



BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff

Town of Brookline

Massachusetts

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0030
28 CUSHING ROAD, BROOKLINE, MA

Petitioners, Fariha and Gulraiz Chaudry, applied to the Building Commissioner for permission to construct a new single-family home at 28 Cushing Road. 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 July 11, 2019 at 7:00 PM., in the Select Board'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 June 27, 2019 and July 4, 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:

28 CUSHING ROAD, BROOKLINE, MA 02445 - Proposed Single Family Detached Dwelling. The existing house is to be demolished and a new residence would be constructed. The residence would be two stories with an unfinished basement and two-car garage in a(n) S-7 SINGLE-FAMILY district on JULY 11 at 7 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Gulraiz and Fariha Chaudry) *Precinct 5*

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:

§5.09.2.N – DESIGN REVIEW

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
Mark G. Zuroff*

Publish: 6/27 & 7/4

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Lark Palermo and Steve Chiumenti. Also present at the hearing were Zoning Planner & Coordinator, Charlotte Leis, and Deputy Building Commissioner, Joseph Braga.

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.

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

Mr. Allen then described the proposal stating that the Petitioners propose to construct a new single-family home with a total finished gross floor area of 3,246 square feet. He noted that Gulraiz, Fariha, and their two children purchased the property in 2018; as residents of Brookline since 2006 they hoped to stay in the Town as their family continued to grow. He further noted that the property is in the S-7 Zoning District. While the Preservation Staff initially found the existing structure to be historically significant, the Preservation Commission voted that the structure was not significant and no stay was imposed on the property. Attorney Allen explained that with the proposed new structure, the front yard setback would increase from 18' to 30' for the main house; the garage will be set back about 20'. Furthermore, he noted that the Petitioners were working with their neighbors and a local arborist regarding trees. He stated that the Petitioners were compliant with the Zoning By-Law in all aspects other than the potentially habitable basement space. He stated that the Petitioners understood the restrictions to finishing the basement space and were comfortable with not finishing the space except as may be permitted by the Zoning By-Law in the future. Finally, Mr. Allen stated that the Petitioners had support letters from immediate abutters at 22 Cushing Road and 32 Milton Road, which were provided to the Planning Board and Planning Department.

Attorney Allen then stated that the Petitioners seek a special permit for relief from **Section 5.09.2.N** for potentially convertible basement space, pursuant to **Section 5.09.4** design standards and **Section 9.05**.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed single-family dwelling, as such is allowed in the S-7 district and is consistent with the current use; the use will not adversely affect the neighborhood because the home will be of a comparable size and style as other dwellings in the immediate neighborhood; there will be no nuisance or serious hazard to vehicles or pedestrians because the driveway will be slightly widened and there is no expected change in the circulation of vehicles on site; 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 also stated that the applicant provided an impact statement responding to the design standards of 5.09.

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 Charlotte Leis, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Leis noted the following:

FINDINGS

Section 5.09.2.n – Design Standards

The most relevant sections of the design review standards are described below. Comments are provided by Planning Department staff. Also see the Applicant’s narrative included with the plans.

Section 5.09.2.N

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially

greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.

Floor Area	Allowed	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	Without basement and attic: 0.3497 With basement and attic: 0.5537	Special Permit
Floor Area (s.f.)	3,248	Without basement and attic: 3,246 With basement and attic: 5,139	

PLANNING BOARD COMMENTS

The Planning Board found the proposed house to be generally acceptable but did not believe the protruding garage wing to be consistent with the architecture of the neighborhood. The Board explored ways in which the design could be revised to push back the garage wing. No conclusive alteration was arrived at, so the Board agreed to allow the applicants to proceed to the Zoning Board of Appeals with a condition requiring the front garage façade to be pushed back approximately 4 feet and an agreement that the applicant would return to the Planning Board for final design review.

Therefore, the Planning Board recommends approval of the site plan by Neponset Valley Survey Assoc. Inc. dated 10/30/2018 and floor plans and elevations by Kent Duckham dated 3/21/2019 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plans, 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 review plans showing the garage face pushed back to be at the same setback as the front porch. The revised plans shall require final approval by the Planning Board.

3. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections regulating FAR, must comply with §5.22 of the Zoning By-law.
4. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan showing a tree survey retaining walls and materials, subject to the review and approval of the Assistant Director of Regulatory Planning.
5. 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.

Attorney Allen raised the concern of the term “coplanar” in condition 2. Chairman Zuroff noted that he believed the word “coplanar” shall be removed from condition 2.

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

During deliberation Board Member Palermo indicated her belief that the special permit criteria were met. Board Member Chiumenti noted that he appreciated the photos and believed that the massing, scale, and footprint of the proposed structure fit in with the neighborhood. Chairman Zuroff agreed.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.09.2.N** for potentially convertible basement space, pursuant to **Section 5.09.4** design standards and **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 such is allowed in the S-7 district and is consistent with the current use.
- b. The use as developed will not adversely affect the neighborhood because the home will be of a comparable size and style as other dwellings in the immediate neighborhood.

- c. There will be no nuisance or serious hazard to vehicles or pedestrians because there is no expected change in the circulation of vehicles on site.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- 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 special permit relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit for review final site plans, floor plans and elevations showing the garage face pushed back. The revised plans shall require final approval by the Planning Board.
- 2. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections regulating FAR, must comply with §5.22 of the Zoning By-law.
- 3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan showing a tree survey, retaining walls and materials, 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 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.

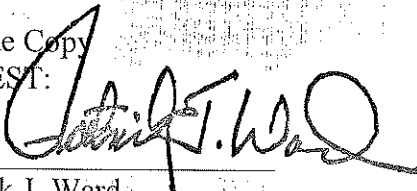
Unanimous Decision of
The Board of Appeals



Mark G. Zurhoff, Chairperson

Filing Date: 7/26/19

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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