



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

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

Patrick J. Ward, Clerk

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2021 MAR 26 A 8:5

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0001
144 WALNUT HILL ROAD
BROOKLINE, MA

Petitioner, Elisabeth Preis, applied to the Building Commissioner for permission to construct a rear addition in an S-10 Single-Family Residential District. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed March 11, 2021 at 7:00 p.m. virtually as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 February 25, 2021 and March 4, 2021 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 **March 11, 2021 at 7:00PM**

Register for this hearing:

<http://bit.ly/3awj8RD>

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>

144 WALNUT HILL ROAD, MA 02467 – CONSTRUCT A THREE-STORY REAR ADDITION AND FINISH A PORTION OF THE BASEMENT. This property is in an S-10 SINGLE FAMILY ZONE. This case is to be heard virtually on 3/4/2021 at 7pm (Petitioner: PREIS, ELISABETH D & FIREHAMMER, JOEL A) 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

§8.02 - ALTERATION OR EXTENSION

Any other relief the Board finds necessary

QUESTIONS, 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 or questions be sent before the hearing to **Monique Baldwin (mbaldwin@brooklinema.gov)**.*

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. 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 **Assistive Listening Devices**, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.*

***Jesse Geller, Chair
Mark Zuroff
Johanna Schneider***

Publish: 2/25/2021 & 3/4/2021

On March 11, 2021, at 7:00 pm the Brookline Zoning Board of Appeals held a public hearing. Present at the hearing were Zoning Board Chair Johanna Schneider and Board Members Mark Zuroff and Lark Palermo.

The Petitioner's attorney, Robert L. Allen, Law Office of Robert L. Allen, Jr. P.C., 300 Washington Street, Brookline, Massachusetts, waived a reading of the public hearing notice for the record. Also in attendance was the Petitioner, Elisabeth Preis and the project architect, Alan Christ, Alan Christ Architects, LLC, 117 Kent Street #2, Brookline, MA 02445

Attorney Allen stated that 144 Walnut Hill Road is a single-family home located in an S-10 Single-Family Residential District near the Baker School. He stated that the proposal has a lot of support from the neighborhood and noted that 19 letters of support have been submitted to the Board from the abutters. Attorney Allen stated that an immediate abutter had some concerns about the impact of the construction to their property. To address this, Mr. Allen stated that a condition of the Board's decision requiring that the Petitioner provide plans to the Department of Public Works for review and approval, including stormwater run-off, would be acceptable to the Petitioner.

Attorney Allen stated that the proposal is to construct a rear 2-story plus basement addition that will add approximately 1,010 square feet for a total sized dwelling of 4,265 square feet. Mr. Allen noted that the proposed addition will accommodate storage in the basement, an expansion of the dining space on the first floor, and some changes to the layout on the second floor.

Regarding the zoning relief requested, Mr. Allen stated that the proposal will result in the expansion of a preexisting nonconforming FAR and noted that all other dimensional criteria will conform to the Zoning By-law. The existing FAR is .33 where a maximum of .3 FAR is allowed by-right. Mr. Allen stated that the FAR will increase to .43 as a result of the proposed addition.

Attorney Allen opined that zoning relief is available to allow the construction of the addition by a finding of the ZBA under the case law pursuant to M.G.L. ch. 40A Section 10, (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539), to allow for the extension of the preexisting nonconforming FAR. Attorney Allen noted that the Board has analyzed substantial detriment to the neighborhood by the lack of opposition and to the special permit requirements under **Section 9.05**.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating:

(1) Specific site is an appropriate location for such use: The property is located in an S-10 residential neighborhood and the addition will maintain this use. (2) Use will not adversely affect the neighborhood: The addition is to the rear and will not change the streetscape nor have any adverse impact on any abutters. (3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians. (4) Adequate and appropriate facilities will be provided for the proper operation and proposed use. (5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Chair Schneider then called for public comments in favor of the proposal. No comments were submitted and no one spoke in support.

Chair Schneider then called for public comments in opposition to the proposal. No comments were submitted and no one spoke in opposition.

Chair Schneider then called upon Monique Baldwin, Planner and Zoning Coordinator to deliver the reports of the Planning Department and Board:

FINDINGS

§5.20 - FLOOR AREA RATIO

ZONING: S-10	Required/ Allowed	Existing	Proposed	Relief
Floor Area Ratio	0.30 / 100% 3,000 sf	0.33 / 109% 3,255 sf	0.43 / 142% 4,265 sf	<u>Special Permit</u>¹

¹ **MGL c.40A §6:** This section allows the special permit granting authority to issue a special permit if the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

§8.02 – ALTERATION OR 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. She noted that the proposed addition complies with all yard setback requirements and the rear addition should not cause any negative impacts.

PLANNING BOARD RECOMMENDATION

Ms. Baldwin stated that the Planning Board is supportive of this proposal as it is well-designed and, being located to the rear of the existing building, will have minimal impacts on surrounding properties and the public way. She noted that the Board also notes the considerable support from surrounding property owners.

Therefore, Ms. Baldwin stated, the Planning Board recommends approval of the site plan by Neponset Valley Survey Association, Inc., dated 12/9/20, and architectural plans by Alan Christ Architects LLC, dated 12/18/20, 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, 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.

The Board discussed the added condition requiring the Department of Public Works to review stormwater and were in support of adding it as a condition.

Chair Schneider then called upon acting Deputy Building Commissioner, Joe Braga to deliver the opinion of the Building Department. Mr. Braga stated that the Building Department has no objection to the relief requested.

The Board then deliberated on the merits of the application. Board Member Zuroff stated that the project as presented was well designed and worthy of the requested relief. Board Member Palermo concurred. Chair Schneider stated that the proposal met the criteria under **Section 9.05** and the strong support is an indicator that there will be no substantial detriment.

The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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.

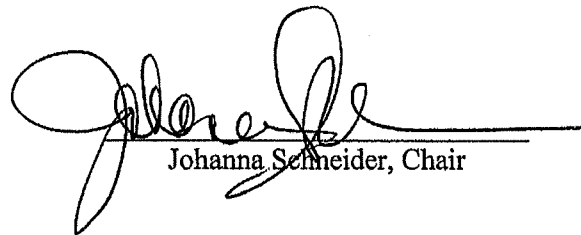
e. The development as proposed will not have a significant adverse effect on the supply of housing available for low- and moderate-income people.

Accordingly, the Board voted unanimously to grant a finding under M.G.L. ch. 40A Section 6 to grant relief from the provisions of **Section 5.22** of the Zoning By-Law to allow for the FAR to increase at 144 Walnut Hill to .43, 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, 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 Department of Public Works for review and approval all engineering plans, including storm water run-off.
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 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

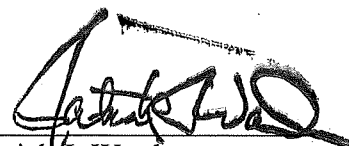
Board of Appeals



Johanna Schneider, Chair

Filing Date: 03/26/21

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals