only requested for three-family dwellings and greater, but the Building Department agrees with the requirement of said plan due to the uniqueness of the subject site.

Chair Geller inquired if the Petitioners would agree to provide a construction management plan since it would be helpful as a good neighbor. Although Mr. Gladstone expressed hesitation about the appropriateness of the recommended condition to the relief being requested, he did not object.

Chair Geller stated that the Petitioner's lot was created 67 years ago, and until now no claim has been asserted that the subject site lacked frontage, opined that the lot has status as pre-existing non-conforming and therefore meets the requirements under M.G.L. c. 40A, Section 6 and Section 9.05 of the Zoning By-Law.

The Board unanimously granted the request for special permit.

2021-0021 17 Hart Street – Demolish existing building and construct single-family dwelling

Attorney Jennifer Dopazo Gilbert, on behalf of the applicant, requested a continuance to September 9, 2021.

Ms. Gilbert stated that the Planning Board provided the Petitioners feedback on the proposed design, and the plans will be revised prior to returning.

Chair Jesse Geller, and Board Members Mark Zuroff and Randolph Meiklejohn had no objection.

The Board unanimously granted the request to continue the application to September 9, 2021.

2021-0033 131 Carlton Street – Proposed garage in the rear

Attorney Jennifer Dopazo Gilbert, on behalf of the applicant, requested a continuance to August 19, 2021.

Ms. Gilbert stated that the Petitioner's team is working with the direct abutter, who is in opposition to the application and is being represented by Attorney Jeffrey Allen, and will need additional time before returning to the Board.

Chair Jesse Geller, and Board Members Mark Zuroff and Randolph Meiklejohn had no objection.

The Board unanimously granted the request to continue the application to August 19, 2021.

2021-0034 462 Chestnut Hill Avenue – Proposed rear addition and interior renovation

Board Member Randolph Meiklejohn disclosed that he is personally acquainted with the applicant and has been inside the subject site, and did not believe it would affect his ability to impartially exercise duties as a member of the Board.

Chair Jesse Geller disclosed that he serves on a committee with the applicant, and has not been inside the subject site.

The Petitioner's Attorney, Jennifer Dopazo Gilbert, waived the reading of the public hearing notice and provided an overview of the project. The project architect, Kecia Lifton, provided an overview of the design.

Attorney Dopazo Gilbert stated that the proposal is to make a variety of minor modifications to the house consisting of installing an elevator, a small expansion of the kitchen, a connection to the garage, and an exterior egress for the accessory dwelling unit.

Ms. Dopazo Gilbert stated that the Petitioners have discussed the plans with the Preservation Staff, and the exterior changes were so minimal that they did not trigger demolition.

Ms. Dopazo Gilbert stated that the Accessory Dwelling Unit improvements comply with the Accessory Dwelling Unit By-Law that the Town of Brookline passed in 2019, that the Building Commissioner issued a certificate for the ADU use which was recorded in March 2021, that the egress stair for the ADU is only one story, and noted that the Planning Board has confirmed that it is not visible from the public way.

Ms. Dopazo Gilbert stated that the architect is working on a landscape plan that will include a new fence and appropriate plantings, and the Petitioners are also investigating a fossil-fuel-free heating system and the possibility of induction stoves.

Ms. Dopazo Gilbert stated that the FAR relief can be granted by a special permit under M.G.L. c. 40A, Section 6, and zoning relief for the proposed connector can be granted pursuant to Section 5.43 of the Zoning By-Law.

Ms. Dopazo Gilbert stated that the proposal will meet all of the requirements for a special permit under Section 9.05 of the Zoning By-Law and will not be substantially more detrimental to the neighborhood.

Board Member Meiklejohn asked for clarification about the relief required for the rear yard setback, and Ms. Dopazo Gilbert stated that once the garage is attached to the main structure through the breezeway, the 30-foot rear yard setback is triggered and the setback is instead measured from the corner of the garage.

Chair Geller called for public comments in support of and in opposition to the application. No comments were submitted.

Karen Chavez, Planner & Zoning Coordinator, provided the Planning Board Report. The Planning Board is supportive of the proposal.

Paul Campbell, Deputy Building Commissioner, stated that the Building Department will require compliance with remote locations for the means of egress and that the Department had no objections, and would work with the Petitioner to ensure compliance.

Member Meiklejohn found that the proposal was appropriate, well-designed, not substantially more detrimental to the neighborhood, and met all of the conditions of the Zoning By-Law.

Board Member Zuroff and Chair Geller agreed, and supported the requested relief.

The Board unanimously granted the request for special permit.

Minutes

The Board unanimously approved the Minutes for 07/01/21 and 07/08/21.

The meeting was adjourned.