



BOARD OF APPEALS
Jesse Geller, Chair
Mark G. Zuroff
Johanna Schneider

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2020-2020
84 BONAD ROAD

Petitioner, Michael O'Connor of 84 Bonad Road, applied to the Building Commissioner for permission to construct an addition to the rear of the home and a new entry. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 27, 2020 at 7:00 p.m., virtually as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 August 13, 2020 & August 20, 2020 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 **virtual** public hearing on **August 27, 2020 at 7:00PM**

Register for this hearing:

<https://bit.ly/3kf7fTf>

After registering you will receive a confirmation email containing information about joining the hearing.

Our Virtual Meeting Guide for Applicants and the Public can be found here:

<https://bit.ly/30wRoY3>

84 BONAD ROAD, BROOKLINE, MA 02467 – CONSTRUCT A REAR ADDITION AND DEMOLISH AND CONSTRUCT AN ENTRYWAY. This property is in an S-7 SINGLE FAMILY ZONE. This case is to be heard virtually on 8/27/2020 at 7pm (Petitioner: RICHMAN LIFE ESTATE, SAMUEL H & F M) Precinct 16

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

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§8.02.2 – ALTERATION AND EXTENSION

Any other relief the Board finds necessary

PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

Advance submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations be sent before the hearing to Monique Baldwin (mbaldwin@brooklinema.gov) and Joe Braga (jbraga@brooklinema.gov). Public testimony will be taken during the hearing as normal.

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 mbaldwin@brooklinema.gov, 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

Johanna Schneider

Publish: 8/13/2020& 8/20/2020

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Mark G. Zuroff and Board Members Kate Poverman and Paul Bell. Town Staff included Joseph Braga, Deputy Building Commissioner and Monique Baldwin, Zoning Coordinator / Planner. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was homeowner, Michael O'Connor.

Zoning Board of Appeals Chair Zuroff called the hearing to order at 7:00 pm. Chair Zuroff reviewed the standard hearing procedures for virtual hearings and confirmed all Board Members and Staff could both visually and auditorily engage in the hearing.

Attorney Allen described the neighborhood as a typical South Brookline neighborhood, with most of the lots under 5,000 square feet. He noted that the house was determined to be not significant by the Preservation Commission in February 2020. Mr. Allen described the proposal to demolish the existing porch which is currently in violation of the front yard setback and to construct a small addition and construct a small mudroom. Mr. Allen noted that at the Planning Board the proposal was to bring the porch into compliance with the front yard setback and construct a 40 square foot mudroom, but the Planning Board thought 40 square feet was too small and encouraged to the Applicant to maintain the existing footprint of the porch and make a larger mudroom. He stated that the front yard setback is preexisting-nonconforming, and have modified the proposal to increase the mudroom addition, but it will not extend further into the front yard setback.

Mr. Allen described the rear addition and noted that the bulk of the addition is in the rear of the home where the first floor is being extended out and a second story is proposed above. He noted that most of the homes nearby have a front entrance into the homes and currently 84 Bonad has a side entrance, which will be changed to be a front entry and will fit in better with the neighborhood.

With regards to the zoning relief, Mr. Allen stated that relief from **Section 5.51** is available under **Section 5.43** and stated that landscaping will be provided to serve as the counterbalancing amenity. Attorney Allen continued that case law (Deadrick v. Board of Appeals of Chatham, 85 Mass.App Ct. 539) has further established that an owner can however expand an existing nonconformity via a special permit granted under Massachusetts General Laws Chapter 40 A, Section 6, provided there is a finding that such expansion causes no substantial detriment. Attorney Allen stated that the maximum allowable FAR in the S-7 District is .35 and the home currently has a FAR of .39. Attorney Allen indicated that the addition will increase the FAR to .49 and noted that the lot is only 5,000 square feet. Mr. Allen stated that the proposal will only add 408 square feet which will greatly help the livability of the home and improve the exterior.

Upon inquiry from Chair Zuroff, Mr. Allen stated that the mudroom addition was originally 40 square feet, and was subsequently increased to 60 square feet in response to the recommendation from the Planning Board to make the room more functional for the family.

Attorney Allen then argued that the proposal will meet all of the requirements for a special permit under **Section 9.05** stating as follows: Specific site is an appropriate location for such use: (1) The site is appropriate for the proposed use as a single-family dwelling, which is allowed in the district, and the current use of the property; (2) use will not adversely affect the

neighborhood: The home is on an undersized lot (5,000 sf, 7,000 sf required) and the proposal is consistent with the other homes in the neighborhood and district; (3) there will be no nuisance or serious hazard to vehicles or pedestrians: The property's on-site circulation will not change; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use: Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; (5) there will be no effect on the supply on housing available for low and moderate income people.

Chair Zuroff called for comments in opposition to the proposal. Mark Seneski, 88 Bonad Road, stated that his house is very close to 84 Bonad Road and noted the addition will be very imposing. He stated that he is worried about his sky line and stated that it will be gone with the second-floor addition. Chair Zuroff encouraged Mr. Seneski and Mr. O'Connor to work together to work towards an amenable solution. Mr. Allen stated that this is a thickly settled neighborhood and added that there are approximately 9' on Mr. O'Connor's property line and at least 10' from the driveway on the abutter's lot, arguing that is a substantial setback for the addition. Mr. Allen stated that this is a 408 square foot addition and at one angle at a certain time there may be some impact to this abutter; Mr. Allen argued that the standards in Deadrick, should be applied to this application, design review is not required and the Planning Board recommended approval. Mr. Allen stated that under the law, the Board would have to find there is substantial detriment to the neighborhood as the result of this addition. Mr. Allen cited existing neighborhood conditions and argued the addition is consistent with the neighborhood.

The Board discussed the impact to the abutter. All Board Members concurred that while they would encourage the Applicant to work with the abutter to explore design solutions such as

the addition of windows to break up the blank wall, the application met the requirements under the standards of Deadrick and **Section 9.05** of the Zoning By-Law.

Chair Zuroff then called for comments in support of the application. There were none submitted.

Chair Zuroff then called upon Planner and Zoning Coordinator, Monique Baldwin to deliver the Planning Report:

ZONING/ FINDINGS

ZONING: S-7	Required/ Allowed	Existing	Proposed	Relief
Floor Area Ratio	0.35 1,750 sf	0.39 / 1,996 sf	0.48 / 2,384 sf	Special Permit¹
Side Yard Setback (Left / Right)	7.5 ft.	18 ft. / 6.7 ft.	18 ft. / 6.7 ft.	Special Permit²

¹ **MGL Chapter 40A, Section 6 Finding:** The applicant is proposing to expand the building, which is already pre-existing nonconforming with respect to Floor Area Ratio. This constitutes an extension of an existing nonconformity and requires a finding by the Zoning Board of Appeals that the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

² **Section 5.43 – Exceptions to Yard and Setback Regulations:** This section allows the Board of Appeals to waive yard and setback requirements if a counterbalancing amenity is provided.

§8.02.2 – Alteration and Expansion – A special permit is required for the alteration of a non-conforming structure.

PLANNING DEPARTMENT COMMENTS

Ms. Baldwin stated that the Planning Department is supportive of this proposal. She stated that the existing FAR already exceeds the limits of the Zoning By-Law and the applicant’s request to further increase this nonconformity is modest and added that the altered structure would remain consistent with the massing and style of the neighborhood. Furthermore, Ms. Baldwin stated, most of the added bulk is on the rear of the structure and the front porch is being

reduced in size meaning that the impact of the addition on the public realm will be fairly limited. She concluded that the proposal is therefore not substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD RECOMMENDATION

On behalf of the Planning Board, Ms. Baldwin stated that the Board is supportive of this proposal and spent some time discussing the design and functionality of the altered front entrance and felt that the applicant should propose a front portico that extends further toward the front yard. Ms. Baldwin noted that the Board recognizes that such an extension of the portico would require additional zoning relief due to creating a new zoning violation of the front yard setback but feels that the relief could reasonably be granted.

Therefore, Ms. Baldwin stated, the Planning Department recommends approval of the site plan by CCR Associates, dated 3/17/20 and the architectural plans by Laurence Gogarty, dated 3/10/20, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Upon inquiry from Board Member Poverman, Ms. Baldwin stated that the Planning Board supported the addition to the rear. Mr. Allen added that the question about the lack of windows along the wall facing the abutter was raised and the architect stated that it was to be respectful of the neighbors, but would explore an alternative approach with the abutter.

Chair Zuroff then called upon Joe Braga, the Deputy Building Commissioner. Mr. Braga stated that the Building Department has no objection to the relief and will work with the Petitioner to ensure compliance with building codes.

Chair Zuroff stated that the Applicant has met the burden under zoning code and 40A Section 6 but encouraged the neighbor to work with the Applicant to find a solution. Chair Zuroff stated that he believes the Applicant is entitled to the relief requested. Board Members Poverman and Bell concurred. Board Member Bell noted that it was a reasonable addition, especially considering how small the lots and noted that the setback proposed provides generous enough space between the two properties therefore would not be substantially detrimental to the neighborhood.

The Board was amenable to modifying the Planning Board condition #1 to allow for design changes to encourage the abutter and Applicant to work together without requiring the Applicant return to the Zoning Board of Appeals.

The Board then determined, by unanimous vote that the requirements for a special permit from the provisions of **Sections 5.51** and **5.20** of the Zoning By-Law pursuant to M.G.L 40A Section 6, **Sections 5.43** and **9.05** of the Zoning By-Law were met. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.

- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any 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 revised conditions:

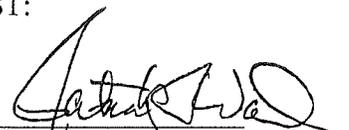
1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of Regulatory Planning for review and approval. The Assistant Director of Regulatory Planning may approve a revised design consistent with the Board's discussion, so as long as there is no increase in the FAR.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 10/05/2020


Mark G. Zuroff, Chair

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals