



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zurroff

Town of Brookline Massachusetts

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Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0077
ARMIA AZADIAN
635 CHESTNUT HILL AVENUE, BROOKLINE, MA

Petitioner, Armia Azadian, applied to the Building Commissioner for permission to construct two attached single-family houses. 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:

635 CHESTNUT HILL AVENUE, BROOKLINE, MA 02445 - Construct two townhouses in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on December 20th at 7:00 pm at in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Armia Azadian) 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:

§4.07 – TABLE OF USE REGULATIONS, USE #05

§5.13 - LOT WIDTH

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

§5.60 - SIDE YARD REQUIREMENTS

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 Zuroff***

Publish: 12/6/18 & 12/13/18

At the time and place specified in the notice, this Board held a public hearing. The hearing was subsequently continued to February 7, 2019 to allow the applicant to make revisions at the Planning Board and then to March 7, 2019. Present at the hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing was Planner Karen Martin.

The case was presented by Norman Kurloff, of NorDesign & Build, architect for the project. Mr. Kurloff stated that the property is an existing single-family house and the proposal is to demolish it to construct a two-family house in this T-5 zoning district. Mr. Kurloff explained that the existing setbacks will be maintained in the newly-constructed structure and that these setbacks are currently non-

conforming. He further explained that the proposed height and FAR are under what is allowed. Mr. Kurloff showed the layout of the existing shared driveway with the abutter and parking area at the rear of the lot.

Owner Armia Azadian then spoke and described outreach he has undertaken to reach out to the neighbors regarding the proposal. He described the existing structure as an eyesore to the neighborhood. Mr. Azadian explained that the project went before the Planning Board three times during which requests were made to clarify the site plan to show turning radii and to conform with the useable open space requirement. Mr. Azadian stated that the Planning Board ultimately recommended approval of the project and noted that the setback relief is warranted due to the very narrow lot. Mr. Azadian described the concerns of the neighbors who spoke at the Planning Board meetings which include snow removal, construction safety, the narrowness of the driveway and traffic congestion. Mr. Azadian stated that he believes the proposal meets the requirements under Section 9.05 for a special permit.

Colin Regan (643 Chestnut Hill Avenue) stated that he has conditional objections to the project. He stated that he is delighted to see the property being developed but that his concern is the size of the proposed structure and that it is already non-conforming so a second unit should not be added. He also stated that the driveway is a concern and is too narrow for an additional unit. The adjacent property has five spaces that also utilize the same driveway and backing out is very dangerous, he stated, with too many cars too close to the expanded structure at the rear of the property. He explained that he believes this proposal will create more problems than benefits to the neighborhood. Chairperson Schneider asked to clarify if Mr. Regan uses this shared driveway. Mr. Regan responded that he does not, he lives two properties over but his concerns are for the whole neighborhood, all of Chestnut Hill Avenue and those who have children at Heath School.

Ms. Palermo asked about the width of the driveway and if there are easements over the two adjacent properties for the shared driveway. Mr. Azadian replied that it is 12 feet wide and both properties have easements.

XiXi Chen (633 Chestnut Hill Avenue) stated that she and her husband just purchased the house that is at the rear of the subject property. She stated that she has attended the Planning Board meetings but has only seen neighbors in opposition, not the neighbors that Mr. Azadian claims are all in support. She stated that her concerns are the house doubling in size as well as increasing in height. She is glad to see the property developed but not to see the use expanded. She further explained that she is worried about congestion and the open space at the rear being replaced by concrete and parked cars. Additionally, she explained that she is personally worried about a tree that is on the property line she shares with the applicant. Mr. Meiklejohn asked to clarify which side of the property line the tree is on. Ms. Chen stated that the tree is on her property with branches that hang over onto the subject property. She showed photos of the tree to the Board members. Mr. Meiklejohn asked if the project construction will require the removal of branches that hang over the property line. Ms. Chen replied that she believes so because the house is so close to the property line. Ms. Palermo explained that legally, a neighbor does have the right to trim branches that hang over onto their property back to the property line. The Board members encouraged the neighbors to work together regarding the tree. Chairperson Schneider stated that the issue of the tree is outside the purview of this Board.

Chairperson Schneider called upon Karen Martin to deliver the findings of the Planning Board.

Ms. Martin noted the following:

FINDINGS

Section 4.07 – Table of Use Regulations Use #5

A special permit is required for an attached dwelling provided that no row of such units shall consist of more than two units.

Section 5.13 – Lot Width

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.91 – Usable Open Space

	Required	Existing	Proposed	Finding
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Lot Width	45 feet	35 feet	35 feet	Special Permit/Variance
Side Yard Setback (left and right)	10 feet	6 to 6.75 feet	6 to 6.75 feet	Special Permit*
Usable Open Space	30%	47%	30.6%	Complies

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

PLANNING BOARD COMMENTS

After numerous appearances before the Board, the members felt comfortable approving this project. The Board had asked the applicants to shrink the building, improve the parking area and ensure that the proposal met the open space requirements. After making these revisions, the Board recommended approval of the project noting that the main reason it is willing to grant the setback relief is due to the unusually narrow and deep lot that is pre-existing non-conforming with regards to lot width.

Therefore, the Planning Board recommends approval of the site plan dated 2/7/2019 by Robert Staples and the floor plans and elevations dated 2/4/2019 by Nordesign & Build, 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 with all materials noted, 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 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairperson Schneider then called upon Ms. 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.

Ms. Palermo stated that in looking at the compliant aspects of the project, the applicant has the right to build this two-family structure and that the usable open space will also remain compliant. She stated that the applicant is not seeking substantial relief from what is allowed. Chairperson Schneider also stated that the use is permitted by right as well as the accompanying parking spaces. She stated that Chestnut Hill Avenue is already congested and that adding one parking space is not going to contribute to a perceptible difference in traffic and that the footprint is remaining as it currently is now and is only being extended into the rear yard where there is space. Ms. Schneider stated that she is sympathetic to the neighbors' concerns but that the issues they raised do not seem to be tied to the zoning relief required. Mr. Meiklejohn stated that the key piece of relief seems to be the construction within the side yard setback. He questioned if there is anything about the construction that will impact the driveway but he does not find that there is. Ms. Palermo stated that the extra parking spaces are allowed and the additional paving will not make useable open space non-compliant. The Board recommended that the applicant screen the parking area with shrubs as the counterbalancing amenity. Mr. Meiklejohn also added that, in looking at the architectural plans, there is no room to make the house narrower than it already is.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for relief from **Section 4.07, Table of Use Regulations Use #5** for two attached single-family dwellings, **Section 5.13** for minimum lot width and **Section 5.60** under **Section 5.43** for side yard requirements, 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 landscaping plan indicating counterbalancing amenities 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

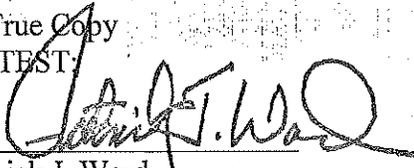
Unanimous Decision of
The Board of Appeals

Filing Date: 3/25/19



Johanna Schneider, Chairperson

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals