



Town of Brookline

Massachusetts

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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zurroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0016
JOSHUA BUDWAY AND ELLEN DESMARAIS
18 THORNDIKE STREET

Petitioners, Joshua Budway and Ellen Desmarais, applied to the Building Commissioner for permission to construct a rear addition to a single-family home located in a T-5 Two-Family & Attached Single-Family Zoning 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 certified by the Board of Assessors of the Town of Brookline and fixed June 3, 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 May 20, 2021 and May 27, 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: 18 Thorndike Street
Petitioner: Joshua Budway and Ellen Desmarais
Zoning District: T-5 (Two-Family & Attached Single-Family)
Precinct: 9
Description: Construct rear addition

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

Date: 06/03/2021
Time: 7:00 pm
Location: Virtual Meeting (see below)

Register for this virtual hearing:

<https://bit.ly/3y8iovl>

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:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§5.70 - REAR YARD REQUIREMENTS

§5.91 - MINIMUM USABLE OPEN SPACE

§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: 05/20/2021 & 05/27/2021

At the time and place specified in the notice, this Board held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Johanna Schneider and Paul Bell. Also present at the hearing was Zoning Coordinator and Planner, Karen Chavez and Deputy Building Commissioner, Paul Campbell.

The Petitioner's attorney, Robert 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 and presented project details to the Board. Also in attendance were homeowners Josh Budway and Ellen Desmarais, and the Project Architect, Anne Snelling.

Mr. Allen stated that 18 Thorndike is an existing single-family home and described the proposal to add a rear addition consisting of 220 square feet. Mr. Allen noted that the overall FAR is decreased by about 40 square feet, due to the demolition of an enclosed porch at the front of the home. He further noted the front porch would return to a farmer's porch and that, with the removal of the rear deck and with the addition occupying less of the side yard setback, the impact on the side yard is reduced. Mr. Allen stated that the only increase to a preexisting nonconformity is a 1% reduction of the useable open space and while these changes are small, they will have a significant impact on the amount of natural light that can get into the home, particularly the kitchen.

Mr. Allen stated that a letter of support was submitted to the Board from the abutter at 22 Thorndike Street. He noted that due to the abutter's proximal location to the proposed rear addition along the right side of the house, they are the most impacted.

Mr. Allen continued that the neighbors to the left of the house have also been supportive and no opposition has been communicated during the public hearing process.

Mr. Allen opined that under the case law precedent under Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539), the ZBA may allow the extension of a preexisting nonconformity as long as no new nonconformities are created, and that there is no substantial detriment to the neighborhood.

Mr. Allen explained that in the subject case a finding of no substantial detriment is requested, pursuant to M.G.L. c. 40A Section 6, for the proposed addition. He stated that the existing side yard setback is 5.8 feet and will not encroach any further, and noted that there is an overall reduction in massing in the side as the existing porch will be demolished. He further stated that the usable open space is at 26.5%, where 30% is required, and will be reduced by less than 1% to 25.6%.

Mr. Allen opined that extension of the nonconformity will not create any substantial detriment to the neighborhood and noted that: the most impacted abutter is in support, the Planning Board was fully supportive of the design and improvements to the house, and the Zoning Board of Appeals has in the past used Section 9.05 to determine detrimental impact.

Mr. Allen opined that pursuant to Section 9.05 of the Zoning By-Law, the Petitioners met the following standards of a special permit: 1) Specific site is an appropriate location for such use: Existing single-family will remain. 2) Use will not adversely affect the neighborhood: The proposal will be a modest addition to the rear of the home and will not adversely affect the

neighborhood. 3) No nuisance or serious hazard to 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 of housing available for low and moderate income people.

Additionally, Attorney Allen requested that condition #2 of the Planning Board report be removed as **Section 5.43** of the Zoning By-Law is not applicable to this case.

Chair Geller then called for public comments in support of the application. No comments were submitted.

Chair Geller then called for public comment in opposition to the application. No comments were submitted.

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

FINDINGS

ZONING: T-5	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	Single-family	Single-family	
Lot Size	4,000sf	5,206sf	5,206sf	
Floor Area Ratio	1.0 (100%) 5,206sf	0.64 (64%) 3,351sf	0.64 (64%) 3,309sf	
Height	35'	32.2'	32.2'	
Front Setback	15'	9.5' (from Thorndike St) 31.7' (from Columbia St)	9.5' (from Thorndike St) 23.26' (from Columbia St)	
Side Yard Setback (Left / Right)	7.5'/7.5'	28.3'/5.7'	28.3'/5.7'	<u>Special Permit</u> ^{1,2}

Rear Yard Setback	30'	N/A	N/A	
Open Space (Landscaped / Usable)	10%/30% 331sf/993sf	2,308sf / 891sf	2,186sf / 847sf	<u>Special Permit</u> ¹

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 the Planning Department is supportive of this proposal. She noted that the addition is a reasonable expansion of the building, and generally consistent with the architecture of the existing building and surrounding buildings. Ms. Chavez explained the other alterations to the building will likely improve the property and not detract from the existing character. She stated that the zoning relief requested is relatively minimal and the site and building otherwise comply with all other zoning requirements. She said that the altered structure will not be substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated the Planning Board is supportive of this proposal. She said that the Board feels that the addition and changes to the property will be an improvement to the neighborhood. She said that the Board does not feel that the applicant should be required to provide counterbalancing amenities and that relief for the side-yard setback should be provided through

M.G.L. c. 40A Section 6. Nonetheless, the Board voted to keep condition #2 in case the Zoning Board of Appeals chose to grant the setback relief through Section 5.43 of the local Zoning By-Law.

Therefore, Ms. Chavez stated, the Planning Board recommends approval of the site plan by Everett M Brooks, dated 5/5/21, and architectural plans by A+SL Studios, dated 5/6/21, 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, if applicable, 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 Deputy Building Commissioner Paul Campbell to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department has no objection to the relief requested and will work with the Petitioner to ensure compliance with the Building Code.

The Board then deliberated on the merits of the application. Board Member Paul Bell agreed with the Planning Board, and stated that a M.G.L. c. 40A, Section 6 finding would suffice for this addition. Board Member Johanna Schneider concurred and noted that counterbalancing amenities are not required. She further explained that she would like to see condition #2 modified

to remove the obligation of providing a counterbalancing amenity. Chair Geller agreed with Board Member Schneider and Board Member Bell.

The Board voted unanimously that the requirements have been met for the issuance of zoning relief under M.G.L. 40 A, Section 6.

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 or engineer 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.

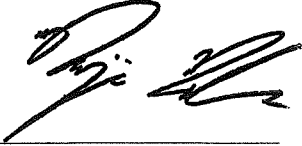
Unanimous decision of the
Board of Appeals



Jesse Geller, Chair

Filing Date: 7/6/21

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals