



# Town of Brookline Massachusetts

**BOARD OF APPEALS**  
Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider

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Benjamin Kaufman, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-00013  
12 WORTHINGTON ROAD

Petitioner Lake Worthington Nominee Trust applied to the Building Commissioner for permission to construct an addition to the rear of the existing single-family dwelling. 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 28, 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 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 April 7, 2022 & April 14, 2022 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

## NOTICE OF HEARING

**The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on Thursday, April 28, 2022 at 7:00pm**

**Registration Link: <https://bit.ly/3NCWAQQ>**

The ZBA will consider the following pursuant to M.G.L. 40A & the Brookline Zoning-Bylaw:

**Petitioner:** Lake Worthington Nominee Trust **Address:** 12 Worthington Road **Zoning:** S-7  
**Precinct:** 1 **Description:** Construct rear addition

**The Board will consider variances and/or special permits from the following sections of the 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**

**ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY**

***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](mailto:pselkoe@brooklinema.gov)).*

*All plans and submissions may be found at:*

<https://brooklinema.gov/DocumentCenter/Index/2352>.

*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](mailto:vpanak@brooklinema.gov), or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

**Assistive Listening Devices** are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

*Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider*

**Publish: 4/7/2022 & 4/14/2022**

On April 28, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Matt Genaze, from Zero Energy Design, 156 Milk St #3, Boston, Massachusetts.

Zoning Board of Appeals Chair Schneider called the hearing to order at 7:00 p.m. Chair Schneider 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. Attorney Allen stated that the single-family home located at 12 Worthington Road is in an S-7 Zoning District and that the Petitioner is proposing a 232 square foot rear yard addition. He continued that the small-scale scope of the addition does not change the nature of the preexisting nonconformity, however, the Petitioner is seeking a finding under M.G.L. Ch. 40A, Section 6 to allow for the increase of the preexisting nonconforming FAR and side yard setback. He continued that unrelated to the requested relief, the proposal also includes the installation of a rear-yard stone patio and added that the existing garage will be demolished and reconstructed within the same footprint and dimensions.

Attorney Allen then stated that the home is located in the Cottage Farm Local Historic District and the Petitioner has worked with the Preservation Commission through a total of seven meetings to work through design and material details and received approval for the proposal. He continued by stating that the Planning Board was unanimously supportive of the proposal and supportive of the removal of invasive trees on the property.

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 side yard setback. He stated that 12 Worthington Road has a preexisting nonconforming FAR of 0.625, where there is an allowed maximum of .35. Attorney Allen continued that the 232 square foot addition would increase the FAR to a 0.647. Attorney Allen stated that a finding is also sought for a preexisting nonconforming side yard setback. He noted that the side yard setback of the existing house is 4.3-feet, and the addition would have a side yard setback of 6.3-feet, where there is a required setback of 7.5-feet.

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 the increase would not be substantially detrimental to the neighborhood than the existing nonconformity. He argued that the small-scale addition would not create any new nonconformity, and there would not be substantial detriment to the neighborhood. Attorney Allen cited the approval of the Preservation Commission and the positive Planning Board recommendation for the proposal and added that the project has gone through substantial review.

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. 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. As part of the Applicant’s work, the property is being brought up to code and the building will be fossil fuel free. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Chair Schneider then called for public comments in support of or opposition to the Petition. There were no public comments submitted.

Chair Schneider then called upon Maria Morelli, Senior Planner, to present the Planning Board report.

**FINDINGS**

<b>ZONING: S-7</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
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<b>Floor Area Ratio</b>	0.35 / 100% 3,806 sf	0.625 / 179% 6,799 sf	0.647 / 185% 7,031 sf	<u>Special Permit</u> <sup>1</sup>
<b>Side Yard Setback (Left)</b>	7.5'	4.3'	4.3' (6.3' at addition)	<u>Special Permit</u> <sup>1,2</sup>

<sup>1</sup> 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.

<sup>2</sup> **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.

**PLANNING DEPARTMENT COMMENTS**

Ms. Morelli stated that the Planning Department is supportive of this proposal and added that this modest addition will not be particularly visible from the public way and will not have a significant impact on surrounding abutters. She continued that the addition is designed with a distinct style from the historical architecture of the main building, thus preserving the integrity of the original building. Ms. Morelli added that given the small nature of the addition, the Planning Department recommends that all zoning relief be granted through M.G.L. c.40A §6, and that no counterbalancing amenity be required.

**PLANNING BOARD RECOMMENDATION**

Ms. Morelli stated that the Planning Board is supportive of the proposal and noted that the Board discussed the proposed removal of several mature Norway maples and concluded that their removal is more of a benefit than a concern but that the applicant should take steps to revitalize the property's open spaces and install new plantings to replace those that are being removed. It was noted that the building will be fossil-fuel-free and the Board was pleased with this.

Ms. Morelli therefore stated that the Planning Board recommends approval of the site plan by Verne T. Porter JR, PLS., dated 1/26/22, and architectural plans by Zero Energy Design, RA, dated 1/26/22, 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 Schneider then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department concurred with the Planning Board analysis and added that should the Board grant the requested relief, the Building Department would work with the Petitioner to ensure conformance with the Board's decision and all applicable building codes.

In discussion, Board Member Zuroff stated that the requested relief was modest and the criteria for the grant of a finding under M.G.L. Ch. 40A, Section 6 were satisfied. Board Member Wishinsky noted that substantial review over the design had taken place and supported granting the requested relief. Chair Schneider concurred with Board Members Zuroff and Wishinsky.

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 as established under 5.60 for the side yard requirements to permit expansion of a preexisting and nonconforming side yard setback of 6.3-feet, where there is a required setback of 7.5-feet and 5.20 to permit an increase in the preexisting nonconforming FAR from a 0.39 to a 0.43 under the Zoning By-Law.

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

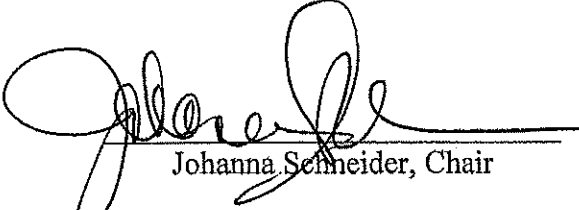
- a. The specific site is an appropriate location for such a use, structure, or condition.

- 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 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.

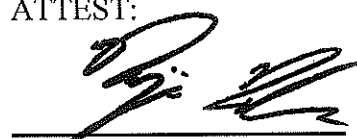
Unanimous Decision of  
The Board of Appeals



Johanna Schneider, Chair

Filing Date: MAY 16 2022

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals