



Town of Brookline Massachusetts

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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0010
JOHN AND CINDY PAN
99 FAIRMOUNT STREET, BROOKLINE, MA

Petitioners, John and Cindy Pan, applied to the Building Commissioner for permission to construct an addition, including garage and deck expansion, in an S-15 Single-Family Residential District. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed May 13, 2021, at 7:00 p.m. virtually as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 April 29, 2021, and May 6, 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: **99 Fairmount Street**
Petitioner: **John and Cindy Pan**

Zoning District: **S-15 (Single-Family)**
Precinct: **14**
Description: **Construct additions including garage and deck expansion**

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

Date: **05/13/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<https://bit.ly/3tNJfuu>

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

§5.50 - FRONT YARD REQUIREMENTS

§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: 04/29/2021 & 05/06/2021

On May 13, 2021, at 7:00 pm, the Brookline Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. Also present at the hearing was Zoning Coordinator and Planner, Karen Chavez and Deputy Building Commissioner, Paul Campbell.

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 were the Petitioners, John and Cindy Pan and the project architect, Steve Sousa, Sousa Design, 81 Boylston St, Brookline, Massachusetts.

Mr. Allen stated that the Petitioners are seeking to make minor changes to their existing single-family home that would drastically improve the livability of the home. Mr. Allen stated that 99 Fairmount is near the Brookline Reservoir and is located in an S-15 residential neighborhood. He stated that special permit relief was granted in 2003 to increase the FAR, and noted that in 2017 the manner in which FAR is calculated changed. He stated that this change now requires the Petitioners to include the existing basement space, thereby making the single-family home preexisting non-conforming as to the FAR.

Mr. Allen stated that the lot at 99 Fairmount is a severely undersized triangular-shaped lot that exacerbates the FAR number. He stated that a lot size in the S-15 district is required to have

15,000 square feet, and 99 Fairmount lot is just under half that amount at 7,228 square feet. Mr. Allen stated that additionally, as shown on the site plan, not only is the lot undersized, but the lot has no side yard as defined by the Zoning By-Law. Mr. Allen stated that 99 Fairmount has two rear yard lot lines and one front yard lot line. He stated that the house was built as far back on the property as possible. Mr. Allen opined that not only is this lot the smallest in the neighborhood, but due to the restrictive setbacks because of the lot shape, it may also have the smallest allowable building footprint.

Mr. Allen stated that the proposal is to increase the size of the existing single-car garage so that the Petitioners can park a second car in the garage. Mr. Allen described the surrounding neighborhood as being void of parked cars in driveways, since many of the homes have the benefit of a two-car garage. Mr. Allen added that the Petitioners are also proposing a small addition that is approximately 439 square feet, which would increase the total size of the house to approximately 4,200 square feet.

Mr. Allen stated that the Petitioners are working with the Preservation Commission to lift the stay of demolition early. He noted that at the Preservation Commission hearing, the commissioners were supportive and thought the proposal was well designed and in keeping with the scale of the home. Mr. Allen added that the Planning Board also provided unanimous support.

Mr. Allen stated that the existing FAR is .52, where a FAR of .25 is allowed. The proposal will increase the FAR to .58. Mr. Allen stated that the FAR number increases as much as it does due to the small lot size, and reiterated that the actual size of the addition is only 439 square feet. Mr. Allen stated that landscaping will be provided to counterbalance the impact of the proposal on the neighbors. Attorney Allen stated that under **Section 5.43** this is an appropriate measure to offset the impact of the setback going to 15 feet and 9 ½ inches, where 25 feet is required.

Mr. Allen stated that the most impacted neighbors have both been supportive and have stated that because of the topography, the proposal will not have any negative impact on their home.

Mr. Allen reviewed a site plan of the lot and demonstrated that the buildable area on the lot could not support any size development. Mr. Allen reviewed a rendering of the structure and noted that the Planning Board was supportive of the design.

Mr. Allen stated that the proposal will not result in a detrimental impact on the neighborhood and will meet all of the requirements for a special permit under **Section 9.05** stating the following: 1) Specific site is an appropriate location for such use: The site is appropriate for the proposed residential addition, as it will not change the residential nature of the home. 2) Use will not adversely affect the neighborhood: The abutters are supportive of these changes and no opposition has been voiced during the process. The Planning Board is unanimously supportive of the proposal and felt that it was a modest and reasonable addition. The Preservation Commission was also supportive of these changes and thought they were done in a way that respected the existing home. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation, and an existing curb cut will be utilized. 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 single-family home. 5) There will be NO effect on the supply on housing available for low- and moderate-income people.

Chair Geller then called upon Karen Chavez, Planner and Zoning Coordinator, to deliver the reports of the Planning Department and Board:

FINDINGS

ZONING: S-15	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	Single-family	Single-family	
Lot Size	15,000sf	7,228sf	7,228sf	
Floor Area Ratio	0.25 (100%) 1,807sf	0.52 (208%) 3,765sf	0.58 (232%) 4,204sf	<u>Special Permit</u>¹
Height	35'	23.5'	23.5'	
Front Setback	25'	28.8'	15.8'	<u>Special Permit</u>²
Side Yard Setback (Left / Right)	N/A	N/A	N/A	
Rear Yard Setback	40' (north) 40' (east)	8.3' (north) 2.8' (east)	3' (north) 2.8' (east)	<u>Special Permit</u>²
Open Space (Landscaped / Usable)	10%/60% 425sf/2,549sf	654sf / 2,879 sf	632sf / 2,663sf	

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. Chavez stated that the Planning Department is not supportive of this proposal. An addition exceeding the allowed FAR was already permitted by Special Permit in 2003. The current FAR significantly exceeds the maximum allowed under the By-law and further relief should be avoided. The proposed additions do not seem essential to maintaining the livability of the property. In addition, the proposed expansion of the deck and garage further encroach on a required setback area that is already in significant nonconformance.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of the proposal. She noted that the Board feels that the requested zoning relief is reasonable given the size of the lot and the conditions of the existing structure (already very nonconforming). She stated that the Board feels that the proposed additions are well designed and reasonable provided that the abutting neighbors are comfortable with the proposal.

Ms. Chavez stated that the Planning Board recommends approval of the site plan by Peter Nolan & Associates, dated 1/7/21, and architectural plans by Sousa Design Architects, dated 4/7/21, 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 Geller then called upon acting Deputy Building Commissioner, Paul Campbell to deliver the opinion of the Building Department. Mr. Campbell stated that the Building Department has no objections to the relief requested and is in favor of the proposal. He stated that the Building Department will work with the Petitioner to ensure compliance with the Board's decision and all state building codes.

Chair Geller then called for public comments in favor of the proposal. The immediate abutters at 112 Dudley Street, Chris Reuning and Ming Jung Kim, spoke in support of the proposal.

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

The Board then deliberated on the merits of the application. Board Member Zuroff stated that the request is minimal, and the project was attractively designed. Board Member Schneider concurred with Board Member Zuroff. Chair Geller stated that 40A Section 6 special permit relief could be granted as requested without substantial detriment to the neighborhood and meets the requirements under **Section 9.05**.

The Board voted unanimously to grant a special permit from the provisions of **Sections 5.20** and **5.50** under M.G.L. ch. 40A, Section 6, **Sections 5.43** and **9.05** 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 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:

6/3/21


Jesse Geller, Chair

A True Copy

ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals