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Town of Brookline Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000061
57 CHATHAM STREET
BROOKLINE, MA

Petitioner, LJEFF, LLC, applied to the Building Commissioner for permission to construct a second-story addition at 57 Chatham Street in an S-10 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 December 16, 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 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: 57 Chatham Street

Petitioner: **COTRAN TRS, KERSTIN & WILLIAMSON, SUZANNE N**
Zoning District: **S-10 Single-Family**
Precinct: **1**
Description: **Construct a second-story 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**
- §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**
- §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 **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: 12/02/2021 & 12/09/2021

On December 16, 2021, 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 Lark Palermo and Paul Bell.

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, Ellen Golde, and project architect, Gary Hendren, Hendren Associates Architects and Planners, 119 Braintree Street, #209, Allston, Massachusetts.

Attorney Dopazo Gilbert stated that 57 Chatham Street is located in the S-10 residential zoning district and the proposal triggered the Demolition Delay By-law. Attorney Dopazo Gilbert stated that the structure was found historically significant at a Preservation Commission meeting, but the 12-month stay of demolition was lifted based on the proposed plans. She added that the Preservation Commission was unanimously supportive and found the addition complementary to the existing structure. Attorney Dopazo Gilbert stated that the Planning Board was also unanimously supportive of the proposal. She stated that the addition is in keeping with the original design of the home, as design by Stanley Meyer who was the architect for the existing home and who contemplated a similar addition as evidenced by an old sketch which Mr. Hendren used in the current design.

Attorney Dopazo Gilbert stated that the project includes a modest second story addition and a small bump out adding just under 800 square feet. She added that the second-floor addition is intended for a music room and a library.

Attorney Dopazo Gilbert opined 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 that there is no new nonconformity created and that the extension is not substantially more detrimental to the neighborhood. She stated that the lot at 57 Chatham Street has a preexisting nonconforming lot size, rear yard setback and FAR. She stated that the lot is just under the required 10,000 square feet. In regards to the FAR, she stated, there is an existing FAR of .37 where a maximum FAR of .3 is allowed. The proposal would increase the FAR to a .47. Attorney Dopazo Gilbert stated that the existing rear yard setback is 13.9', where there is a required rear setback of 30'. She stated that part of the proposal includes a small bump out addition that is 3'6" by 16', where there is an existing porch that will maintain the existing 13.9' setback.

Attorney Dopazo Gilbert then called upon Mr. Hendren to present the architectural drawings. Upon inquiry from Board Member Bell, Mr. Hendren stated that the home was built to the original proportions as confirmed by reviewing the original blueprints.

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 property is 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. We have also received the unanimous support of the Preservation Commission and the Planning Board and have heard no opposition throughout this process. (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 beautiful large open space area. (5) The development will not have any effect on the supply of housing available for low- and moderate-income people.

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

| ZONING: S-10 | Requirements | Existing Conditions | Proposed Conditions | Relief Required |
|--|----------------------------|--------------------------------|--------------------------------|--|
| Use | 1-family detached dwelling | Single-family | Single-family | |
| Lot Size | 10,000sf | 9,165sf | 9,165sf | Pre-Existing Nonconforming (unaffected) |
| Floor Area Ratio | 0.30 (100%) 2,750sf | 0.37 (123%) 3,387sf | 0.47 (157%) 4,326sf | <u>Special Permit</u>¹ |
| Height | 35' | 21'7" | 30'10" | |
| Front Setback From Chatham Street | 20' | 20.9' | 20.9' | |

| | | | | |
|----------------------------------|--------------------------|------------------------------|------------------------------|--------------------------------------|
| From Chatham Circle | 20' | 21.7' | 21.7' | |
| Side Yard Setback | 10' | 17.9' | 17.9' | |
| Rear Yard Setback | 30' | 13.9' | 13.9' | <u>Special Permit</u> ^{1,2} |
| Open Space (Landscaped / Usable) | 10%/40% 433sf/1,732sf | 177%/160% 5,987sf/5,415sf | 125%/112% 5,441sf/4,834sf | |

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.

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. Baldwin stated that the Planning Department is supportive of this proposal. She noted that the proposed second story addition is architecturally consistent with the existing building and relatively modest in size. She stated that the alterations to the building are unlikely to have significant negative impacts on surrounding abutters or the public way so Planning staff believes that the altered structure is not substantially more detrimental to the neighborhood than the existing structure and all necessary zoning relief can be granted through MGL c. 40A §6.

PLANNING BOARD RECOMMENDATION

Ms. Baldwin stated that the Planning Board has no comments on this proposal and is supportive. She concluded that the Planning Board recommends approval of the site plan by Verne

T. Porter, dated July 28, 2021, and architectural plans by Hendren Associates, dated September 10, 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 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. Board Member Bell stated that the design of the addition is thoughtful and well done. He added that there will be no increase to the existing footprint of the home and added that the addition is nicely proportioned. Mr. Bell stated that the relief requested meets the criteria under M.G.L. 40A Section 6 as reviewed under **Section 9.05** for the reason stated by applicant's counsel. Board Member Palermo concurred and was in support of granting the requested finding as it meets the standards under 40A Section 6. Chair Zuroff concurred.

The Board voted unanimously to grant a finding under M.G.L. Ch. 40A, Section 6 to grant a finding of no new nonconformity or substantial detriment to the neighborhood to allow the

proposed additions that would alter a structure on a lot with a nonconforming lot size, rear yard setback and increase a preexisting nonconforming FAR.

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 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


Mark G. Zurhoff, Chair

Filing Date: JAN 06 2022

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals