



Town of Brookline

Massachusetts

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BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000057
99 SHAW ROAD, BROOKLINE, MA

Petitioners, Amal and Amin Arnaout, applied to the Building Commissioner for permission to construct an addition in the rear at 99 Shaw Road. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed December 16, 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 December 2, 2021, and December 9, 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: **99 Shaw Road**
Petitioner: **ARNAOUT, M AMIN & AMAL K**
Zoning District: **S-10 (Single-Family)**

Precinct: 16
Description: Construct a rear addition

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

Date: 012/16/2021
Time: 7:00 pm
Location: Virtual Meeting (see below)

Register for this virtual hearing:
<https://bit.ly/3nVMpMp>

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
§5.60 - 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 Cattlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.*

*Jesse Geller, Chair
Mark G. Zuroff
Johanna Schneider*

Publish: 12/02/2021 & 12/09/2021

At the time and place specified in the notice, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing was Chair Mark G. Zuroff and Board Members Lark Palermo and Paul Bell. Also present at the hearing was Zoning Coordinator / Planner, Monique Baldwin and Deputy Building Commissioner, Paul Campbell.

Chair Zuroff reviewed the standard virtual hearing protocol with Board Members and all those in attendance. Chair Zuroff called the hearing to order at 7:00 pm. The case was presented by the project architect, Timothy Burke, of 142 Berkley Street, Boston MA. Mr. Burke waived the reading of the public hearing notice.

Mr. Burke introduced the proposal. He stated that the Planning Board supported the project. He noted that the proposed work will not be visible from the street and included additional space to accommodate a kitchen, bedrooms, bathrooms and a bay window.

Mr. Burke stated that the relief sought was for the floor area ratio since the existing FAR is 0.40 and the proposed is FAR 0.48 where the maximum allowed under the Zoning By-Law is .30. Additionally, Mr. Sachs noted relief was needed for the side yard setback, though the side yard setback of the addition is proposed at 10 feet. He argued that relief was available under Massachusetts General Law ch.40A, Section 6 as interpreted by current case law and with a finding of no substantial detriment.

Chair Zuroff asked if the floor area ratio included the entire basement. Mr. Burke stated that there is unfinished storage area in the basement that is not counted towards the FAR.

Chair Zuroff then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor.

Chair Geller then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition.

Chair Geller then called upon Monique Baldwin, Zoning Coordinator / Planner, to deliver the findings of the Planning Board:

PLANNING DEPARTMENT COMMENTS

The Planning Department is supportive of this proposal. The addition is well designed and consistent with the architectural style of the existing building. As the addition is located in the rear of the building and the rear abutter is a fair distance away, the addition is unlikely to have significant negative impacts on surrounding properties. Planning staff believes that the altered structure is not substantially more detrimental to the neighborhood than the existing structure and that all necessary zoning relief can be granted through MGL c.40A §6.

PLANNING BOARD COMMENTS

Although the Board had a few recommendations for improvement to the design, the Planning Board is supportive of this proposal.

The Planning Board recommends approval of the site plan by Antonio Land Surveyors and architectural plans by Timothy Burke Architecture, dated 9/07/2021, 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 Zuroff then called upon Paul Campbell, Deputy Building Commissioner, to review the findings of the Building Department. Mr. Campbell stated that the Building Department has no opposition to the requested relief.

The Board the deliberated on the merits of the proposal. Board member Lark Palermo stated that the project qualified for the relief sought as it is discreet. Board Paul Bell concurred with Ms. Palermo. Chair Zuroff commented that the proposal meets the requirements for application of protection under M.G.L. Ch. 40A, Section 6 as interpreted by current case law and as applied by the Board under the Zoning By-Law.

The Board voted unanimously to grant a finding under M.G.L. Ch. 40A, Section 6 to grant relief from the provisions of Sections 5.20 of the Zoning By-Law for the Floor Area Ratio, and §5.60 of the Zoning By-Law for the side yard setback.

The Board made the following specific findings pursuant to §9.05:

- 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. Development will not have any effect on the supply of housing available for low- and moderate-income people.

Accordingly, the Board voted unanimously to grant the requested 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.

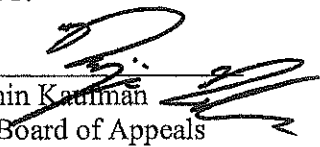
2. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of 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: JAN 12 2022


Mark G. Zuroff, Chair

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals