



Town of Brookline Massachusetts

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

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2021 AUG -5 A 10:10

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000034
SANDRA AND PAUL A. SANER
462 CHESTNUT HILL AVENUE, BROOKLINE, MA

Petitioners, Sandra and Paul A. Saner, applied to the Building Commissioner for permission to construct a rear addition and interior renovation to the existing single family home in an S-10 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 15, 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 July 1, 2021 and July 8, 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: **462 Chestnut Hill Avenue**
Petitioner: **Sandra and Paul A. Saner**
Zoning District: **S-10 (Single-Family)**
Precinct: **13**
Description: **Proposed rear addition and interior renovation**

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

Date: **07/15/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<https://bit.ly/2Sv4Hr2>

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

§5.60 - SIDE 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: 07/01/2021 & 07/08/2021

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 Jesse Geller and Board Members Mark Zuroff and Randolph Meiklejohn. Also present at the hearing was Deputy Building Commissioner, Paul Campbell and Zoning Coordinator and Planner, Karen Chavez.

The Petitioner's attorney, Jennifer Dopazo Gilbert, 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, Sandra and Paul A. Saner, and Project Architect, Kecia Lifton, Fine Spaces Architecture, 175 Maple Street, Sherborn, Massachusetts.

Attorney Dopazo Gilbert stated that the Saners have lived at the subject site for over thirty-three years, and the proposed modifications will allow the Saners to age safely in place. Ms. Dopazo Gilbert further stated that the proposal is to make a variety of minor modifications to the house consisting of installing an elevator, a small expansion of the kitchen, a connection to the garage, and an exterior egress for an accessory dwelling unit. Ms. Dopazo Gilbert stated that the Petitioners have discussed the plans with the Preservation Staff, and the exterior changes were so minimal that they did not trigger demolition.

Ms. Dopazo Gilbert stated that the Accessory Dwelling Unit improvements comply with the Accessory Dwelling Unit By-Law that the Town of Brookline passed in 2019, and the Building Commissioner issued a certificate for the ADU use, which was recorded in March 2021. Ms.

Dopazo Gilbert noted that the egress stair for the ADU is only one story, and further noted that the Planning Board has confirmed that it is not visible from the public way. Ms. Dopazo Gilbert stated that the architect is working on a landscape plan that will include a new fence and appropriate plantings, and the Petitioners are also investigating a fossil-fuel-free heating system, as well as the possibility of induction stoves.

Ms. Dopazo Gilbert stated there is minimal relief required, and the FAR relief can be granted by a special permit under M.G.L. c. 40A, Section 6. Ms. Dopazo Gilbert further stated that the additions would add approximately 520 square feet of gross floor area, and would alter the garage from being an accessory structure to being attached to the primary structure. Ms. Dopazo Gilbert then stated that the proposed connector requires zoning relief for the rear yard setback pursuant to Section 5.43 of the Zoning By-Law, and commented that the proposed counterbalancing amenities consist of new fencing and landscaped screening for the most impacted neighbor. Ms. Dopazo Gilbert noted that this lot is large, at 14,892 square feet, and is located in an S-10 zoning district. Ms. Dopazo Gilbert then introduced the project architect, Kecia Lifton who provided an overview of the design. With respect to M.G.L. Chapter 40A, Section 6, Ms. Dopazo stated that the subject site is an appropriate location for this use, and will not be substantially more detrimental to the neighborhood.

Ms. Dopazo Gilbert stated that the proposal will meet all of the requirements for a special permit under Section 9.05 of the Zoning By-Law noting as follows: 1) Specific site is an appropriate location for such use: The subject site will continue to be residential use. 2) Use will not adversely affect the neighborhood: The addition consists of 520 square feet and provides for an improved egress for the ADU. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: The residential nature of the use is not changing and there is a large driveway that

provides ample off-street parking. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: The use is not changing, and will be improved by the new layout and access to the garage, with a new egress for the ADU. 5) There will be no effect on the supply of housing available for low- and moderate-income people: The legal ADU on the subject site now provides an additional residential unit.

Board Member Meiklejohn asked for clarification about the relief required for the rear yard setback, and Ms. Dopazo Gilbert stated that once the garage is attached to the main structure through the breezeway, the 30-foot rear yard setback is triggered and the setback is instead measured from the corner of the garage.

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

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

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

FINDINGS

ZONING: S-10	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	1-family detached dwelling	1-family detached dwelling	
Lot Size	10,000sf	14,892sf	14,892sf	
Floor Area Ratio	0.30 (100%) 4,468sf	0.49 (163%) 7,294sf	0.52 (175%) 7,814sf	<u>Special Permit</u>¹

Height	35'	38'	38'	Pre-existing Nonconforming
Front Setback from Chestnut Hill Ave from Willard Road	20' 20'	24.6' 28.2'	24.6' 28.2'	
Side Yard Setback	10'	14.2'	10.1'	
Rear Yard Setback	30'	39.4'	10.3'	<u>Special Permit</u> ²
Open Space (Landscaped / Usable)	10%/40% 781sf/3,126sf	118% / 82%	109.8% / 78%	

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 4.05.3.11, Restrictions on Accessory Uses in Residence Districts: This paragraph states that exterior stairs required for secondary access to an accessory dwelling unit must be approved by Special Permit and must be 1) not visible from a public way, and 2) not exceed one story in height. *The Building and Planning Departments would like input from the Planning Board on whether the exterior stair should be deemed visible from a public way.*

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 proposed additions to the building are modest and the zoning relief needed is relatively minimal. Ms. Chavez stated that setback relief for the rear yard is required and can only be granted through **Section 5.43**. Ms. Chavez explained that the applicant should therefore explicitly identify the amenity and/or provide a landscaping plan that provides adequate screening. Ms. Chavez stated that relief for the ADU's exterior access stair may need a Variance, but if the Zoning Board of

Appeals can find that the criteria for a Variance are met or if the exterior stair is deemed not visible from a public way by the Planning Board and ZBA, staff believes that the necessary zoning relief can be granted.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal. She noted that the Board feels that the alterations to the structure are modest and important to accommodating the current resident's ability to age in place. Ms. Chavez explained that the Board discussed the visibility of the spiral staircase serving as a second egress for the ADU and determined that the staircase would not be visible from a public way and that the stair is only one story in height.

Ms. Chavez then stated that the Planning Board recommends approval of the site plan by Verne T. Porter Jr., dated 3/22/21, and architectural plans by Finespaces Architecture, LLC, dated 4/23/21, 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 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 Meiklejohn found that the proposal was appropriate and well-designed, and stated that the additional area does not make the structure substantially more detrimental to the neighborhood. Board Member Meiklejohn opined that the relief sought for the setback is available as requested under **Section 5.43** of the Zoning By-Law, that all of the conditions under **Section 9.05** of the Zoning By-Law have been met, and was in favor of granting the relief. Board Member Zuroff and Chair Geller agreed, 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 pursuant to **Section 5.43** and **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 a landscape plan that shows proposed counterbalancing amenities subject to the review and 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


Jesse Geller, Chair

Filing Date: 8/5/21

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals