



BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff

# Town of Brookline

## Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0083  
SIEW TIN GAN & EDWIN BARBARIN  
654 CHESTNUT HILL AVE BROOKLINE, MA

Petitioners, Siew Tin Gan and Edwin Barbarin, applied to the Building Commissioner for permission to construct an addition and expand the third floor. 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 January 25, 2019 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 January 10, 2019 and January 17, 2019 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:

**654 CHESTNUT HILL AVENUE, BROOKLINE, MA 02445 - Construct addition and expand third floor in a(n) S-15 SINGLE-FAMILY on January 24<sup>th</sup>, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Siew Tin Gan) 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:

§5.10 - MINIMUM LOT SIZE

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§8.02.2 - ALTERATION AND 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](http://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](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

**Publish: 1/10/19 & 1/17/19**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johnanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing was Planner, Karen Martin.

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 Petitioners, Siew Tin Gan and Edwin Barbarin, and the architect for the project, Andrea Morton.

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

Mr. Allen then described proposal stating that the Petitioners propose to construct an addition and to expand the home's third floor. He noted that the home is located in the S-15 Zoning District. He further noted that the Petitioners had been to two Planning Board Meetings and two Preservation Commission Hearings. He stated that at the second Planning Board Meeting the Petitioners received unanimous approval of their revised proposal and that at Preservation the Commission generally approved these plans and sent the matter to an empowered subcommittee for final approval.

Attorney Allen then stated that the Petitioners seek a special permit for relief from **Section 5.10** for minimum lot size and **Section 5.20** for floor area ratio, under M.G.L. ch. 40A, sec. 6, from **Section 5.60** under **Section 5.43** for side yard requirements, and **Section 8.02.2** for alteration or extension of a non-conforming structure, all pursuant to **Section 9.05**. He argued that with respect to **Sections 5.10** and **5.20**, under M.G.L. ch. 40A, sec. 6, the current minimum lot size, which is under the required, and the current floor area ratio, which is over the allowed, are non-conformities that could be increased further, provided that there are no new non-conformities and that the increase is not substantially detrimental to the neighborhood.

Regarding relief for the floor area ratio and minimum lot size under M.G.L. ch. 40A, sec. 6, Attorney Allen noted that there are no new non-conformities and no substantial detriment to the neighborhood. He argued that the Board could look to the fact that there is no opposition to the proposal and to the standards of Section 9.05 to illustrate that there is no substantial detriment. He then described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed addition because the proposed addition will be consistent with other homes in the neighborhood and will not change the use of the property; the proposed height will be in compliance with the Zoning By-Law; the use will not adversely affect the neighborhood because the home will continue to be used as a single-family dwelling, which is consistent with the surrounding neighborhood, and many surrounding homes have undersized lots and floor area ratios over that allowed in the S-15 District; 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 there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen added that the counterbalancing amenity for the setback relief would be landscaping.

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

Chairperson Schneider then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairperson Schneider then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

**FINDINGS**

**Section 5.10 – Minimum Lot Size**

**Section 5.20 – Floor Area Ratio**

|                                    | Allowed/<br>Required | Existing      | Proposed      | Finding                      |
|------------------------------------|----------------------|---------------|---------------|------------------------------|
| Minimum Lot<br>Size                | 15,000               | 4,593         | 4,593         | Special Permit*/<br>Variance |
| Floor Area Ratio<br>(% of allowed) | .25<br>(100%)        | .49<br>(196%) | .57<br>(228%) | Special Permit*/<br>Variance |
| Floor Area (s.f.)                  | 1,148                | 2,240         | 2,656         |                              |

\* 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 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.60 – Side Yard Requirements**

|  | Required | Existing | Proposed | Finding         |
|--|----------|----------|----------|-----------------|
| Side Yard<br>Setback<br>(Left and Right) | 15 feet  | 8 feet   | 8 feet   | Special Permit* |

\* Under *Section 5.43*, the Board of Appeals may waive by special permit yard and/or setback requirements, if a counterbalancing amenity is provided.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter this non-conforming structure.

**PLANNING BOARD COMMENTS**

The Planning Board was appreciate that the applicant gave additional thought to the Planning Board’s initial comments and explored various design alternatives for the roof. The Board was satisfied with the architect’s new design that did not incorporate dormers but instead lowered the roof by one foot and kept the proposed skylights.

Therefore, the staff recommends approval of the site plan by Peter Nolan dated 9/11/2018 and the floor plans and elevations by Morton Design dated 1/9/2019 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 a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. 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.

Chairperson Schneider then called upon Karen Martin to deliver the comments of the Building Department. Ms. Martin stated that the Building Department was not present and provided no report, but the Planning Department would work with the Petitioner to ensure compliance with the conditions of this decision.

During deliberation, Chairperson Schneider stated that she believed the criteria for the requested relief was met. Board Member Meiklejohn stated that the plans are very clear and that the new space has been clearly labeled and is very efficiently used. Board Members Meiklejohn and Palermo agreed. The Board agreed to add a fourth condition regarding future revisions that may be requested by the Preservation Commission.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for relief from **Section 5.10** for minimum lot size and **Section 5.20** for floor area ratio, under M.G.L. ch. 40A, sec. 6, from **Section 5.60** under **Section 5.43** for side yard requirements, and **Section 8.02.2** for alteration or extension of a non-conforming structure, all pursuant to **Section 9.05** of the Zoning By-Law were met, finding specifically under said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed addition will be consistent with other homes in the neighborhood and will not change the use of the property.
- b. The use as developed will not adversely affect the neighborhood because the home will continue to be used as a single-family dwelling and the new height will be compliant with the Zoning By-Law.

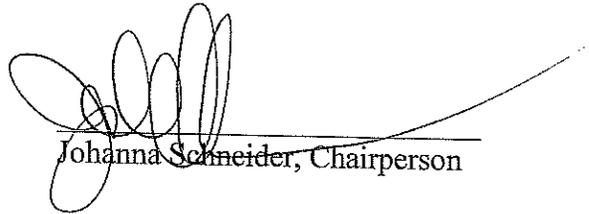
- c. There will be no nuisance or serious hazard to vehicles or pedestrians and the property's on-site circulation will not change.
- d. Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

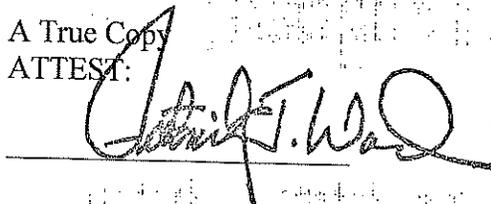
1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Should the plans be amended at the request of the Preservation Commission, such final plans shall be subject to the review and approval of the Assistant Director of Regulatory Planning.
4. 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 building elevations; 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: 2/1/2019

  
Johanna Schneider, Chairperson

A True Copy  
ATTEST:

  
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Patrick J. Ward  
Clerk, Board of Appeals