



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zurroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0005
23 LEICESTER STREET
BROOKLINE, MA

Petitioners David and Terri Silver applied to the Building Commissioner for permission to demolish colonnade entry, construct a dormer, a single-story addition, three patios and canopies, and a connector piece to connect the detached garage to the main structure. 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 April 14, 2022, 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 Petitioners, 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 March 31, 2022 & April 7, 2022 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Notice of Hearing

Pursuant to M.G.L., c.40A, the Board of Appeals will conduct a public hearing on the following petition:

Address: 23 Leicester Street
Petitioner: HALPERIN, TERRI
Zoning District: S-15 Single Family District
Precinct: 14
Description: Construct a number of minor additions

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

Date: 4/14/2022
Time: 7:00 pm
Location: Virtual Meeting (see below)

Register for this virtual hearing:

<https://bit.ly/35bsbrn>

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
- §5.51 - PROJECTIONS INTO FRONT YARDS
- §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 **Polly Selkoe** (pselkoe@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: 3/31/2022 & 4/7/2022

On April 14, 2022, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Mark Zuroff and Neil Wishinsky. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Theodore Touloukian, Touloukian Touloukian Inc, 67 Batterymarch Street, Suite 200, Brookline, Massachusetts. The Petitioners, David and Terri Silver, were also in attendance.

Zoning Board of Appeals Chair Geller called the hearing to order at 7:00 pm. Chair Geller reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing. Attorney Allen waived a reading of the published notice.

Attorney Allen presented the case for the Petitioners, stating that the single-family home located at 23 Leicester Street is in an S-15 Zoning District and added that the Petitioners are proposing to demolish the existing colonnade entry and construct a dormer, a single-story addition, three patios and canopies, and a connector piece to connect the detached garage to the main structure. He then stated that seven letters supporting the petition were submitted to the Board from the neighborhood and added that the Planning Board was unanimously supportive.

Mr. Touloukian presented the architectural and site plans to the Board. He reviewed the plans and stated that the proposal includes a new wrap-around porch and entryway. He

presented pictures of the existing home and described the location of the addition that would connect the detached garage to the principal structure. He added that no change to the existing footprint of the garage is proposed. Mr. Touloukian reviewed diagrams of the proposed massing volumes.

Attorney Allen then reviewed the requested zoning relief, stating that a finding under M.G.L. Ch. 40A, Section 6, is sought to allow for the increase of the preexisting nonconforming FAR and alteration of a preexisting nonconforming side yard setback. He continued that 23 Leicester Street has a preexisting nonconforming FAR of .31, where there is an allowed maximum of .25. Attorney Allen added that the additional 895 proposed square feet would increase the FAR to a .34 and added that the side yard setback of the garage is currently preexisting nonconforming at 7.1-feet where there is a required 15-foot side yard setback.

Attorney Allen then stated that under Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539), the Board of Appeals may allow for the extension of a preexisting nonconformity as long as no new nonconformities are created, and there is no substantial detriment to the neighborhood. He argued that the minor additions proposed would not create any new nonconformity, and there would be no substantial detriment to the neighborhood. Attorney Allen cited the seven letters in support from abutters as evidence of this.

Attorney Allen then noted that the Board of Appeals has used the special permit requirements enumerated in **Section 9.05** to review substantial detriment in previous cases, stating the followings: 1) 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) 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. Seven letters of support have been submitted to the 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. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Upon inquiry from Chair Geller, Attorney Allen confirmed that the side yard setback of the garage is preexisting nonconforming and not a new non-conformity. He added that an accessory structure must be setback 75-feet from the front property line to take advantage of the reduced setback requirement in **Section 5.63**, and in this case, the garage is setback only 20-feet away from the front property line. Deputy Building Commissioner Campbell concurred with Attorney Allen’s analysis.

Chair Geller then called for public comments in support of or opposition to the Petition. No public comments were submitted.

Chair Geller then called upon Senior Planner Maria Morelli to Present the Planning Board report.

FINDINGS

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.51 - PROJECTIONS INTO FRONT YARDS

§5.60 - SIDE YARD REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

ZONING: S-15	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	Single-family	Single-family	Single-family	No change
Lot Size	15,000 sf	28,061	28,058	No change
Lot Width	100’	189’	189’	No change

Height	35'	34.4'	34.4'	No change
Floor Area Ratio	0.25 / 100% 7,015 sf	0.31 / 124% 8,699 sf	0.34 / 137% 9,594 sf	Special Permit ¹
Front Yard Setbacks Fisher Ave & Leicester Street	25' / 25'	37.69' / 44.51'	26.88' / 45.88'	Conforming
Side Setbacks Principal Structure	15'	42.98'	7.41'	Special Permit ²
Landscape	10% of GFA	217 %	204 %	Conforming
Usable Open Space	60% of GFA	110 %	105 %	Conforming

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. Morelli stated that the planning staff does not object to the proposal and added that at the date of the publication of this report, the Department has received seven letters of support, one of which includes a letter in support from the direct abutter, located at 35 Fisher Hill Avenue. Ms. Morelli continued that preservation staff has reviewed the demolition and design aspects of the project. She commented that it was administratively determined that the demolition portion of the proposed changes are not elements that contribute to the historical significance of the structure. Therefore, Ms. Morelli stated that the Department concludes that the proposed changes are minimal and the proposed structure will not be more detrimental to the neighborhood than the existing structure.

PLANNING BOARD RECOMMENDATION

Ms. Morelli stated that the Planning Board is very supportive of the proposed changes to the building. She noted that the Board felt that the demolitions and the additions would help to highlight the original architecture and enhance the function of the building while avoiding an over-emphasis on form.

Ms. Morelli therefore stated that the Planning Board recommends approval of the site plan by JOYCE Consulting Group dated 1/12/22, and architectural plans by Touloukian Inc., dated 11/12/21 Rev 2, subject to the following conditions recommended by the Planning Department:

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. The landscape plan shall be implemented 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.

Chair Geller then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In discussion, Board Member Wishinsky stated that the proposal meets the requirements for relief and continued that the impacts of the proposal do not rise to be more substantially detrimental to the neighborhood than the existing condition. Board Member Zuroff concurred with Board Member Wishinsky and added that the special permit standards prescribed under Section

9.05 of the Zoning By-Law were satisfied. Chair Geller agreed with Board Members Wishinsky and Zuroff.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6 allowing for an alteration or increase to preexisting nonconforming conditions in violation of Section 5.20 of the By-Law to allowing an increase in the preexisting nonconforming FAR from a 0.31 to a 0.34 under the Zoning By-Law.

In addition, the Board made the following specific findings under said Section 9.05 based on the evidence submitted at the hearing and the Board's deliberation:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no 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 a final landscaping plan indicating all counterbalancing amenities to the Assistant Director for Regulatory Planning for review and approval. The landscape plan counterbalancing amenities shall be implemented 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.

Unanimous Decision of
The Board of Appeals


Jesse Geller, Chair

Filing Date: **MAY 12 2022**

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals