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Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000060
3 GOODNOUGH ROAD, BROOKLINE, MA

Petitioners, Frederick and Dalessio Cobey, and Ana Catalina, applied to the Building Commissioner for permission to construct dormers, add additional living space on the third floor and to construct an addition on the right side at 3 Goodnough 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 9, 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 November 25, 2021, and December 2, 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 Goodnough Road**

Petitioner: **COBEY, FREDERICK & DALESSIO, ANA CATALINA**
Zoning District: **S-7 (Single-Family)**
Precinct: **16**
Description: **Constructing dormers; adding additional living space on the third floor. Constructing an addition on the right side**

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

Date: **12/9/21**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

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

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
- §5.70 - REAR YARD REQUIREMENTS
- §5.91 - MINIMUM USABLE OPEN SPACE
- §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 Zuroff
Johanna Schneider*

Publish: 11/25/2021 & 12/2/2021

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 Jesse Geller and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing was Zoning Coordinator / Planner, Monique Baldwin and Deputy Building Commissioner, Paul Campbell.

Chair Geller reviewed the standard virtual hearing protocol with Board Members and all those in attendance. Chair Geller called the hearing to order at 7:00 pm. The case was presented by project architects, Peter Sachs and Ana Gabby, of Peter Sachs Architect at 20 Hunter St, Newton, MA 02465. Mr. Sachs waived the reading of the public hearing notice.

Mr. Sachs introduced the proposal. He noted that the Planning Board supported the project 5-1. However, the project did receive opposition from the rear abutter. To alleviate concerns of privacy, Mr. Sachs noted that changes were made regarding the size of the rear dormer in addition to the elimination of a window. Mr. Sachs provided examples of other structures in the neighborhood with dormers, similar to the proposed structure, and also noted that they had received letters in support of the project.

Mr. Sachs stated that the relief sought was for the floor area ratio since the existing FAR is 0.38 and the proposed is FAR 0.50 where the maximum allowed under the Zoning By-Law is .35. Additionally, Mr. Sachs noted relief was needed for the rear yard setback, which would remain 13.6' but is less than the required minimum of 30', and required open space. 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 Geller 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. Gail Greenberger, 17 Walnut Hill Road, shared concerns related to privacy and the lack of notification from the abutter (before receiving the required notice in the mail).

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 additions successfully add living area to the third floor of the building and reconstructs the front entrance in a way that does not significantly affect the massing and maintains the architectural character of the building.

Planning staff recommends that relief be granted for all zoning relief through MGL c.40A §6 and that the altered structure be found not substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD COMMENTS

The Planning Board is supportive of this proposal. The Board heard concerns from a few abutters about the scale of the building and how it might affect their properties and some members of the Board were sympathetic to these concerns. Although the Board felt that the applicant could have provided more compelling evidence to support the claim that the altered structure is not substantially more detrimental to the neighborhood than the existing structure, the Board ultimately felt that the addition meets this standard. The Board recommends that the applicant

provide information on other buildings in the neighborhood to show the proposed buildings consistency with the development patterns in the area.

The Planning Board recommends approval of the site plan by VTP Associates, dated August 10, 2021, and architectural plans by Peter Sachs Architect, dated 9/23/21, 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 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 Geller 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 Randolph Meiklejohn noted that due to raising the ridge of the structure, as modified, the proposed structure is still within the maximum height requirement and that the proposal is not substantially more detriment and that he supported the project. Board member Lark concurred with Mr. Meiklejohn. Chair Geller 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, §5.70

of the Zoning By-Law for the rear yard setback and §5.91 of the Zoning By-Law regarding the open space.

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 06 2022**

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals


Jesse Geller, Chair