



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2018 JAN 11 AM 11:11

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0074
PAN YUE & BINGCHEN YAN
291 BUCKMINSTER ROAD, BROOKLINE, MA

Petitioners, Pan Yue & Bingchen Yan, applied to the Building Commissioner for permission to construct a rear addition. 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 December 20, 2018 at 7:00 PM., in the Selectmen'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 December 6, 2018 and December 13, 2018 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:

291 BUCKMINSTER ROAD, BROOKLINE, MA 02445 - Construct addition at rear of home in a(n) S-10 SINGLE-FAMILY on December 20th, 2018 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Bingchen Yan) Precinct 14

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:

§5.20 - FLOOR AREA RATIO

§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 G. Zuroff*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Acting Chair Mark G. Zuroff and Board Members Kate Poverman and Steve Chiumenti. Also present at the hearing was Zoning Planner & Coordinator, Mackenzie Leahy, and Assistant Director of Regulatory Planning, Polly Selkoe.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also present at the hearing were the Applicant, Bingchen Yan, Zoning Coordinator and Planner McKenzie Leahy, and Assistant Director of Regulatory Planning Polly Selkoe.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then provided an overview of the property and the requested relief. The house has a "castle" look to it. This house was subject to Preservation review and the Applicant spent the previous summer working with the Preservation Commission for the proposed addition—demolition review is triggered

whenever there is a proposal to cover a portion of an existing historical façade. Along with the proposed addition, the Applicants have also made preservation efforts in replacing the doors and windows. The Preservation Commission provided unanimous support for the addition.

The Applicants propose to add 622 square feet with the two-story addition, to the basement and first floor at the rear of the home. The addition will allow for a new modern family room, mudroom, and kitchen expansion. They will be preserving the home's historic library and other living areas. The streetscape will be maintained; the proposed addition is in a "tucked" area where most of the addition will not be visible from the street.

The existing home is nonconforming as it relates to the allowed Floor Area Ratio ("FAR") within the S-10 Zoning District. The current FAR is at 0.67 (223% of what is allowed), where the Bylaw maximum is 0.30. The proposed addition will increase the existing nonconforming FAR from 0.67 to 0.72 (240% of what is allowed).

Whereas this building is nonconforming, the Board may grant a special permit for the proposed relief under G.L. Chapter 40A § 6, so long as the Board finds that, "such change, extension, alteration shall not be substantially more detrimental than the existing nonconforming use [or structure] to the neighborhood," and that there will be no creation of any new nonconformities. The home was built in 1897—prior to The Zoning Enabling Act of 1954, the subsequent Zoning Act of 1975, and the existing section of the Zoning Bylaw for the Town of Brookline which provides a maximum FAR of 0.30 for the S-10 Zoning District.

Mr. Allen noted that many residents are trying to adapt these existing [nonconforming] homes in a considerate way to allow for modern living. The one thing that the Board can be sure of is that this has been a process, with review from the Building Department, Preservation Commission, and Planning Board and there has been no opposition to the proposal thus far.

Chairman Zuroff asked if this home was built with the existing FAR of 0.67. Mr. Allen stated that there had been no signs of an addition. Kate Poverman stated that she had asked Ms. Leahy if there was any record of any additions or alterations—there was no record of any changes except for interior alterations and the garage and driveway.

Chairman Zuroff asked if there were other Jacobian-style homes in the neighborhood. Mr. Allen said that there were a few in the neighborhood.

Attorney Allen stated that he believed the requirements for a special permit under Chapter 40A § 6 had been met and although not required, the Applicants have proved this by meeting the standards under **Section 9.05** of the Zoning By-Law in order to allow the relief from **Section 5.20** for floor area ratio,

and from **Section 8.02.2** to allow for the change, extension, or alteration of a nonconforming use or structure.

Attorney Allen outlined the standards under **Section 9.05** of the Zoning Bylaw: The specific site is an appropriate location for such a use, structure, or condition as the home will continue to be used as a single-family dwelling and the addition is at the rear of the home complying with setback requirements; The use as developed will not adversely affect the neighborhood because the additional gross floor area is consistent with homes in the neighborhood; There will be no nuisance or serious hazard to vehicles or pedestrians because the property’s on-site circulation will not change; Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and development will have no effect on the supply of housing available for low and moderate income people; and argued that these standards had been met through his testimony.

Public Comments

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal. Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Mackenzie Leahy, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Leahy noted the following:

Section 5.20 – Floor Area Ratio

| Floor Area | Allowed | Existing | Proposed | Finding |
|--|----------------|-----------------|-----------------|------------------------------|
| Floor Area Ratio (% of allowed) | .30 (100%) | .67 (223%) | .72 (240%) | Special Permit*/ Variance |
| Floor Area (s.f.) | 3,826 | 8,632 | 9,253 | |

** 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.

The Planning Board had no issues with this proposal and supported this design that had previously been approved by the Preservation Commission. The Board acknowledged that the FAR of the home is already largely over what is allowed and that this addition will not have any negative impacts.

Therefore, the Planning Board recommends approval of the site plan by Michael Pustizzi dated 3/3/2018 and the floor plans and elevations by D. Michael Collins Architects dated 10/3/2018 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 to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Polly Selkoe to deliver the comments of the Building Department. Ms. Selkoe stated that the Building Department has no opposition to this request and, should relief be granted, the Building Department will work with the Applicants to ensure compliance with the Building Code.

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Brookline Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearings and comments submitted by Town departments, boards and committees as well as residents placed in the public record during the course of the hearings.

During deliberation Chairman Zuroff stated that he believed that the proposal for a special permit could be allowed by the Statute, the case law and the zoning code. Board Members Poverman and Chiumenti agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.20 per M.G.L. Chapter 40A Section 6 and from Section 8.02.2 pursuant to Section 9.05 of the Zoning By-Law, respectively, were met, finding specifically under said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition as the home will continue to be used as a single-family dwelling and the addition is at the side and rear of the home complying with setback requirements. Existing homes in the neighborhood are of similar FAR, size, and style.
- b. The use as developed will not adversely affect the neighborhood. The additional gross floor area is consistent with homes in the neighborhood. While above the Bylaw maximum for FAR in the S-10 District, the addition of 622 square feet accounts only for only a 17% increase in the already nonconforming FAR. Additionally, the Applicant has worked with the Preservation Commission in preservation efforts while replacing a number of doors and windows of the home.

- c. There will be no nuisance or serious hazard to vehicles or pedestrians. The property's on-site circulation will not change. There will be no additional residents or vehicles on the premises.
- d. Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling. The existing driveway provides for adequate on-site parking. The proposed additions allow for more accommodating facilities that better suit the Applicants' needs.
- e. Development will have no effect on the supply of housing available for low- and moderate-income people as this proposal does not propose an increase or decrease in number of dwellings.

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **GRANTS** to Pan Yue and Bingchen Yan, a **SPECIAL PERMIT**, in accordance with G.L. Chapter 40A § 6 and as confirmed by 85 Mass. App. Ct. 539 Deadrick vs. Zoning Board of Appeals of Chatham, and under Section(s) Section 8.02 for nonconforming alterations and extension, as it relates to Section 5.20 Floor Area Ratio, to construct a rear addition and converting the existing enclosed porch and second floor deck to create habitable space, in the S-10 District, for the property located at 291 Buckminster Road (Assessor Parcel No. 243-09-00).

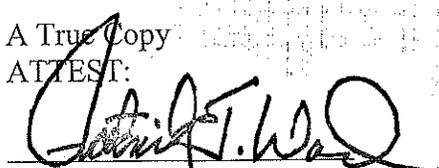
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner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

Unanimous Decision of
The Board of Appeals

Filing Date: 01/11/19


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals