



Town of Brookline Massachusetts

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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
BOARD OF APPEALS
CASE NO. 2021-0031
JOHN DEGNAN
96 VERNDALE STREET, BROOKLINE, MA

Petitioner, John Degnan, applied to the Building Commissioner for permission to construct a new roof structure, a new porch and deck in the rear, and an addition to the front of the house 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 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 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: **96 Verndale Street**
Petitioner: **96 Verndale Street LLC**
Zoning District: **T-5 (Two-Family & Attached Single-Family)**
Precinct: **9**
Description: **Proposed new roof structure, new porch and deck in the rear, and addition to front of house**

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:

- §5.30 - MAXIMUM HEIGHT OF BUILDINGS**
- §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**
- §5.52 - FENCES AND TERRACES IN FRONT YARDS**
- §5.60 - SIDE 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: 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, 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 architect, Ralph Kilfoyle, Rdk Architects, 825 Beacon Street, Newton Centre, Massachusetts.

Attorney Allen stated that 96 Verndale is located in a T-5 zoning district at the intersection of Verndale Street and Columbia Street, and therefore with two front yards. Mr. Allen described the existing three-story building, and noted that the structure is in need of repair. He further added that that Verndale Street contains mostly single and two-family homes of a similar size.

Mr. Allen stated that the proposal is to fully renovate the existing building and while the floor plans will be altered, the exterior changes are minor. 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, to allow for the increase of the pre-existing non-conforming conditions. Mr. Allen explained that the Petitioner is seeking relief for the front yard and side yard setbacks, and for height. Mr. Allen noted

that the exterior changes include the addition of a deck on the first floor, a balcony on the second floor, a roof deck on the third floor, and an expansion of the attic/roof area. Mr. Allen further noted that gross floor area is being added to the attic, and the unfinished basement is being converted into living area. He explained that several of the basement-level windows were added to provide natural light, which was a concern from the Planning Board. Mr. Allen stated that the Planning Board was supportive of the proposal since it would be an improvement to the existing building.

Mr. Allen noted that the Petitioner delivered letters to the neighbors, and the Petitioner has not been made aware of any opposition to the requested relief. Mr. Allen further noted that eight signatures were submitted into the record in support of the proposal, and the signatures include both immediate abutters as well as the abutter from across the street.

Mr. Allen opined that the relief required for this proposal is minimal, and explained that the proposal is increasing an existing non-conformity without creating substantial detriment or creating new non-conformities. Mr. Allen stated that the height is being increased by approximately 2 feet, and that the side yard setback will remain at 7.5 feet.

Architect Ralph Kilfoyle provided an overview of the design. Chair Schneider inquired if there were proposed changes to the parking configuration, and Mr. Allen stated that currently the parking area is only asphalt, where up to six vehicles would park and the proposed scope of work includes landscaping along the parking area to delineate four parking spaces. Board Member Palermo asked about the proposed material for the clapboards, and Mr. Kilfoyle confirmed that the proposed material is cement board. Board Member Bell asked for confirmation on the proposed front yard setback, and Mr. Kilfoyle identified the proposed setbacks.

Mr. Allen 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. He further stated that no new non-conformities will be created with this proposal, and in terms of substantial detriment, the proposal has received the support of the most impacted abutters as well as the full support of the Planning Board.

Mr. Allen stated that the proposal will meet all of the requirements for a special permit under **Section 9.05** of the Zoning By-Law stating as follows: 1) Specific site is an appropriate location for such use: The existing two-family is an allowed use in this zoning district, and will remain a two-family. 2) Use will not adversely affect the neighborhood: The proposal complies with the maximum allowable FAR in the zoning district, and will result in some improvements to the property with minimal impact to the neighborhood. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: Vehicular and pedestrian site access will remain the same. In addition, the proposal is reducing the amount of pavement, adding landscaping, and reducing parking from six to four cars. 4) Adequate and appropriate facilities will be provided for the proper operation as a two-family dwelling building. 5) There will be no effect on the supply on housing available for low- and moderate-income people: The proposal will result in a payment being made to the affordable housing trust.

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: T-5	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	2-family dwelling	2-family dwelling	2-family dwelling	
Lot Size	5,000sf	7,821sf	7,821sf	
Floor Area Ratio	1.0 (100%) 7,821sf	0.61 (61%) 4,765sf	0.88 (88%) 6,898sf	
Height	35'	37.38'	39.52'	<u>Special Permit</u>¹
Front Setback from Columbia St from Verndale St	15' 15'	10.1' 23.8'	7.0' 21.1'	<u>Special Permit</u>^{1,2}
Side Yard Setback	10'	7.5'	7.5'	<u>Special Permit</u>^{1,2}
Rear Yard Setback	30'	32.7'	30.2'	
Open Space (Landscaped / Usable)	<i>10%/30%</i> 690sf/2,069sf	32.3% / 32.8%	31.4% / 32.3%	
Parking	4	Unclear	Unclear	

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 supportive of this proposal. She noted that the changes to the existing building are a reasonable set of alterations to upgrade the building and improve its livability. Ms. Chavez stated that the altered structure will not be substantially more detrimental to the neighborhood than the existing structure. Ms. Chavez explained that the staff recommends that relief from the setback requirements be granted through a **c. 40A Section 6** finding rather than through **Section 5.43**. Ms. Chavez further explained that the staff also requests that the applicant provide clarity on the number of existing and proposed parking spaces. Ms. Chavez stated that given the extent of the renovation, the applicant should strongly consider converting the building to be fossil-fuel-free.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal. She noted that the Board felt that the alterations to the building are appropriate and would significantly improve the appearance of the existing structure. Ms. Chavez explained that the Board suggested that the applicant look into making the building fossil-fuel-free (at least as it relates to the HVAC system).

Ms. Chavez stated that the Planning Board recommends approval of the site plan by Keenan Survey, dated 7/1/21, and architectural plans by RDK Architects, dated 7/1/21, 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 then 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.

The Board then deliberated on the merits of the application. Board Member Bell was supportive of the proposal and was satisfied that the criteria for the grant of relief under **Section 6** were satisfied. The Board discussed the addition of a condition to ensure compliance with the parking requirement. Board Member Palermo agreed, and was in support of granting the relief. Chair Schneider agreed with Board Members Palermo and Bell, opined that the proposal met the findings under **M.G.L. c. 40A, Section 6**, and supported the requested relief

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 5.30, 5.50, and 5.60** of the Zoning By-Law pursuant to **Section 9.05** of the Zoning By-Law have been met.

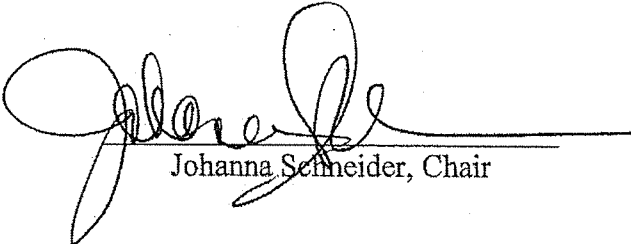
Relying on **Section 9.05** of the Zoning By-Law for guidance on whether or not the expansion of the preexisting nonconformities would result in substantial detriment to the neighborhood, the Board made the following findings:

- 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 revised conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans, a parking site plan to demonstrate the proposal will provide the required number of parking spaces for the development, 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, elevations, and parking site plan 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.

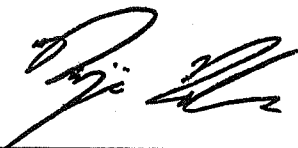
Unanimous Decision of the
Board of Appeals



Johanna Schneider, Chair

Filing Date: 8/2/21

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals