



Town of Brookline Massachusetts

RECEIVED
TOWN OF BROOKLINE
2021 SEP -7 P 4:06

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. 2021-0038
SCOT OSTERWEIL
52 KENDALL STREET, BROOKLINE, MA

Petitioner, Scot Osterweil, applied to the Building Commissioner for permission to construct a two-story addition at the rear of structure in an M-1.0 Apartment House 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 August 5, 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 22, 2021 and July 29, 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: **52 Kendall Street**
Petitioner: **Scot M Osterweil, Et Al**
Zoning District: **M-1.0 (Apartment House)**
Precinct: **5**
Description: **Construct two story addition at rear of structure**

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

Date: **08/05/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

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

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
§5.51 - PROJECTIONS INTO FRONT YARDS
§5.70 - REAR YARD REQUIREMENTS
§5.71 - PROJECTIONS INTO REAR YARDS
§8.02.2 – ALTERATION AND 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: 07/22/2021 & 07/29/2021

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 Paul Bell. 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 was the Petitioner, Scot Osterweil, and Project Architect, Tom Dolle, Dolle Architects, Brookline, Massachusetts.

Attorney Dopazo Gilbert stated that the Petitioner has lived in this home since the 1980s, and further stated that the subject site is an undersized, triangular lot located in the M-1.0 Multi-Family Zoning District. She continued that the Preservation Board issued a Certificate of Non-Significance for this property in March 2020.

Ms. Dopazo Gilbert stated that the proposal is to construct a two-story addition on the rear left side of the home to expand the entryway on the first floor and to accommodate a bathroom on the second floor, and noted that the addition will stay within the existing outline of the building. Ms. Dopazo Gilbert explained that the addition will add a total of 132 square feet to the home, and with the additional floor area will stay within the allowable FAR. She further noted that the

Petitioners have discussed the plans with the immediate abutters, who provided their support, and the Planning Board was unanimously supportive of the proposal finding that the addition was reasonable.

Ms. Dopazo Gilbert then stated that minimal relief is required for the setbacks, and noted that the FAR will increase to 0.87, where the maximum FAR is 1.0. Ms. Dopazo Gilbert opined that the proposed scope of work was de minimis in nature and explained that this is an example of a project, according to recent caselaw, whereby the Building Commissioner could have in his discretion deemed the project “small scale.” She noted that when a project is deemed “small scale,” pursuant to M.G.L. Chapter 40A, Section 6, a building permit can be issued by-right, and eliminate the costly and lengthy special permit process. Ms. Dopazo Gilbert argued that this was the intent of M.G.L. Chapter 40A, Section 6, as applicable to single and two-family structures. Nevertheless the Petitioners are moving forward with a special permit request rather than challenging the Building Department decision.

Ms. Dopazo Gilbert explained that relief can be granted by a special permit under **M.G.L. Chapter 40A, Section 6**, noting that the front yard, side yard, and rear yard setbacks have pre-existing nonconforming conditions, with setbacks at 0.8’, 1.72’ and 1.55’, respectively. Furthermore, the proposed addition will not encroach closer to the property line, it will not create a new nonconformity, and there will be no substantial detriment 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 home will retain its style and will maintain its existing use. 2) Use will not adversely affect the neighborhood: The goal of the proposal is to increase the living space in a manner that will not negatively impact the neighborhood. While the proposal does expand the FAR, the scope

of work remains under the allowable FAR. Additionally, the proposal maintains the existing setbacks, it will be within the allowed height, and will not be intrusive to abutters. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: In fact, there will be no change to the existing circulation on the site, and the changes themselves do not create a nuisance nor serious hazard to vehicles or pedestrians. Additionally, there will be no change in the use or number of occupants, or vehicles at the house. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: The use will remain a single-family use. 5) There will be no effect on the supply of housing available for low- and moderate-income people: In fact, this proposal will allow this long-term family to stay in their home.

Chair Geller called for public comments in favor 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: M-1.0	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	1-family detached dwelling	1-family detached dwelling	
Lot Size	4,000sf	1,761sf	1,761sf	<u>Special Permit</u>¹
Floor Area Ratio	1.0 (100%) 1,767sf	0.80 (80%) 1,411sf	0.87 (87%) 1,543sf	

Height	35'	27'6"	27'6"	
Front Setback	15'	0.08'	0.08'	<u>Special Permit</u> ^{1,2}
Side Yard Setback	7.5'	1.72'	1.72'	<u>Special Permit</u> ^{1,2}
Rear Yard Setback	30'	1.55'	1.55'	<u>Special Permit</u> ^{1,2}
Open Space (Landscaped / Usable)	10%/20% 154sf/308sf	unknown / unknown	unknown / unknown	

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 5.51, Projections Into Front Yards: This section states that projections into front yards (like porches) may not project more than 3.5 feet into a required front yard setback. In no case can a projection extend closer than 5 feet from a front property line. Relief from this section can be granted through Section 5.43 (see above).

Section 5.71, Projections Into Rear Yards: This section states that projections into rear yards (like porches) may not project more than 4 feet into a required rear yard setback. In no case can a projection extend closer than 10 feet from a rear property line. Relief from this section can be granted through Section 5.43 (see above).

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 lot is so unusual and the building so extensively nonconforming (except FAR and height) that no reasonable alteration to the building could be achieved without some form of zoning relief. In this case, the requested alteration is very minimal and reasonable. Ms. Chavez stated that it is also well designed and consistent with the architecture of the existing building and surrounding neighborhood. She noted that staff recommends that setback relief be granted through a finding under M.G.L. c.40A §6 rather than by requiring a counterbalancing amenity under Section 5.43.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal. She noted that the Board feels that the addition is very modest, reasonable, and well-designed. Ms. Chavez stated that the Board noted the uniqueness of the lot, which is believed to justify the issuance of zoning relief in this case. She added that the Board also made a few design suggestions for the front entrance that the applicant should take into consideration.

Ms. Chavez continued that the Planning Board recommends approval of the site plan by Terra Nova Survey Consultants, dated 2/5/20, and architectural plans by Dolle Architects, dated 1/25/20, 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 Geller called upon Deputy Building Commissioner, Paul Campbell to deliver the recommendations 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 applicable state building codes.

The Board then deliberated on the merits of the application. Board Member Zuroff was in support of the requested relief and found that the criteria had been met for a **M.G.L. c.40A, Section 6** finding. Board Member Bell agreed and voted in favor of the relief. Chair Geller stated that the proposal met the provision under **M.G.L. c.40A, Section 6** and the requirements under **Section 9.05** of the Zoning By-Law, noting that the proposal was a de minimis case, and voted in favor of the 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 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: SEP 07 2021


Jesse Geller, Chair

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals