



Town of Brookline

Massachusetts

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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0028
JEAN J & BRIAN T O'HALLORAN, TRUSTEES
177 COOLIDGE STREET, BROOKLINE, MA

Petitioners Jean J & Brian T O'Halloran, Trustees, applied to the Building Commissioner for permission to convert a ground floor screened porch to enclosed space 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 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: **177 Coolidge Street**
Petitioner: **Jean J & Brian T O'Halloran, Trustees**
Zoning District: **T-5 (Two-Family & Attached Single-Family)**
Precinct: **9**
Description: **Convert a ground floor screened porch to enclosed space**

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

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT 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: 07/22/2021 & 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 builder, Jeff Capello, waived a reading of the public hearing notice for the record.

Mr. Capello stated that the project site is located on the corner of Abbotsford Road and Fuller Street, and the proposal is to convert the existing screened porch into interior living space and construct a second story above with the same footprint. Mr. Capello explained that current setback to the front lot line is 5.9 feet, and the Petitioners are therefore requesting relief from the setback required by the Zoning By-Law. Mr. Capello noted that in an effort to address feedback received from the Planning Board, the existing plantings will be raised from about 40 inches to 5.5 feet.

Chair Geller reminded Mr. Capello that Section 5.43 of the Zoning By-Law requires a counterbalancing amenity to offset the nature of the nonconformity, and inquired whether the

raised plantings were being proposed as the counterbalancing amenity. Mr. Capello confirmed that the improved landscaping is being offered as a counterbalancing amenity.

Chair Geller called for public comments in favor of the application. Ric Panciera, resident at 173 Thorndike Street, stated that he had no objections to the modifications nor to the plantings around the perimeter. Mr. Panciera opined that the property is in a precarious spot and that the Petitioner could use more privacy.

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

| | Required | Existing | Proposed | Finding |
|--|-----------------|-----------------|-----------------|-----------------|
| Front Yard (Fuller Street) | 15 feet | 5.9 feet | 5.9 feet | Special Permit* |
| Front Yard (Abbotsford Rd.) | 15 feet | 5.9 feet | 5.9 feet | Special Permit* |

** Under **Section 5.43**, the Board of Appeals may waive by special permit yard and/or setback requirements, if a counterbalancing amenity is provided.*

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 to enclose the ground-story screen porch. The FAR will remain well under the allowable limit for the zoning district and all setbacks are pre-existing non-conforming. She noted that because this lot has three front yards, it would be difficult to add an addition and meet the front yard setbacks. Since a counterbalancing amenity is required, the applicant should add additional landscaping to the grounds.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal. The Board feels that the proposed addition is reasonable and, given the location of the lot bounded by three streets, justified in being granted zoning relief.

Ms. Chavez stated that the Planning Board recommends approval of the site plan dated 3/30/2021 by Metrowest Engineering and the floor plans and elevations dated 2/3/2021 by Axiom Architects, The Planning Department recommends 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.

Paul Campbell, Deputy Building Commissioner, inquired whether the height of the proposed plantings would conflict with Section 5.45 of the Zoning By-Law that speaks to traffic visibility across corners. Chair Geller stated that the Zoning Board of Appeals did not have jurisdiction to waive a General Town safety ordinance requirement, and if it was determined that the proposed landscaping impeded the line of sight required under the Zoning By-Law, the Board can provide a condition identifying the conflict for the Assistant Director for Regulatory Planning to review prior to approving the landscaping plan.

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 Bell inquired whether the Board could approve the proposal which requires counterbalancing amenities, when the proposed counterbalancing amenities were at risk of noncompliance with the Zoning By-Law. Chair Geller noted that the landscaping is being proposed at the recommendation of the Planning Board, and clarified that the concern was whether the height of the proposed landscaping located adjacent to two intersecting streets was safe. Board Member Zuroff stated that his interpretation of Section 5.43 of the Zoning By-Law was that a counterbalancing amenity is required that benefits the general area, as opposed to requiring a counterbalancing amenity in a particular location. Chair Geller recommended deferring the review of the landscaping plans to the Assistant Director for Regulatory Planning, while conditioning that one of the review standards be line-of-sight safety.

Board Member Bell agreed with the recommendation, and stated that the proposal meets the requirements for special permit, and voted in support of the relief. Board Member Zuroff also

agreed with the recommendation, and stated that the proposal meets the requirements of Sections 5.43 and 9.05 of the Zoning By-Law. Board Member Zuroff voted in favor of granting the relief. Chair Geller voted in favor of granting the relief, subject to the revised conditions.

The Board then determined, by unanimous vote, that the requirements for a special permit for Sections 5.50 and 8.02 of the Zoning By-Law 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 revised 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 that meet line-of-sight safety requirements, subject to the review of 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

Filing Date: SEP 07 2021



Jesse Geller, Chair

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals