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Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairperson
Mark Zuroff
Johanna Schneider

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2020-0045
79 BUCKMINSTER ROAD,
BROOKLINE, MA

Petitioners, David Frey and Helen Cheng, applied to the Building Commissioner for permission to construct a rear addition to the home at 79 Buckminster Road. 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 October 1, 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

September 17, 2020 & September 24, 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 **October 1, 2020** at **7:00PM**

Register for this hearing:

<https://bit.ly/2DIEMVg>

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>

79 BUCKMINSTER ROAD, BROOKLINE, MA 02445 – Construct an addition in the rear and expand the rear deck. This property is in an S – 10 SINGLE FAMILY ZONE. This case is to be heard virtually on 10/1/2020 at 7pm (Petitioner: CHENG, HAO & FREY, DAVID M) Precinct 12

The Board of Appeals will consider 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

§8.02.2 – 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 Zuroff
Johanna Schneider***

Publish: 9/17/2020& 9/24/2020

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairperson Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. Also present at the hearing were Deputy Building Commissioner, Joe Braga, and Planner & Zoning Coordinator, Monique Baldwin.

Chairperson Geller reviewed the standard virtual hearing protocol with Board Members and all those in attendance.

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. Also in attendance were the Petitioners, David Frey and Helen Cheng and the project Designer, Anthony Lee, Honest Struggle.

Chairperson Geller called the hearing to order at 7:00 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen described the proposal to construct a 193 square foot addition at the rear of the building. Mr. Allen noted that the existing structure is in need of some repairs and, as part of those renovations, the homeowners would like to add an addition which will greatly increase the interior circulation of the home. Mr. Allen stated that the existing FAR is at .4 and the Zoning By-Law allows for a maximum FAR of .3; the proposal seeks to increase the FAR to .42, without creating any new nonconformity.

Mr. Allen stated that the Petitioner is seeking a special permit under the Zoning By-Law and pursuant to M.G.L. Chapter 40A, Section 6. He argued that case law (Deadrick v. Board of Appeals of Chatham, 85 Mass. App. Ct. 539) interpreting M.G.L. Chapter 40A, Section 6 has established that as long as there will be no new nonconformity created and the proposal will not be substantially more detrimental, the Board of Appeals may grant dimensional relief by a special permit. Mr. Allen argued that the proposal will not be substantially more detrimental to the neighborhood and reviewed the standards outlined in **Section 9.05** of the Zoning By-Law, stating as follows: (1) The specific site is an appropriate location for such use since the existing single-family will remain. (2) The use will not adversely affect the neighborhood inasmuch as the proposal will be a modest addition to the rear of the home and will not adversely affect the neighborhood, with Mr. Allen noting the Petitioner has reached out to neighbors and the neighbor at 76 Buckminster submitted a letter in support. (3) No nuisance or serious hazard to vehicles or pedestrians will occur. (4) Adequate and appropriate facilities will be provided for the proper

operation and proposed use. (5) The development will not have any effect on the supply on housing available for low- and moderate-income people.

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

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

Chairperson Geller then called upon Monique Baldwin, Planner & Zoning Coordinator, to deliver the findings of the Planning Board:

FINDINGS

§5.20 – FLOOR AREA RATIO

ZONING: S-10	Required/ Allowed	Existing	Proposed	Relief
Floor Area Ratio (0.30 / 100%)	0.30 / 100% 4,469 sf	0.40 / 133% 6,011 sf	0.42 / 139% 6,204 sf	Special Permit¹

¹ **M.G.L. c.40A, §6 finding (aka Deadrick)** – Because the subject lot or building is pre-existing nonconforming, any alteration or substantial reconstruction that increases the nonconforming nature of the structure can only be approved provided that the Zoning Board of Appeals make a finding that the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

§8.02.2 – Alteration and Extension: 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 since the proposed addition is minimal and, being located in the rear of the structure, would have little impact on the public way or abutters. She noted that the proposal is not substantially more detrimental to the neighborhood.

PLANNING BOARD RECOMMENDATION

Ms. Baldwin stated that the Planning Board is supportive of this proposal. The Board commends the applicant on the quality of the plans and modesty of the proposal. The Board commented on the removal of the shutters on the side elevations and wondered whether it constitutes a wise design choice, but did not feel it important enough to require a change. The Board also briefly discussed ideas for landscaping the rear of the site but left any final decisions on that front to the applicant.

Therefore, Ms. Baldwin stated, the Planning Board recommends approval of the site plan by Jarvis Land Survey Inc. dated July 21, 2020, and architectural plans from Philip Kramer Architect dated September 17, 2020, 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 for Regulatory Planning for review and approval.
2. 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 for 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.

Chairperson Geller then called upon Deputy Building Commissioner, Joe Braga, to review the findings of the Building Department. Mr. Braga stated that the Building Department had no issues with the relief sought under the Brookline Zoning By-Law. Mr. Braga further noted that should the Board find that the requirements for the grant of relief are satisfied, the Building Department will work with the Petitioner to ensure compliance with the Building Code; he noted that the relief request is minimal.

In deliberation, Board Members Zuroff and Schneider found that the criteria for the grant of the request relief had been met. Chairperson Geller stated that the application is not substantially more detrimental than the prior nonconformity. The Board was satisfied that the proposal met the standards of Massachusetts General Laws Chapter 40A Section 6, as well as the requirements of **Section 9.05** of the Zoning By-Law and determined, by unanimous vote, that the requirements for a special permit from for **Sections 5.20** and **8.02** of the Zoning By-Law pursuant to **Section 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 not 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 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 for Regulatory Planning for review and approval.
2. 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 for 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.

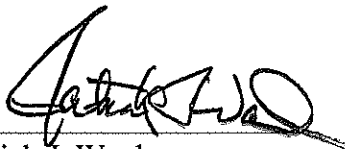
Unanimous Decision of
The Board of Appeals

Filing Date: 10/6/20



Jesse Geller, Chairperson

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals