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Patrick J. Ward, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zurroff
Johanna Schneider

Town of Brookline

Massachusetts

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2021 MAR 3 A 10:05

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0006
JEAN AND RANIA ABOUHAMAD
143 TAPPAN STREET, BROOKLINE, MA

Petitioner, Jean Abouhamad, applied to the Building Commissioner for permission to construct a rear addition in an SC-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 April 1, 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 March 18, 2021, and March 25, 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 public hearing on the following petition:

Address: **143 Tappan Street**

Petitioner: **Jean and Rania Abouhamad**
Zoning District: **SC-10 – Single-family and Converted for Two-family**
Precinct: **12**
Description: **Construct a rear addition**

Date, time, and location of the public hearing are as follows:

Date: **04/01/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<http://bit.ly/3vi4kyk>

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>

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

§5.70 - REAR YARD REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

*Advanced 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 **Victor Panak** (vpanak@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 by mail or in the papers. Questions about hearing schedules may be directed to the Planning and Community Development Department at vpanak@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: 03/18/2021 & 03/25/2021

On April 1, 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 Kate Poverman.

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, Jean Abouhamad, and the project's architect, Will Ruhl, Ruhl Studio Architects, 281A Mt. Auburn Street, Watertown, Massachusetts.

Attorney Allen stated that 143 Tappan Street is a single-family home located in an SC-10 Zoning District. He noted that the proposal is to construct a 300 square foot single-story addition and construct a new dormer that would add approximately 63 square feet to the FAR. Attorney Allen noted that the changes will have minimal to no impact on the streetscape and relief for the proposal is sought pursuant to M.G.L. ch. 40A, Section 6. Specifically, Attorney Allen stated that zoning relief was required to allow the extension of a preexisting nonconforming FAR and rear yard setback. Attorney Allen stated that there will be no new nonconformity created. Mr. Allen noted that letters of support were submitted by the abutters from both sides as well as an abutter directly across the street from 143 Tappan Street.

Attorney Allen noted that the Planning Board was unanimously supportive of the proposal. He noted that Planning Board Members found the proposal to be nicely designed and thought the addition was done in a sensitive way that respects the historic nature of the home.

Mr. Allen stated that the proposal would increase the preexisting nonconforming FAR from 164% to 170%, or by about 6%. Additionally, he noted that the proposal would increase a preexisting nonconforming rear yard setback by less than one foot. He noted that the existing rear yard setback is 20.7 feet and would be reduced to 19.8 feet. All other dimensional criteria will conform.

Attorney Allen opined that under Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. App. Ct. 539), the ZBA may allow for the extension of a preexisting nonconformity as long as no new nonconformities are created and there is no substantial detriment to the neighborhood. He noted the support from the abutters as evidence that no detriment would be created.

Attorney Allen noted that the Board has analyzed substantial detriment to the neighborhood in reference to 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) 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) The use will not adversely affect the neighborhood: The addition is designed to have minimal to no impact on the streetscape and will have no shadow impacts on abutting structures. (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.

Attorney Allen noted that counterbalancing amenities should not be required, as recommended in the second condition of the Planning Board report, as all zoning relief required falls under *Deadrick*.

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 Polly Selkoe, Assistant Director of Regulatory Planning to deliver the reports of the Planning Department and Board:

FINDINGS

ZONING: SC-10	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	Single-family	Single-family	
Lot Size	10,000sf	15,813sf	15,813sf	
Floor Area Ratio	0.35 (100%) 5,535sf	0.57 (164%) 9,062sf	0.60 (170%) 9,424sf	<u>Special Permit</u>¹
Height	35'	50'	50'	Pre-existing Nonconforming
Front Setback	20'	21.7'	21.7'	
Side Yard Setback (Left / Right)	7.5'/7.5'	na/21.2	na/21.2'	
Rear Yard Setback	30'	20.7'	19.8'	<u>Special Permit</u>^{1,2}
Open Space (Landscaped / Usable)	10%/30% 942sf/2,827sf	unknown/ 7,728sf	unknown/ 7,633sf	

¹ Under **MGL Chapter 40A, Section 6**, a pre-existing nonconforming structure can extend or intensify the nonconformity by special permit provided the Board of Appeals finds 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:** Relief from setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

Other Zoning Relief Needed

Section 8.02, Alteration or Extension: A special permit is required for the alteration of a non-conforming structure.

PLANNING DEPARTMENT COMMENTS

Ms. Selkoe noted that the Planning Department is supportive of this proposal. The addition is very well designed, reasonable in scale, and, being located to the rear of the structure, will have little impact on abutters or the public way. The addition is designed with a distinct architectural character from the existing building which helps maintain a visual separation between the historic architecture of the original structure and the new addition. The altered structure is therefore not substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD RECOMMENDATION

Ms. Selkoe stated that the Planning Board is supportive of this proposal. The Board feels that the addition is very well-designed and appropriately distinguishes itself from the rest of the historical building. Planning Board members did raise minor concerns with glare and natural light entering through the large windows of the addition, impacting the comfort of residents and energy efficiency of the building.

Ms. Selkoe stated that the Planning Board recommends approval of the site plan by RJO'Connell & Associates, Inc., dated 12/10/2020, and architectural plans by Ruhl Studio Architects, dated 3/4/21, 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 a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
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.

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 relief requested for the rear yard is minimal and stated that he was in favor of granting the requested relief. The Board discussed the impact of **Section 5.43** when setback relief is sought under M.G.L. ch. 40A Section 6. The Board concurred that a Section 6 finding would cover both the FAR and setback relief sought. The Board noted that a Section 6 finding could be available for any dimensional requirement that is preexisting nonconforming, should the criteria otherwise be met.

The Board voted unanimously to grant a finding under M.G.L. ch. 40A, Section 6 to provide zoning relief from the provisions of **Section 5.20** for the floor area ratio and **Section 5.70** for the rear yard setback, both preexisting nonconforming conditions of the Zoning By-Law.

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

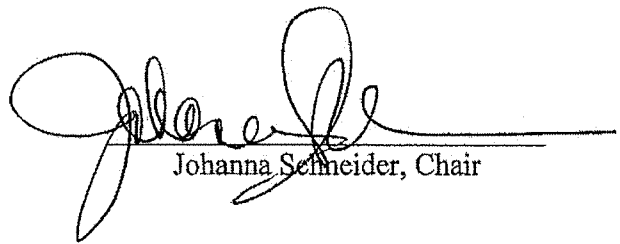
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

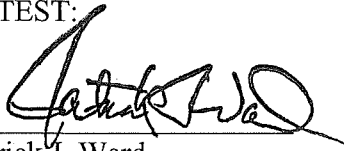
Unanimous decision of
The Board of Appeals

Filing Date: 5/3/21



Johanna Schneider, Chair

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals