



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zurroff
Johanna Schneider

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Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000039
3 CLEVELAND ROAD
BROOKLINE, MA

Petitioner, Philip Vineburgh, applied to the Building Commissioner for permission to construct second-story addition to the existing single-family home and an addition above a detached garage. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed August 5, 2021, at 7:00 p.m. virtually as the 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 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: 3 Cleveland Road
Petitioner: Arienne M. Dwyer
Zoning District: S-10 (Single-Family)
Precinct: 13
Description: Construct second-story addition and addition over detached garage

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:

§5.20 - 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: 07/22/2021 & 07/29/2021

On August 5, 2021, at 7:00 pm, the Brookline Zoning Board of Appeals held a public hearing. Present at the hearing were Zoning Board Chair Jesse Geller and Board Members Paul Bell and Mark Zuroff.

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. Attorney Dopazo Gilbert requested to continue the hearing to September 23, 2021, at 7:00 pm. The Board deliberated and unanimously agreed to grant the continuance as requested. No substantive testimony was provided.

On September 23, 2021, at 7:00 pm, the Brookline Zoning Board of Appeals held a public hearing. Present at the hearing were Zoning Board Chair Johanna Schneider and Board Members Paul Bell and Lark Palermo.

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 Petitioner, Philip Vineburgh and the architectural designer for the project, Cody Sanborn, RODE Architects, 535 Albany Street #405, Boston, Massachusetts, 02118.

Attorney Allen stated that 3 Cleveland Road is a single-family home built in 1925 in the S-10 Single-Family zoning district. Attorney Allen noted that the neighborhood is primarily

similar-sized single-family homes and noted that the preservation staff found the detached garage on the property not historically significant.

Attorney Allen stated that when the Petitioner purchased the home, it needed interior and exterior renovations. He noted that some interior construction and site work had started. Attorney Allen described the communication regarding construction management with the abutters and noted the Petitioner's accommodations to requests to restrict construction hours on weekends during the summer. Mr. Allen indicated that support letters from the abutter across the street at 136 Willard Road and the neighbor directly to the right, 135 Willard Road, have been provided to the Board. Additionally, Attorney Allen stated that the abutter at 7 Cleveland Road expressed support at the Planning Board meeting.

Attorney Allen stated that the original proposal had a second-story office added above the garage. He described concerns about the increased height and privacy voiced by the rear abutters. He stated that the Petitioner revised the proposal to maintain a single-story height garage and add an office as a single-story garage extension. Attorney Allen stated that this modification addresses the concerns heard about the project.

Attorney Allen described the two components of the proposal. First, he stated that a second-story addition above an existing single-story portion of the house is proposed and would add 200 square feet. Attorney Allen noted that this addition would allow for the expansion of the primary bedroom. Second, he stated that the proposal also includes expanding the existing garage to accommodate a new office for personal use. He noted that the office extension is 240 square feet.

Attorney Allen then reviewed the zoning relief required. He stated that relief is needed to intensify a preexisting nonconforming FAR. He noted that the existing FAR is at .4, where there

is an allowed maximum of .3, and the proposed FAR would increase to .45. Attorney Allen stated that the main house complies with setbacks. Attorney Allen clarified that the office addition square footage falls within the FAR increase to a .45. He stated that the garage requires relief to extend a preexisting nonconforming side yard setback. Attorney Allen stated that the Zoning By-law requires a setback of six feet for an accessory structure, and the existing setback is five feet. He noted that while the garage extension will not encroach further into the side yard, relief is required to extend the footprint of the building along the side yard. While no changes are proposed to the rear setback, Attorney Allen stated that relief is needed to alter a nonconforming structure. He explained that the existing rear yard setback of the garage is five feet and noted that six feet are required. Mr. Allen stated that the proposal would add approximately 480 square feet and extend a five-foot setback down the side property line about 14-feet.

The Board discussed the appropriate zoning use classification for an office within a garage. Attorney Allen stated that the use was discussed with the Building Commissioner, and he noted that use #61 was added for the Board's consideration as to whether a special permit would be required. Attorney Allen stated that use #61 is generally for non-habitable space. He stated that if the garage were going to be 720 square feet, all the square footage would all be exempt from the FAR. Attorney Allen opined that the office falls under use #71 "Other accessory use customarily incidental to a permitted principal use, and not normally conducted as an independent principal use or as an accessory to some other use, provided that any use accessory to a use permitted only under a special permit shall be established only if and as provided in such permit." He stated that the 240 square feet of office space must be included in the FAR calculation, unlike garage or shed space. He noted that the office use is an allowed use by-right under use #71. Chair Schneider stated that she did not find that the office use was use #61 "Non-

commercial greenhouse, tool shed, or other similar accessory structure.” Attorney Allen noted that neither use results in a variance required to increase the FAR for the office in the garage.

Board Member Bell confirmed that the .45 FAR included the office and the addition above the first story. Deputy Building Commissioner Campbell confirmed with Attorney Allen that the existing basement is included in the FAR calculation of .40.

Attorney Allen stated that under M.G.L. Chapter 40A, Section 6, the ZBA may allow for the increase of preexisting nonconforming conditions if the Board finds that the proposal will create no substantial detriment to the neighborhood than what is already existing or no new nonconformity. Attorney Allen stated that the proposal will create no new nonconformities. In terms of substantial detriment, he stated that the proposal has the support of the Planning Board. Additionally, Attorney Allen stated that support was provided from both side direct abutters, who would be the most impacted by the proposal.

Attorney Allen stated that the ZBA has used Section 9.05 to review substantial detriment on previous cases. Attorney Allen stated the proposal meets the requirements under Section 9.05, noting the following: 1) Specific site is an appropriate location for such use: The property is in an S-10 residential neighborhood, and the addition will maintain this use. 2) Use will not adversely affect the neighborhood: The addition to the home has been designed to be in keeping with the existing home. The changes are minor enough to the exterior that the Town’s Demolition By-law was not triggered. Additionally, the Petitioner modified the garage addition from a second story addition to just an extension of the garage to address the concerns shared about the impact on privacy and viewsheds. 3) No nuisance or serious hazard to vehicles or pedestrians. There will be no change to the site circulation for vehicles or pedestrians. 4) Adequate and appropriate facilities will be provided for the proper

operation and proposed use. The Petitioner’s renovation will bring the property up to modern code standards. 5) **Development will not have any effect on the supply on housing available for low- and moderate-income people.** This detached home office will help modify the home to meet this family’s needs.

Upon inquiry from Board Member Bell, Attorney Allen stated that the side yard setback would not encroach further into the required side yard. He noted that the garage extension along the five-foot setback requires a special permit and confirmed that while the rear yard is not changing, relief is needed to alter a pre-existing nonconforming structure.

Chair Schneider then called for public comments in favor of the proposal. No comments were submitted in support of the proposal.

Chair Schneider then called for public comments in opposition to the proposal. No comments were submitted, and no one spoke in opposition.

Chair Schneider then called upon Maria Morelli, Senior Planner, to deliver the reports 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	9,936sf	9,936sf	<u>Special Permit</u>¹
Floor Area Ratio	0.30 (100%) 2,981sf	0.40 (133%) 3,950sf	0.45 (150%) 4,430sf	<u>Special Permit</u>¹
Height	35'	unknown	unchanged	
Accessory Garage	15'	unknown	14'11"	
Front Setback	20'	40'	40'	

Side Yard Setback (left / right) Accessory Garage	10' / 10' 6' / na	12.2' / 7.5' 5' / na	12.2' / 7.5' 5' / na	<u>Special Permit</u> ^{1,2} <u>Special Permit</u> ^{1,2}
Rear Yard Setback Accessory Garage	30' 6'	~65' 4.5'	~65' 4.5'	<u>Special Permit</u> ^{1,2}
Open Space (Landscaped / Usable)	10%/40% 448sf/1,790sf	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.

³ Section 5.72, **Accessory Buildings or Structures in Rear Yards:** This section allows accessory buildings to be located in required rear yard areas provided that (1) the accessory structure does not occupy more than 25 percent of the required yard area, (2) the accessory structure is no closer than 6 feet from the rear property line, side property line, or main building, and (3) the height of the accessory structure is less than 15 feet. The existing accessory garage does not comply with the setback requirements; the proposed alterations intensify this nonconformity and relief can therefore be granted under MGL c. 40A §6 or alternatively through Section 5.43 (see above).

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. Morelli stated that the Planning Department is supportive of this proposal. She noted that the additions to the main building and detached garage are reasonable and modest as well as consistent with the existing architecture and surrounding neighborhood.

PLANNING BOARD RECOMMENDATION

Ms. Morelli stated that while the Planning Board is generally supportive of the proposal, the Board made a few recommendations to the applicant regarding the layout of windows on the east elevation of the addition. Ms. Morelli submitted the Planning Board report for the record that stated that the Board also suggested matching the roof pitch of the addition to the roof pitch of the existing house. Some Board members feel that the proposed office space in the detached garage constitutes an accessory use under Use #61 of the Table of Use Regulations and, being

greater than 150 square feet, requires a Special Permit. The Board therefore requests that the Building Commissioner and the ZBA review the zoning relief for this case.

Chair Schneider then called upon Deputy Building Commissioner, Paul Campbell, to deliver the opinion of the Building Department. The Board discussed the appropriate use classification for the office. Attorney Allen stated that the garage and office will meet the building code and that the uses can exist in this way.

Chair Schneider then read the recommended Planning Board conditions into the record stating that the Planning Board recommends approval of the site plan by Framingham Survey Consultants, dated 7/26/21, and architectural plans by Rode, dated 7/26/21, 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. The applicant shall consider modifying the roof pitch of the addition to the main house and adding windows to the second floor of the east elevation.
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.

Upon inquiry from Chair Schneider, Attorney Allen confirmed that counterbalancing amenities are not required with a M.G.L. Ch. 40A Section 6 finding. Chair Schneider concurred

and noted that while counterbalancing amenities are encouraged, the Board cannot require them under **Section 5.43**.

The Board then deliberated on the merit 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. He stated that while not required under **Section 6**, the support from the direct abutter supports a finding of no substantial detriment. Board Member Palermo was in support and was satisfied that the office use was a by-right use and permitted to occupy the same building, subject to meeting the required building and fire codes. Ms. Palermo stated that **Section 6** and **Section 9** have both been satisfied. Chair Schneider concurred and noted that the proposed office does not fall under Use #61.

The Board voted unanimously to grant a special permit pursuant to **M.G.L. Chapter 40A, Section 6** from the provisions of **Sections 5.20, 5.60 and 5.70 and 8.02**.

Relying on **Section 9.05** of the Zoning By-Law for guidance on whether 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 special permit 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. The applicant shall consider modifying the roof pitch of the addition to the main house and adding windows to the second floor of the east elevation.
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




Johanna Schneider, Chair

Johanna Schneider, Chair

Filing Date: 10/19/2021

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals