



Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

Town of Brookline Massachusetts

TOWN OF BROOKLINE
TOWN CLERK
2021 JUN -2 P 2:42

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0029

CHARLES A. RADIN AND MUGI HANAO
184 CLARK ROAD, BROOKLINE, MA

Petitioners, Charles A. Radin and Mugi Hanao (“Petitioner” and/or “Applicant”), applied to the Building Commissioner for permission to construct a greenhouse, enclose a small potting room, and alter the existing deck at the rear of the property in a S-7 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 July 8, 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 June 24, 2021 and July 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: **184 Clark Road**
Petitioner: **Charles A. Radin and Mugi Hanao**
Zoning District: **S-7 (Single-Family)**
Precinct: **12**
Description: **Proposed addition to rear of house consisting of a potting area, greenhouse, and covered porch**

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

Date: **07/8/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<https://bit.ly/3gwN2bp>

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

§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: 06/24/2021 & 07/01/2021

At the time and place specified in the notice, the Town of Brookline Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Lark Palermo 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, Cameron S. Merrill, Merrill & McGeary, 100 State Street, Suite 200, Boston, Massachusetts, waived a reading of the public hearing notice for the record. Also in attendance was the project architect, Steven Elmets.

Attorney Merrill explained to the Board that the existing home is in excess of the allowable FAR and is therefore a pre-existing nonconforming structure. The Petitioner desires to install a greenhouse which would allow him to have a more productive and efficient garden, while also having little to no impact on his neighbors.

Mr. Merrill introduced the Petitioner's architect, Steven Elmets, who explained that the proposed square footage increase would be approximately 111 square feet, consisting of a small potting room and a greenhouse. Mr. Merrill explained that the requested relief is for FAR and for alteration and extension of a non-conforming structure, pursuant to Section 5.20 and 8.02.2, respectively. Mr. Merrill opined that

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

Mr. Merrill opined that pursuant to **Section 9.05** of the zoning By-Law, the Petitioner met the following standards of a special permit: 1) the specific site is an appropriate location for such use, 2) the use will not adversely affect the neighborhood, 3) there will be no nuisance or serious hazard to vehicles or pedestrians, 4) adequate and appropriate facilities will be provided for the proper operation and proposed use as described in the plans, and 5) there will be no significant adverse effect on supply of available low-income housing.

Board Member Paul Bell inquired about the proposed material for the greenhouse, and Mr. Elmetts confirmed the greenhouse material would be glass. Board Member Bell also inquired about foundation details for the greenhouse, and Mr. Elmetts stated that it will sit on a cast-in-place concrete foundation which will have footings that go into the ground. Upon inquiry from Chair Schneider, Mr. Elmetts clarified that the addition consists of 43 square feet for the potting area and 68 square feet for the greenhouse.

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

Chair Schneider called for public comments in opposition to the application. No comments were submitted.

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

FINDINGS

ZONING: S-7	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	1-family detached dwelling	1-family detached dwelling	
Lot Size	7,000sf	6,815sf	6,815sf	Pre-existing Nonconforming
Floor Area Ratio	0.35 (100%) 2,385sf	0.43 (124%) 2,946sf	0.45 (128%) 3,057sf	<u>Special Permit</u> ¹
Height	35'	unknown	unknown	
Front Setback	20'	25'	25'	
Side Yard Setback (left/right)	7.5' / 7.5'	14.6' / 11.6'	14.6' / 11.6'	
Rear Yard Setback	30'	unclear	40.6'	
Open Space (Landscaped / Usable)	10%/30% 306sf/917sf	2,007sf / 3,758sf	2,007sf / 3,758sf	

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.

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 supportive of this proposal. She added that the additions to the building are minimal and located to the rear of the building where they will not impact

abutters or the public way. The zoning relief needed is also minimal and therefore the altered structure will not be substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal, feeling that the additions are well-designed and consistent with the architecture of the existing building.

The Planning Board recommends approval of the site plan by Everett M. Brooks Co., dated 3/3/21, and architectural plans by Steven Elmets Architecture, dated 3/30/21, 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 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 called upon Deputy Building Commissioner, Paul Campbell, to deliver the opinion 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 Board's decision and all State Building Codes.

Chair Schneider inquired whether the greenhouse was an accessory structure or an addition to the main structure, and both Mr. Merrill and Mr. Elmets confirmed it was an addition since the proposal is attached to the existing house.

The Board deliberated on the merits of the application. Board Member Lark Palermo opined that it was a minimal addition and serving a good purpose, and was in support of the relief. Board Member

Paul Bell noted it was a nice addition and was in favor of granting the relief. Chair Schneider agreed with Board Members Palermo and Bell, and opined that the proposal is not more detrimental to the neighborhood than the existing structure.

The Board then determined, by unanimous vote, that the requirements for a special permit under **M.G.L. c. 40A, Section 6** and for **Section 8.02** of the Zoning By-Law pursuant to **Section 9.05** of the Zoning By-Law have been met.

The Board made the following specific findings, pursuant to said **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.

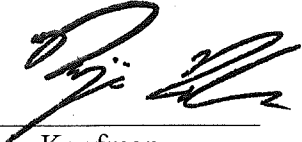
Accordingly, the Board voted unanimously to grant zoning relief, subject to the following conditions:

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.

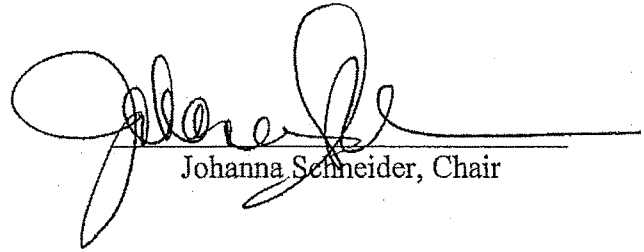
Unanimous Decision of the
Board of Appeals

Filing Date: 8/2/21

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals



Johanna Schneider, Chair