

# Town of Brookline Massachusetts



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BOARD OF APPEALS  
Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2020-0029  
105 STEDMAN STREET

Petitioner, 105 Stedman Street LLC, applied to the Building Commissioner for a building permit to raze the existing single-family home on the property and replace it with a new single family home. 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 September 10, 2020 at 7:00 p.m. as the date and time for a virtual hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney 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 27, 2020 and September 3, 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 **September 10, 2020 at 7:00PM**

**Register for this hearing:**

<https://bit.ly/31atkuG>

*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>

**105 STEDMAN STREET, BROOKLINE, MA 02446 – DEMOLISH AND RECONSTRUCT A NEW SINGLE FAMILY HOME. This property is in a T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY ZONE. This case is to be heard virtually on 9/10/2020 at 7pm (Petitioner: 105 Stedman Street LLC) Precinct 8**

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:

**§5.13 - LOT WIDTH**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§6.04.5.D – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**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](mailto:mbaldwin@brooklinema.gov)) and Joe Braga ([jbraga@brooklinema.gov](mailto: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](mailto:mbaldwin@brooklinema.gov), 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  
Mark Zuroff  
Johanna Schneider***

**Publish:** August 27, 2020 and September 3, 2020

The public hearing was held on September 17, 2020 and October 22, 2020.

Present at the September 17, 2020 hearing was Chair Jesse Geller and Board Members Mark Zuroff and Johanna Schneider.

Attorney Jeffrey P. Allen, attorney for the Petitioner explained that the proposed project is a pre-existing, nonconforming structure under Chapter 40A Section 6. Attorney Allen stated the proposed project is therefore as-of-right and exempt from the Zoning By-Law but noted, in any event, the nonconformities (the side yard setbacks) are not being increased and are actually being decreased and improved from the existing nonconformity. Mr. Allen referenced case law in support of his argument - *Bellalta* and *Gale*. Board Member Johanna Schneider stated she did not find anything that would support the proposition that the reconstruction of a pre-existing nonconformity that does not increase the nonconformity is exempt from zoning. Since the Board was tasked with making a preliminary determination on the procedural question, Ms. Schneider made the suggestion that the Board seek an opinion from Town Counsel. Chair Geller noted that the Mr. Allen's interpretation is inconsistent with the way the Board had previously applied the Section under the Zoning By-Law. Chair Geller stated that, if the proposed project was as-of-right, then it would not be appropriate to continue to hear the case and take public comment. Attorney Allen requested an administrative determination that would pre-empt the public hearing process. The Board requested the opinion of Town Counsel, and

Attorney Allen asked to continue the case. The Board unanimously granted the request to continue the application.

The public hearing continued on October 22, 2020. Attorney Jeffrey P. Allen provided an overview of the Board hearing on September 17, 2020. Town Counsel provided an opinion to the Board disagreeing with Attorney Allen's argument that the relief requested for the reconstruction of a single-family home at 105 Stedman Street should be granted as of right, rather than through through the Zoning By-Law's special permit process. In support, Town Counsel, Jonathan Simpson, stated that construction of the new improvements was an increase in the non-conforming aspect of the house. Mr. Simpson added that the Board would under applicable case law have to approve the request unless they were to find that the change would be "more detrimental to the neighborhood than the existing nonconformity." Attorney Allen requested from the Board a Section 6 finding in the form of a special permit holding that the proposed nonconformity was not substantially more detrimental to the neighborhood than the existing nonconformity. Ms. Schneider asked Mr. Simpson if this hearing was the appropriate place for Attorney Allen to seek such a special permit. Town Counsel Simpson stated the hearing was an appropriate place to do so. Attorney Simpson also noted that no other conditions could be added unless they were procedural or agreed to by the petitioner. Ms. Schneider asked for clarification regarding the types of conditions allowable under the Section 6 finding. Town Counsel Simpson clarified that only procedural conditions are allowable.

Chair Geller provided an overview of the legal discussion to the public. There was further discussion between the Board members regarding conditions. Comment from the public was invited but no one spoke in favor of or in opposition to the application.

Chair Geller called upon Zoning Coordinator Planner Monique Baldwin to review the findings of the Planning Board. Ms. Baldwin stated that the Planning Board is not particularly supportive of this proposal. She continued that the Planning Board feels that the house is poorly designed and that the plans submitted for their review do not provide sufficient detail for a proper understanding of the visual impact of the new building. The Planning Board is furthermore disappointed that the applicant did not construct a new house that conforms to the current requirements of the By-Law. The Planning Board expects that where existing buildings are demolished and new buildings constructed in their place, the new buildings will be designed to meet the current requirements of the By-Law. The Board was also dismayed that the applicant did not consider the use of fossil-fuel free infrastructure. Ms. Baldwin explained that, nonetheless, the Planning Board recognized that the zoning relief needed for this proposal is very minimal and that the Board has very limited design review ability in this case. Ms. Baldwin explained that the Planning Board therefore did not opt to recommend denial but it does recommend a condition that requires the applicant to return to the Planning Board for final design review. Therefore, the Planning Board recommends approval of the proposed project subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall return to the Planning Board for final design review and approval.
2. 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.
3. 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.
4. 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.

Chair Geller requested that Deputy Building Commissioner Joseph Braga present the findings of the Building Department. Mr. Braga stated that the Building Department had no objections to the Board approving a Section 6 special permit.

Attorney Allen noted that under a Section 6 finding further "approval" should not be necessary but stated that the Petitioner does not object to condition 1 regarding design review as long as it is changed to "input" from "approved" and the other procedural conditions. Chair Geller discussed modifying the conditions proposed by the Planning Board as follows:

1. Prior to the issuance of a building permit, the applicant shall return to the Planning Board for final design input.
2. 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.
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.

Ms. Schneider noted for the record that nobody from the Town supports this project but there is nothing the Board can do about it. Chair Geller and Board Member

Zuroff concurred adding that it is a project insensitive to its neighbors and surroundings. Ms.

Schneider commented that this is an incredibly unfortunate circumstance.

**Accordingly, the Board voted unanimously that the within application is subject to the provisions of G.L. c. 40A, § 6, as administered under the Town's Zoning By-Law under Section 9.05, and that the proposed project described in the site plan by A. Matthew Belski dated April 27, 2020, and architectural plans by RAV &**

**Associates, Inc. dated June 29, 2020 will not be substantially more detrimental than the existing nonconforming home to the neighborhood, and a special permit shall issue subject to the three conditions above.**

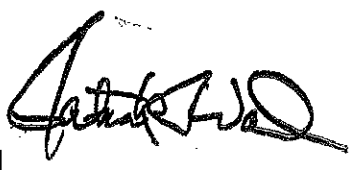
Unanimous Decision of  
The Board of Appeals

Filing Date: 03/01/21

  
Jesse Geller, Chair

A True Copy

ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals