



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Geller, Chair  
Mark G. Zuroff  
Johanna Schmelder

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JUN 9 '22 PM 4:52

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-000008  
1040 W ROXBURY PKWY

Petitioner Robert Basile applied to the Building Commissioner for permission to construct a two-story addition to the side of his home. 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 March 31, 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 March 17, 2022, & March 24, 2022, 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: **1040 West Roxbury Parkway**  
Petitioner: **BASILE, J ROBERT**

Zoning District: **S-7 Single Family Zone**  
Precinct: **16**  
Description: **Construct a two-story addition on side of single-family home**

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

Date: **3/31/22**  
Time: **7:00 pm**  
Location: **Virtual Meeting (see below)**

**Register for this virtual hearing:**

<https://bit.ly/35NM0VX>

*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:

**§5.09.2.J – DESIGN REVIEW**

**§5.22.3.B.1.B – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.50 - FRONT YARD REQUIREMENTS**

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

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

**Publish: 3/17/2022 & 3/24/2022**

On March 31, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Mark G. Zuroff and Board Members Johanna Schneider 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.

Zoning Board of Appeals Chair Zuroff called the hearing to order at 7:00 pm. Chair Zuroff 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 Petitioner. Attorney Allen stated that the single-family home located at 1040 West Roxbury Parkway is in an S-7 Zoning District and that the Petitioner is proposing to add a two-story extension and a partially underground parking area to the home. He noted that the addition was identical to one unanimously approved in 2018 by the Board and, before that, by the Planning Board. However, Attorney Allen continued, construction delays and COVID-19 had prevented the project from proceeding as approved within the permitted time. He stated that the proposal, having once again been approved by the Planning Board, consisted of two stories and 1,724 square feet, nearly doubling the livable space of the home, and making the existing structure more consistent with other residences in the neighborhood.

Attorney Allen then reviewed the zoning relief sought. He stated that since the project would alter or extend a nonconforming structure, a special permit is required under Section 8.02.2, subject to the conditions for approval of a special permit provided in Section 9.05. Attorney Allen continued that the proposed front yard setback is 14 feet and stated that while it would be less than the minimum of 20 feet required by Section 5.50, it may be allowed by special permit under Section 5.43 because the project will include a counterbalancing amenity in the form of landscaping. He then stated that because the proposed floor area ratio of 0.42 is in excess of the maximum allowed FAR of 0.35, the project also requires a special permit under Section 5.22.3.b.1.b. That section, Attorney Allen noted, allows the Zoning Board of Appeals to grant a special permit to build up to 120% of the floor area.

Attorney Allen next reviewed the project in light of the provisions of Section 9.05 and stated 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. At the public hearings for the Planning Board and the Zoning Board of Appeals, no opposition to the proposal had been expressed. 3) No nuisance or serious hazard to vehicles or pedestrians: The project is partially below-ground parking area would reduce the area needed for the Petitioner's vehicles. 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.

Chair Zuroff then called for public comments in support of or in opposition to the proposal. No member of the public spoke in favor or against the proposal.

Chair Zuroff then called upon Ms. Maria Morelli, Senior Planner, to present the Planning Board's report.

**FINDINGS**

**§5.20 - FLOOR AREA RATIO**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§8.02 - ALTERATION OR EXTENSION:** A special permit is required for the alteration of a non-conforming structure.

<b>ZONING: S-10</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>Floor Area Ratio</b>	<b>.30 / 100% 2,866 sf</b>	<b>0.39 / 130% 3,703 sf</b>	<b>.43 / 144% 4,116 sf</b>	<b><u>Special Permit</u><sup>1</sup></b>
<b>Side Yard Setback (Left / Right)</b>	<b>10'/10'</b>	<b>7-1'/8.6'</b>	<b>7-1'/8.6'</b>	<b><u>Special Permit</u><sup>1,2</sup></b>

<sup>1</sup> Under **M.G.L. 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 BOARD COMMENTS**

Ms. Morelli stated that the Planning Department is supportive of the proposal given that it had not changed since its previous approval by the Planning Board and the Zoning Board of Appeals in 2018. She also stated that, while the Planning Board would have preferred that an area below the house be enclosed, such a design would have greatly exceeded the maximum FAR allowed under a special permit. Ms. Morelli further stated that the Planning Board unanimously recommended approval of the site plan by Bruce Bradford, dated 11/21/2017, and of the floor plans and elevations by The MZO Group, dated 12/29/2017, 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 a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed 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 Zuroff called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department agrees with the Planning Department's findings and conditions for approval of the proposed project. He continued 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 by-laws and building codes. The Board presented no questions or comments in response to Mr. Campbell's statements.

Chair Zuroff found that the requirements for the grant of the requested relief were met and voted in support. This sentiment was echoed by Board Members Wishinsky and Schneider.

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 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.

The Board then voted unanimously to approve all requested relief for the Petitioner's project, 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 a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed 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

  
Mark G. Zuroff, Chair  
Zoning Board of Appeals

Filing Date: JUN - 9 2022

A True Copy  
ATTEST:

  
Benjamin Kaufman  
Clerk, Board of Appeals