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Town of Brookline

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Patrick J. Ward, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johnna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0009
895 HAMMOND LLC
895 HAMMOND STREET, BROOKLINE, MA

Petitioner, 895 Hammond LLC, applied to the Building Commissioner for permission to construct a second story addition. 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 April 8, 2021 at 7:00 PM., virtually as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, 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 March 25, 2021 and April 1, 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: **895 Hammond Street**
Petitioner: **895 Hammond LLC**
Zoning District: **S-15 (Single-Family)**
Precinct: **15**

Description: **Construct second-story addition and make interior renovations**

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

Date: **04/08/2021**

Time: **7:00 pm**

Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<http://bit.ly/30Qf8WL>

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:

§5.09.2.A – DESIGN REVIEW

§5.22.3 – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS

§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 **Karen Chavez** (kchavez@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: 03/25/2021 & 04/01/2021

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Jesse Geller and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing were Planner and Zoning Coordinator, Karen Chavez and Deputy Building Commissioner, Paul Campbell.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., P.C. 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were the Petitioner, Niall Hanley and the architect for the project, Timothy Burke, 142 Berkeley Street, Boston, Massachusetts, 02116.

Chairman Geller called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen stated that the proposal is to construct a second story addition to an existing ranch style single-family home in the S-15 Residential Zoning District located near the Putterham Golf Course. He further stated that the second story addition would add a total of 1,131 square feet of gross floor area, for a total floor area ratio (FAR) of 108% of the total maximum allowed FAR. Attorney Allen opined that under **Section 5.22** of the Zoning By-Law, a special permit may be granted by the ZBA to allow for an increase of up to 120% of the total allowable FAR. Attorney Allen noted that in lieu of

seeking to maximize the FAR for the home, the design approach was to create an addition that was appropriate in scale and complemented the existing house.

Attorney Allen represented that a set of drawings for the proposal were provided to the abutters to the rear of the subject property at 30 Aston Road early on the process along with contact information should the abutting owners have any questions or concerns. He stated that a letter of support was provided from the owner of 905 Hammond Street and no other abutter reached out until the Planning Board meeting. Mr. Allen noted that the Planning Board was unanimously supportive of the addition and commented that one of the Planning Board members described the addition as “modest and reasonable.” Attorney Allen then stated that subsequent to the Planning Board meeting and at the suggestion of the Planning Board due to the concerns raised by the rear abutter, Mr. Burke conducted a shadow study, which evidenced no new shadow will be cast on the rear abutter’s property.

Attorney Allen then described the neighborhood as comprised of many similar size two-story homes. Additionally, he noted that many of the surrounding homes have completed additions in recent years and cited a ZBA case from 2017 that granted special permit relief for the rear abutter at 30 Aston Road to exceed the maximum allowable FAR by 12%. Attorney Allen noted that the Petitioner is seeking relief pursuant to the same section to allow the home at 895 Hammond Street to exceed the maximum allowable FAR by 8%. Attorney Allen added that a second story house is more consistent in scale and massing to the houses in the neighborhood.

Relying on a digital presentation, Mr. Burke presented the architectural plans for the proposed addition. Mr. Burke reviewed the shadow study for the Board. Mr. Burke noted that the existing structure to the rear casts a shadow on the Petitioner’s property. In describing the counterbalancing amenity required under the Zoning By-Law for the requested rear yard setback relief, Mr. Burke stated that the primary amenity will be a stonewall along the front of the property which will provide some

street line continuity as well as some additional landscaping at the front of the house. Mr. Burke reviewed renderings that show the proposed addition with the proposed landscaping. He noted there were several large mature trees on the property that would be protected.

Upon inquiry from Board Member Meiklejohn, Mr. Burke stated that there is an existing stone wall, but noted that the height of the wall will be increased to be consistent with the side abutter's stone wall.

Upon inquiry from Board Member Palermo, Mr. Burke stated that the Petitioner's property is approximately 13 feet lower than the rear abutter.

Chair Geller confirmed with Mr. Burke that all new FAR will be to the exterior to the home and that there will be no interior conversion of any basement or attic space.

Mr. Allen explained that at the rear of the property there exists a lot of ledge which would make it difficult to plant any additional screening, and therefore the focus of the counterbalancing amenity is along the frontage. For context of the homes in the neighborhood, Attorney Allen stated that the rear home added approximately 1,700 square feet in 2017 and reiterated that this proposal is to add 1,100 square feet and is consistent with the neighborhood. He then stated that the addition has been designed to be pushed away from the rear as much as possible and added that there will be no change to the footprint of the existing home.

Attorney Allen continued that the Board can grant relief by special permit to allow the requested extension of the FAR under to **Section 5.22.3.b.1.b** of the Zoning By-Law, and can allow the extension of the existing 17.6-foot rear yard setback also by special permit under **Section 5.43** of the Zoning By-Law.

Attorney Allen stated that the proposal meets all of the requirements for a special permit under **Section 9.05** of the Zoning By-Law noting the following: (1) **Specific site is an appropriate location for**

such use: The site is appropriate for the proposed use of the home since an attached single-family dwelling, as it is an allowed use in the S-15 district. (2) Use will not adversely affect the neighborhood: As noted by the Planning Board report, this is a modest second story addition and there are similarly sized homes in the neighborhood that have added second stories. (3) There will be no nuisance or serious hazard to vehicles or pedestrians: There will be no change to the existing circulation on the site. (4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: Adequate and appropriate facilities will be provided for the proper operation of the attached single-family dwellings. (5) There will be no effect on the supply on housing available for low and moderate income people.

Chairman Geller then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal. Attorney Allen noted a letter in support was provided to the Board.

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal. Attorney Glenn Kramer, 209 West Central Street, Natick, Massachusetts, 01760, stated that he represents the abutters residing at 30 Aston Road to the rear who are opposed to the proposal due to the decrease in light into their home. Mr. Kramer noted that he had not had adequate opportunity to review the shadow study and alleged that required design review did not adequately take into account the reduced sunlight caused by the proposal.

Chairman Geller then called upon Karen Chavez, Planner & Zoning Coordinator, to deliver the findings of the Planning Board. Ms. Chavez noted the following:

ZONING: S-15	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	Single-family	Single-family	
Lot Size	15,000sf	19,669sf	19,669sf	
Floor Area Ratio	0.25 (100%) 4,917sf	0.21 (66%) 4,130sf	0.27 (108%) 5,317sf	<u>Special Permit</u>¹
Height	35'	20'	30.6'	
Front Setback	25'	54.5'	54.5'	
Side Yard Setback (Left / Right)	15'/15'	30.5/47.13	30.5/47.13	
Rear Yard Setback	40'	17.6'	17.6'	<u>Special Permit</u>^{2,3}
Open Space (Landscaped / Usable)	<i>10%/60%</i> 532sf/3,190sf	unknown/ unknown	358%/228%	

FINDINGS

¹ **Section 5.22, Exceptions to Floor Area Ratio (FAR) for Residential Units:** This section allows single- and two-family dwellings to seek a Special Permit to increase their FAR beyond the maximum FAR allowed under Section 5.01. In the case of interior conversions, the FAR may be increased to 130% of the allowed FAR. In the case of exterior additions, the FAR may be increased to 120%. Any Special Permit pursuant to this section requires Design Review (Section 5.09)

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.

³ 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.

Other Zoning Relief Needed

Section 5.09, Design Review: All applications for additional FAR pursuant to Section 5.22 require a Special Permit under Section 5.09. The applicant has submitted an Impact Statement that explains how the proposal meets the Community and Environmental Impact and Design Standards of Section 5.09.4.

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

PLANNING DEPARTMENT COMMENTS

Ms. Chavez stated that the Planning Department is supportive of this proposal. She noted that the addition is a reasonable improvement to the existing dwelling and results in only a minor increase above the allowed floor area ratio for the zoning district. Ms. Chavez stated that the addition is fairly well designed and is sited atop the existing first floor in a way that will limit its perception of scale and impact on the surrounding abutters and public way. She further noted that the surrounding neighborhood is a mix of one-story dwellings and two-story dwellings so the altered structure will not be inconsistent with abutting properties.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal. She noted that the Board feels that the proposed addition is a reasonable improvement to the existing building and will not have any significant adverse impacts on surrounding abutters. She noted that the Board raised some minor concerns with tree preservation in the rear yard and stated that the applicant is encouraged to install adequate tree protection measures during construction activity.

Ms. Chavez therefore stated that the Planning Board recommends approval of the site plan by Michael Paul Antonio, dated 11/18/2020, and architectural plans by Timothy Burke Architecture, dated 11/09/2020, the Planning Department recommends 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.

Chairman Geller then called upon Paul Campbell, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department has no objection to this request. He added that should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code and the Board's decision.

The Board deliberated on the merits of the relief as requested. Board Member Palermo stated that in her review of the plans and familiarity with the site, the proposed addition is appropriate and meets the requirements for the grant of special permit relief. Specifically, she noted that there will not be a detrimental impact to the surrounding neighborhood and that the new addition would make the house more consistent with the neighborhood. Board Member Meiklejohn stated that he was familiar with the evolution of the neighborhood moving from ranch style houses to two-story houses. He noted that he was satisfied that the extent of the proposed addition by its occupation within the existing footprint is comfortably within the range of other structures in the neighborhood. Board Member Meiklejohn further stated that while some of the addition is within the rear setback, most of the addition is located within the middle of the house. Chair Geller stated that he agreed with Board Member Meiklejohn. He commented that **Section 5.43** of the Zoning By-Law requires that a counterbalancing amenity be provided to offset the impact of the rear yard setback relief. He noted that ordinarily the

counterbalancing amenity must be designed to offset the specific impacts for which the relief is sought, in some cases this is not a feasible option and the Board has instead accepted a more general counterbalancing amenity. Chair Geller noted that testimony was provided by the Petitioner's counsel that the bedrock in the rear yard would prevent additional plantings and therefore the counterbalancing amenity to provide additional landscaping at the front of the home and a stone wall is acceptable. He also noted that in terms of relief under Section 5.09, the proposal has fulfilled the design review requirements for the reasons recited in the Planning Board report.

In reliance on the above-referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from the provisions of Section 5.20 for the FAR and Section 5.70 for the rear yard setback and Section 8.02.2 of the Zoning By-Law were satisfied pursuant to Sections 5.22.3.b.1.b, 5.09, 5.43 and 9.05 of the Zoning By-Law. The Board noted that relief may be granted without substantial detriment, finding specifically under said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition: Testimony was provided to the Board that the proposal is consistent with other houses, including house on the lot abutting 895 Hammond to the rear.
- b. The use as developed will not adversely affect the neighborhood: The Board noted significant efforts were made to minimize the impact of the addition in terms of pushing the addition centered on the roof and almost pushing it forward. The proposal does not increase the rear yard setback.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians. The Board noted specific caution was taken to ensure safety through their design of the height of the new stone wall to not interfere with a clear line of sight for vehicles existing the existing driveway.

- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

The proposal is well designed and will result in an updated and upgraded single-family home in a single-family zoning district.

- e. Development will have no effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested special permit relief subject to the following conditions:

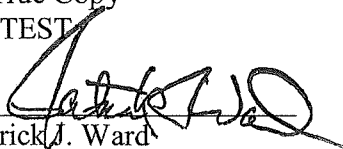
1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit 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.

Unanimous Decision of
The Board of Appeals

Filing Date: 5/3/21


Jesse Geller, Chair

A True Copy
ATTEST


Patrick J. Ward
Clerk, Board of Appeals