



# Town of Brookline

## Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zutöf  
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. 2021-0002  
85 SEARS ROAD  
BROOKLINE, MA

RECEIVED IN  
TOWN OF BROOKLINE  
TOWN CLERK  
2021 MAR 26 A

Petitioner, Kevin Hayes, applied to the Building Commissioner for permission to demolish a two-story rear addition and replace it with a single-story addition in an S-40 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>

**85 SEARS ROAD, MA 02445 – CONSTRUCT AN ADDITION IN THE REAR. This property is in an S-40 SINGLE FAMILY ZONE. This case is to be heard virtually on 3/4/2021 at 7pm (Petitioner: HAYES KEVIN & JULIE) Precinct 15**

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](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 **Assistive Listening Devices**, 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: 2/25/2021 & 3/4/2021**

On March 11, 2021, at 7 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, MA, waived a reading of the public hearing notice for the record. Also in attendance was the Petitioner, Kevin Hayes, and project architect, Jacob Lilley, Jacob Lilley Architects, 103 Central Street, Wellesley, Massachusetts.

Attorney Allen stated that 85 Sears Road is a single-family home located in an S-40 Single-Family Residential District. Mr. Allen stated that the home is located at the end of Sears Road and abuts the Park School. Mr. Allen described the proposal to add a total of 36 square feet to the rear of the home. He noted that Preservation Staff determined that partial demolition was not triggered.

Attorney Allen stated that the existing home is preexisting nonconforming as to its FAR; the existing FAR is .17, where a .15 is allowed by-right. Mr. Allen stated that the proposal seeks to add a total of 36 additional square feet of gross floor area which would increase the FAR to a .18. Attorney Allen opined that relief is available by a finding by the ZBA under the case law pursuant to M.G.L. ch. 40A, Section 6, (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539) to allow for the extension of a preexisting nonconforming FAR if the Board finds that there is no new non-conformity created and that the extension is not substantially detrimental to the neighborhood.

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.** Mr. Allen noted that Mr. Hayes spoke with the neighbors and there has been no opposition to the project.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating:  
 (1) The specific site is an appropriate location for such use: The property is located in a residential neighborhood and the addition will maintain this use. (2) These will not adversely affect the neighborhood: The house is located at the end of a cul-de-sac and the addition is at the rear of the home and won't have any impact on abutters; all setbacks are conforming to the Zoning By-law. (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) The 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**

<b>ZONING: S-40</b>	<b>Required/ Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Floor Area Ratio</b>	<b>0.15 / 100% 7,370 sf</b>	<b>0.18 / 117% 8,686 sf</b>	<b>0.18 / 118% 8,722 sf</b>	<b><u>Special Permit</u><sup>1</sup></b>

<sup>1</sup> **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 first-story addition is modest in size and well-designed and no yard setback relief is needed and the addition should have no impact on neighbors due to the large size of the lot.

**PLANNING BOARD RECOMMENDATION**

Ms. Baldwin stated that the Planning Board is supportive of this proposal. She stated that the Planning Board found it to be a very well-designed and complimentary addition to the existing structure that will have no impact on abutters or the public way on account of the large lot and siting of the addition.

Therefore, Ms. Baldwin stated, the Planning Board recommends approval of the site plan by Meridian Associates., dated 12/9/20, and architectural plans by Jacob Lilley Architects Inc., 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.

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 merit of the application. Chair Schneider stated that the addition was a modest 36 square feet. Chair Schneider noted that the proposal would not create a new nonconformity nor be substantially detrimental to the neighborhood. Board Members Zuroff and Palermo concurred.

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.

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

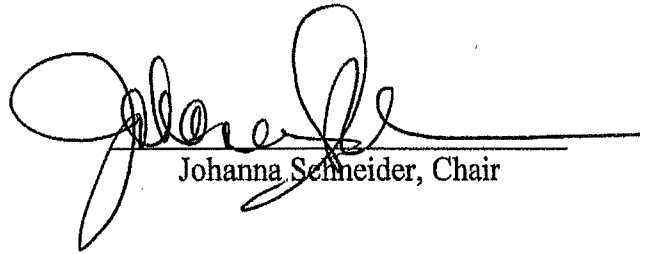
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 special permit 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, 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.

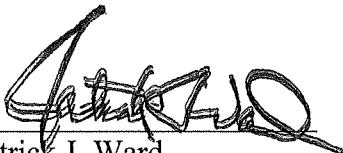
Unanimous decision of the  
Board of Appeals

Filing Date: 03/26/21



Johanna Schneider, Chair

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals