



BOARD OF APPEALS
Jesse Geller, Chair
Mark G. Zuroff
Johanna Schuelder

Town of Brookline

Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000069
67 CROWNINSHIELD ROAD
BROOKLINE, MA

Petitioner, Omar Badri, applied to the Building Commissioner for permission to construct dormers and enclose a rear porch at 67 Crowninshield Road in an S-7 Single-Family Residential 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed February 17, 2022, 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 February 3, 2022, and February 10, 2022, 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: 67 Crowninshield Road

Petitioner: **Krystyna, Denise, & Richard Chmielinski**
Zoning District: **S-7 Single Family District**
Precinct: **2**
Description: **Construct dormers and enclose rear porch**

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

Date: **2/17/22**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<https://bit.ly/3u6DSd6>

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

§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 **Monique Baldwin** (mbaldwin@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: 2/3/2022 & 2/10/2022

On February 17, 2022, at 7:00 pm, the Brookline Zoning Board of Appeals held a public hearing. Present at the hearing were Zoning Board Chair Mark G. Zuroff and Board Members Randolph Meiklejohn and Neil Wishinsky.

The Petitioner's attorney, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, Brookline, Massachusetts, waived a reading of the public hearing notice for the record. Also in attendance was the Petitioner, Omar Badri, and project architect, Kent Duckham, Duckham Architecture & Interiors, 53 Central Avenue, Needham, Massachusetts.

Attorney Dopazo Gilbert stated that 67 Crowninshield Road is located in an S-7 zoning district in the Crowninshield Local Historic District. She noted that the home is currently in need of interior and exterior work and added that the project's goal was to preserve as much of the home's historic character as possible while adding some needed space for the family. Attorney Dopazo Gilbert stated that the Petitioner worked with the Preservation Commission, who created a subcommittee to focus on the design. After four meetings with preservation, she noted that the proposal received unanimous approval from the Preservation Commission.

Attorney Dopazo Gilbert stated that the Planning Board voted unanimously to recommend approval in addition to the unanimous Preservation Commission support. She stated that the Planning Board felt that the proposal was relatively small and noted that it includes the enclosure

of an existing rear porch with an addition above that will not extend beyond the existing porch footprint. Attorney Dopazo Gilbert added that the proposal seeks to add low-profile dormers in the attic to finish the space and smaller stairwell dormer.

Attorney Dopazo Gilbert stated that relief is available by a finding by the ZBA under the case law pursuant to M.G.L. Ch. 40A, Section 6, (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539) to allow for the extension of the preexisting nonconformities if the Board finds no new nonconformity is created and that the extension is not substantially more detrimental to the neighborhood. Attorney Dopazo Gilbert reviewed the preexisting nonconforming conditions of the property, stating that: 1) The lot is 5,960 square feet where 7,000 square feet are required. 2) The lot width is 60-feet, with a required minimum of 65-feet. 3) The existing height is 35.59-feet, with a maximum allowed height of 35-feet. 4) The existing side yard setback is 5.8-feet, with a required setback of 7.5-feet. She clarified that the addition above the porch requires side yard relief but will not encroach any further into the side yard setback. 5) The existing FAR is .65, where there is a maximum FAR allowed of .35, which would be increased to .77 due to this proposal.

Attorney Dopazo Gilbert stated that the Petitioner reached out to the abutters and 14 letters in support have been submitted to the Board. Attorney Dopazo Gilbert added that a direct abutter was concerned about some existing invasive plants that will be addressed as part of the landscape plan.

Attorney Dopazo Gilbert stated that the Board has analyzed substantial detriment to the neighborhood by looking at the criteria for a special permit under Section 9.05. Attorney Dopazo Gilbert described the standards under Section 9.05 of the Zoning By-Law, stating: (1) The specific site is an appropriate location for such use: The existing use is a single-family home located in a

residential neighborhood and the addition will maintain this use. (2) The use will not adversely affect the neighborhood: There will be no change to the use and the proposed addition will not adversely affect the neighborhood. It has been designed in the spirit of the original architect and is modest in size. The proposal has also received the unanimous support of the Preservation Commission and the Planning Board. (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: There is adequate off-street parking and a substantial landscaping plan is proposed. (5) The development will not have any effect on the supply of housing available for low- and moderate-income people.

Upon inquiry from Chair Zuroff, Attorney Dopazo Gilbert stated that the basement will be finished with the exception of the mechanical area.

Attorney Dopazo Gilbert then called upon Mr. Duckham to review the architectural plans. Mr. Duckham reviewed the proposal with the Board including floor plans and elevation drawings. Mr. Duckham stated that the exterior additional square footage is approximately 514 square feet. He stated that 142 square feet of basement space will be added under the existing porch.

Chair Zuroff then called for public comments in favor of the proposal. No comments were submitted and no one spoke in support.

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

Chair Zuroff then called upon Monique Baldwin, Planner and Zoning Coordinator to deliver the reports of the Planning Department and Board:

FINDINGS

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS
§8.02 - ALTERATION OR EXTENSION

ZONING: S-7	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Lot Size	7,000 sf	5,960 sf	5,960 sf	Pre-existing nonconforming (unchanged)
Min Lot Width	65'	60'	60'	Pre-existing nonconforming (unchanged)
Max Height	35'	35.59'	35.59'	Pre-existing nonconforming (unchanged)
Floor Area Ratio	.35 / 100% 2,086 sf	.65 / 186% 3,874 sf	.77 / 219% 4,589 sf	Special Permit ¹
Principal Structure Setbacks (Front / Rear)	20' / 30'	14.8' / 40.2'	14.8' / 39.9'	Pre-existing nonconforming (unchanged) / Conforming
Principal Structure Setbacks (Left / Right)	7.5' / 7.5'	9.9' / 5.8'	9.9' / 5.8'	Conforming / Special Permit ^{1,2}
Accessory Structure Setbacks (Side / Rear)	6' / 6'	2.3' / 1.3'	2.3' / 1.3'	
Open Space: Landscape	10% / 700 sf	N/a	57.75% / 2,641 sf	
Open Space: Usable	30% / 2,100 sf	N/a	44.05% / 2,014sf	

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.

PLANNING DEPARTMENT COMMENTS

Ms. Baldwin stated that the Planning Staff is supportive of proposal as the proposed modifications are minor and are well-designed. The proposed structure is not substantially more

detrimental to the neighborhood than the existing structure and is in keeping with other 2.5-story structures in the neighborhood.

PLANNING BOARD RECOMMENDATION

Ms. Baldwin stated that the Planning Board is supportive of the proposal. The Board feels that the alterations to the building are relatively minor and well-designed. Given the extensive interior work, the Planning Board suggests that the applicant look into electrifying the building and incorporate as many sustainable design elements as possible.

Ms. Baldwin stated that the Planning Board recommends approval of the site plan by Peter Nolan and Associates, dated 9/3/21, and architectural plans by Duckham Architecture and Interiors, dated 12/27/21, 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 final landscaping plan to the Assistant Director for Regulatory Planning for review and approval.
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 then 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 all codes.

The Board then deliberated on the merit of the application. Chair Zuroff stated that the while the relief does not require a counterbalancing amenity, the Petitioner has agreed to provide landscaping. Board Member Wishinsky stated that the exterior changes are relatively minor and are in keeping with the neighborhood. He added that he would defer to the approval of the Preservation Commission as this property is located in a Local Historic District. Mr. Wishinsky stated that the proposal was well designed and noted the support of many of the neighbors. He stated that based on upon the evidence and testimony, he did not believe the alterations to the preexisting nonconformities would be detrimental to the neighborhood. Board Member Meiklejohn concurred. He added that he was satisfied that the standards under Section 9.05 were met. Chair Zuroff concurred with board members Wishinsky and Meiklejohn and voted to grant the requested relief.

Pursuant to M.G.L. Ch. 40A, Section 6, the Board voted unanimously to find that there would be no new nonconformity and there would not be substantial detriment to the neighborhood as a result of the alterations, as presented, to the preexisting nonconforming conditions at 67 Crowninshield Road.

Based on evidence and testimony provided, the Board made the following specific findings pursuant to 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 special permit 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 final landscaping plan to the Assistant Director for Regulatory Planning for review and approval.
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

MAR 25 2022

Filing Date: _____


Mark G. Zutoff, Chair

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals