



Town of Brookline

Massachusetts

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Town Hall, 1st Floor
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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-00037
GABRIEL ASKARINAM
142 BELLINGHAM ROAD, BROOKLINE, MA

Petitioner, Gabriel Askarinam, applied to the Building Commissioner for permission to construct a second story addition 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 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 & 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: **142 Bellingham Road**
Petitioner: **Maurice Y Alpert, Trustee**

Zoning District: **S-10 (Single-Family)**
Precinct: **16**
Description: **Construct second story addition**

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:

§5.09.2.J – DESIGN REVIEW

§5.20 - FLOOR AREA RATIO

§5.22.3.B.1.B – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§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 G. Zuroff
Johanna Schneider*

Publish: 07/22/2021 & 07/29/2021

On August 5, 2021, the Board met and Ashley Clark, Senior Planner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts 02445, requested to continue the hearing to August 19, 2021 at 7:00PM. Chair Zuroff, being the only ZBA member present, voted to approve the continuance as requested.

A subsequent notice of the hearing was published on August 12, 2021 & August 19, 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: **142 Bellingham Road**
Petitioner: **Gabriel Askarinam, Trustee of the G Askarinam Realty Trust**
Zoning District: **S-10 (Single-Family)**
Precinct: **16**
Description: **Construct second story addition**

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

Date: **08/19/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

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

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:

**§5.09.2.J – DESIGN REVIEW
§5.20 - FLOOR AREA RATIO**

§5.22.3.B.1.B – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§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.*

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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 G. Zuroff
Johanna Schneider*

Publish: 08/12/2021 & 08/19/2021

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 Mark G. Zuroff and Board Members Johanna Schneider and Lark Palermo. Also present at the hearing was Deputy Building Commissioner, Paul Campbell and Zoning Coordinator and Planner, Karen Chavez.

The Petitioner's attorney, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts, waived a reading of the public hearing notice for the record. Also in attendance was the Petitioner, Gabriel Askarinam.

Attorney Allen stated that the Petitioner purchased the home in 2020 and would like to make some changes to the house to better fit their family's needs. Attorney Allen stated that 142 Bellingham Road is a single-family home in the S-10 zoning district, and is on an undersized lot of about 7,818 SF, where 10,000 SF are required. He noted that the home abuts the Walnut Hills Cemetery, and is near the Brookline Public Library.

Mr. Allen stated that the Petitioner has agreed to return to the Planning Board for final design review. Additionally, the Preservation Commission issued a Certificate of Non-Significance for the structure in April 2021.

Mr. Allen stated that the proposal is to build a second floor above the existing first floor, and noted that the expansion would stay within the existing footprint. Mr. Allen added that the home is in need of upgrades, and the Petitioner proposes to improve the uninsulated masonry walls with a furring wall and closed-cell foam, and replace the single-pane windows with energy-efficient alternatives.

Mr. Allen stated that the proposal would increase the FAR from a .21 to .40, where the maximum allowed FAR is .30. He noted that a variance is being requested for FAR, per recommendation from the Planning Board, which pointed out the unique features of the lot, and advised that the variance for the FAR would also result in a better project.

Mr. Allen stated that M.G.L. c. 40A, Sec. 10 expressly authorizes a permit granting authority to grant a variance with respect to particular land where it finds that "owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and

especially affecting such land or structures but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law." Mr. Allen opined that the subject property presents circumstances relating to the soil conditions, shape, or topography affecting the property, but not generally affecting the zoning district in which it is located. He noted that the subject property has unique soil conditions and topography that potentially impacted how the single-family home was constructed, contributing to the uniqueness of this lot and affecting this property, but not generally affecting the overall zoning district.

Mr. Allen described that there is a significant amount of rock and ledge that covers approximately half of the lot. Mr. Allen added that over half of the existing basement consists of only crawl space mainly because of ledge that was not excavated, and further added that this created a unique condition for the home because it impeded this particular section of the basement from becoming habitable space. Mr. Allen opined that, had the basement been fully habitable space, the subject property would have had a nonconforming FAR, and the request would fall under an M.G.L. c.40A, Section 6 finding.

To support his analysis, Mr. Allen stated that in 2015, the property owner of 160 Bellingham Road was granted an M.G.L. c.40A, Section 6 special permit under Section 5.20 of the Zoning By-Law by the Zoning Board of Appeals to increase the FAR to a .46. Mr. Allen pointed out that in this particular case, the basement was included in the FAR calculations, which yielded an FAR that exceeded the maximum allowed, and therefore qualified for an M.G.L. c.40A, Section 6 finding. Mr. Allen argued that the Petitioner seeks to increase the FAR by far less than

what was approved at 160 Bellingham Road. Mr. Allen further noted that the ZBA has seen many cases where the existing basement pushed the home over the allowable FAR, and into a pre-existing nonconformity condition.

Mr. Allen stated that literal enforcement of Section 5.20 of the Zoning By-Law would involve a substantial hardship, financial and otherwise, to the Petitioner. Mr. Allen noted that because of the soil and topography of the lot, the Petitioner could not build out the basement space. Additionally, the Petitioner cannot convert the 867 square feet of crawl space because of the ledge. Mr. Allen stated that the cost associated with removing the ledge from inside an existing home would be prohibitive, so to make up for that lost 867 square feet, the Petitioner is seeking to add 450 square feet to the second floor.

Mr. Allen stated that the Petitioner is proposing an FAR of 133%, and unfortunately cannot take advantage of Section 5.22.3.b.1.c of the Zoning By-Law, which allows the FAR to exceed up to 130% by special permit, because this section requires conversion of both interior space as well as exterior space, with the exterior space not exceeding 35% of the requested increase. He noted that the Petitioner could not convert the required interior space strictly because of the ledge in the basement. Mr. Allen stated that the Petitioner is seeking a modest variance to allow 450 square feet, to make up for the lost 867 square feet taken up by the ledge in the basement.

Mr. Allen explained that the Planning Board is supportive of the variance request, and submitted in their report that the "Board encourages the applicant to seek a Variance from the Zoning Board of Appeals for additional FAR." Additionally, the Petitioner's most impacted abutter is also in support of this option, since it impedes less on their privacy than a proposed exterior second-floor deck. Mr. Allen displayed the two floor plan options for the second floor, and described how small the rooms would be without the extension across the entire footprint. He

noted that the Planning Board pointed out the benefit of having the additional living space, and stated that the Board may grant the desirable relief without substantial detriment to the public good and without nullifying, or substantially derogating, from the intent or purpose of the By-Law.

Mr. Allen stated that the Petitioner requests, for the reasons stated above, that the Board finds that enforcement of **Section 5.20** of the Zoning By-Law, as it relates to the subject property, would create a substantial hardship for the Petitioners, and grant the relief requested. Mr. Allen opined that the proposal meets the standards under **M.G.L. c. 40A, Section 10** and that the request is driven by the inability to convert basement space to gross floor area. He concluded that had the Petitioner been able to convert the basement, this would be a special permit request; however, issues related to the soil, such as ledge and cost associated with digging out the basement, are prohibitive.

Mr. Allen then stated that relief is sought from the provisions of **Section 5.60** pursuant to **Section 5.43** of the Zoning By-Law, for the left side yard setback. He noted that the existing setback is 8.8 feet, which will be extended vertically and will not encroach further into the setback. Mr. Allen stated that the Petitioner will provide a landscaping plan to the Assistant Director of Regulatory Planning to satisfy the counterbalancing requirement for this relief.

Mr. Allen opined that the proposal meets the criteria for the grant of special permit relief under **Section 9.05** of the Zoning By-Law and noted the following: 1) **The specific site is an appropriate location for such a use, structure, or condition:** The property is located in an S-10 residential neighborhood, and the addition will maintain the same use. 2) **The use as developed will not adversely affect the neighborhood:** The addition will not expand the existing footprint, and the update to the home will be more consistent with the neighborhood in terms of massing and design. 3) **There will be no nuisance or serious hazard to vehicles or pedestrians:** There will be no

changes to the site circulation for vehicles or pedestrians, nor any increase in the number of cars accessing the site. 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use. 5) The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Chair Zuroff called for public comments in favor of the application. Timothy Sullivan, resident at 146 Bellingham Road, stated that the variance design is preferable to the previous version, which resembled a Motel 6. Mr. Sullivan also noted that the neighborhood is made up of single-family ranch homes, and expressed concern about long-term affordability in the neighborhood when homes are doubled in size.

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

Chair Zuroff 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	7,818sf	7,818sf	<u>Special Permit</u>¹
Floor Area Ratio	0.30 (100%) 2,345sf	0.21 (70%) 1,642sf	0.35 (119%) 2,795sf	<u>Special Permit</u>²
Height	35'	20.8'	33.1'	
Front Setback	20'	21'	21'	

Side Yard Setback (left / right)	10' / 10'	8.8' / 7.2'	8.8' / 11'	<u>Special Permit</u> ^{1,3}
Rear Yard Setback	30'	48.7'	48.7'	
Open Space (Landscaped / Usable)	10%/40% 280sf/1,118sf	unknown / unknown	47% / 146%	

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 5.22, **Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units:** This section allows an applicant to seek a Special Permit to exceed the allowed FAR for single-family and two-family buildings by up to 20% or 30% (depending on how much of the additional GFA is due to an exterior addition or interior conversion). The applicant is seeking to exceed the allowed FAR by 19% which is permitted by Special Permit under this Section for exterior additions.

³ 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 By-Law.

Other Zoning Relief Needed

Section 5.09.2.J, Design Review: Projects seeking additional FAR pursuant to Section 5.22 require Design Review. The applicant has submitted an Impact Statement that explains how the project satisfies the Community and Environmental Impact and Design Standards of Section 5.09.4.

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 second story is confined within the footprint of the existing building and will therefore not have a significant adverse impact on surrounding properties. The overall renovation of the building constitutes an improvement to the neighborhood, and the zoning relief needed is relatively minimal.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is generally supportive of this proposal. However, she noted that Board members feel that the project would be greatly improved if the applicant were permitted to enclose at least a portion of the rear balcony. Recognizing that doing so would increase the FAR beyond what can be granted under a Special Permit, the Planning Board encourages the applicant to seek a Variance from the Zoning Board of Appeals for additional FAR. Likewise, the Planning Board recommends that the ZBA grant the request. Board members had several other concerns/comments regarding details of the architectural design and recommended that the ZBA require the applicant to return to the Planning Board for final design review.

Therefore, Ms. Chavez stated, the Planning Board recommends approval of the site plan by Land Mapping Inc, dated 2/22/21, and architectural plans by Haosheng Zhang, dated 5/19/21, 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 Planning Board 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 Zuroff 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 deliberated on the merits of the application. Board Member Palermo stated that the neighborhood is predominately ranch houses, however, the request is for variance relief and the standard of review is related to the uniqueness of the property and stated the specific issue is for the enclosure of the balcony. Board Member Palermo said that Mr. Allen provided a compelling case for a variance, that a valid argument was made in relation to the basement, and would support the relief as requested. Board Member Schneider concurred and noted there are a unique set of circumstances created due to the inability to have a basement because of the conditions on the lot. She opined that while it is unusual to have a different type of zoning treatment, in this case it does meet the variance criteria, and would support the relief as requested. Chair Zuroff agreed and noted that the variance criteria, including the uniqueness, had been satisfied. He further stated that the result is a relatively minor expansion that has the support of the abutter and the Planning Board. Chair Zuroff opined that this speaks to the minimal impact of the variance relief sought. In this case, Chair Zuroff concluded, the variance and special permit criteria have been satisfied, and supported the relief as requested.

The Board then determined, by unanimous vote, that the requirements for a variance from the provisions of Section 5.20 and for a special permit for Section 5.60 pursuant to Sections 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 no adversely affect the neighborhood.

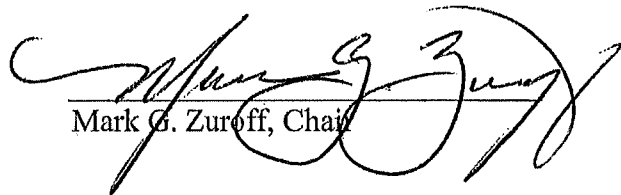
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and 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 Planning Board 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.

Unanimous decision of the
Board of Appeals

Filing Date: SEP 07 2021


Mark G. Zurhoff, Chair

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals