



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zurroff
Johanna Schneider

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Benjamin Kaufman, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0022
260 LEE STREET

JWN CLERK'S OFFICE
JUL 11 '22 AM 10:16

Petitioners Jeffrey Cook and Pamela Tublin-Cook applied to the Building Commissioner for permission to demolish an existing building and to construct a new single-family dwelling at 260 Lee Street. 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: Jeffrey Cook and Pamela Tublin-Cook **Address:** 260 Lee Street

Zoning: S-40 **Precinct:** 14

Description: Demolish existing building and construct new single-family dwelling

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):

§5.09.2.N – DESIGN REVIEW

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). 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, or by checking the Town meeting calendar at: 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: 4/14/2022 & 4/21/2022

On April 28, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were the Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The Zoning Board of Appeals voted unanimously to continue the matter of 260 Lee Street, Case #2022-0022, to June 23, 2022, without discussion.

On June 23, 2022, the Zoning Board of Appeals held a public hearing for the proposal at 260 Lee Street. Present at the virtual hearing were Chair Jesse Geller and Board Members Randolph Meiklejohn and Neil Wishinsky. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance were the project architect, Timothy Burke, Timothy Burke Architecture, 142 Berkeley Street, Boston, and the Petitioners, Jeffrey Cook and Pamela Tublin-Cook.

Zoning Board of Appeals Chair Geller called the virtual 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 Dopazo Gilbert waived a reading of the published notice.

Attorney Dopazo Gilbert, presenting the case for the Petitioners, stated that the property located at 260 Lee Street is in an S-40 Zoning District and that the Petitioners are proposing the demolition of the existing two-story building and the construction of a new single-family dwelling. Attorney Dopazo Gilbert continued that the Petitioners had worked extensively with their architect to design a home that would be appropriate for the lot's unique topography and consistent with other structures in the neighborhood. She added that in August 2021 the Preservation Commission found the existing structure not historically significant and that the Petitioners' neighbors have not expressed any opposition to the proposal.

Attorney Dopazo Gilbert then stated that the Planning Board had unanimously voted to support the project and that in response to Planning Board comments, the amount of paving for the home's proposed parking area had been reduced and that the dormers on the front of the proposed structure had been enlarged. She also stated that the lot's severe topography made other changes in accordance with the Planning Board's comments infeasible.

Mr. Burke then presented the architectural and site plans to the Board. In conjunction with a digital presentation, he stated that the architectural style is traditional and that the proposed design incorporates the proposed parking spaces by hiding them from view. In reviewing the floor plans and elevations, Mr. Burke reiterated that the topography of the lot prevents him from making any further amendments to the design that would bring it into greater conformance with the comments of the Planning Board. Upon inquiry from Board Member Meiklejohn, Mr. Burke reviewed the stormwater management plan.

Attorney Dopazo Gilbert then reviewed the requested zoning relief. She stated that while the Petitioners' home as proposed would comply with the maximum allowed FAR of 0.15 under **Table 5.01**, the design required special permit relief under **Section 5.09.2.N** because the basement would contain unfinished space that, if converted in the future, would result in an FAR that exceeds the allowed maximum. Attorney Dopazo Gilbert stated that the Board of Appeals was required to make the two findings required for a special permit under **Section 5.09.2.N** to issue the special permit: (1) That the massing, scale, footprint, and height of the Petitioners' proposed home are not substantially greater than those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood, and (2) that its setbacks are not substantially less than those of the same structures.

Attorney Dopazo Gilbert continued that the proposed structure's height is less than the maximum allowed under the By-Law and that information on nearby structures had been compiled in an FAR analysis based on Assessor's records and submitted to the Board. She continued that the FAR analysis demonstrates an average FAR of 0.18 in the neighborhood and the proposed FAR for 260 Lee Street is 0.15. Attorney Dopazo Gilbert further added that the Petitioners' proposal includes generous front-, rear-, and side-yards setbacks of 124.6, 142.9, and 29 and 36 feet, respectively, where setbacks of only 30, 50, and 20 feet are required. She concluded that the

Board of Appeals, therefore, could find that the massing, scale, footprint, and height of the Petitioner's proposed structure are not substantially greater than, and that its proposed setbacks are not substantially less than, those of abutting structures and other complying structures in the neighborhood for the purposes of Section 5.09.2.N. Attorney Dopazo Gilbert further stated that an Impact Statement was submitted to the Board of Appeals that explains how the proposal satisfies the Community Environmental Impact and Design Standards of Section 5.09.4.

Attorney Dopazo Gilbert then reviewed the proposal in light of the special permit standards enumerated in Section 9.05, stating the followings: 1) Specific site is an appropriate location for such use: The property is located in a residential neighborhood and the new single-family is an allowed use. 2) Use will not adversely affect the neighborhood: The single-family was designed to comply with all dimensional criteria and is setback a generous distance from both the street and abutting structures. Further, there has been no opposition throughout the process and the Petitioners have the support of the Planning Board, which appreciated the Petitioners' plans for substantial landscaping and the removal of some invasive species, such as Norway Maples and Trees of Heaven. 3) No nuisance or serious hazard to vehicles or pedestrians: The Petitioners and their engineer extensively redesigned the existing driveway to improve sight visibility and increase safety for cars exiting and entering the driveway. The new driveway will also eliminate a preexisting nonconformity by increasing a side-yard setback. 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.

The Board of Appeals discussed Attorney Dopazo Gilbert's request to modify the Planning Board recommendation to limit the future basement space to an additional 1,945 square feet. Attorney Dopazo Gilbert explained that the final size of the mechanical room may be reduced and therefore create an opportunity for additional basement space to be finished. She stated that the

maximum allowed by special permit under the Zoning By-Law is 130% or in this case, approximately an additional 2,569 square feet in the basement.

Chair Geller then asked whether any member of the public wished to comment in favor of or in opposition to the proposal. No public comments were made.

Chair Geller then called upon the Senior Planner, Maria Morelli, to present the Planning Board Report.

FINDINGS

Under **Section 5.09.2.n**, a Special Permit for Design Review is required where a structure complies with the maximum allowed FAR but contains unfinished space that could be converted in the future and result in a structure with more FAR than allowed. The applicant has submitted an Impact Statement that explains how the project satisfies the Community and Environmental Impact and Design Standards of **Section 5.09.4**.

PLANNING DEPARTMENT COMMENTS

Ms. Morelli stated that the Planning Staff is supportive of the proposal and noted that the proposed building is well-designed and will be consistent in size and design with buildings on surrounding properties. She added that the site disturbance is relatively minimal given the scope of the project, and improvements to the site will likely be a net benefit and because the proposal involves new construction, staff strongly recommends that the applicant consider designing the building to be all-electric.

PLANNING BOARD RECOMMENDATION

Ms. Morelli stated that the Planning Board is supportive of the proposal. She added that the Board believes that the proposed house is well designed, although the Board laments the loss of the existing structure. She stated that the Planning Board suggests that the applicant consider rotating the front parking court so that the cars face toward the right side of the property, allowing

the area to be reduced in size. Ms. Morelli continued that the Planning Board recommends the incorporation of pervious pavement and that the building be made fossil-fuel-free. Regardless, she concluded, the Board recommends approval of the project.

Ms. Morelli therefore stated that the Planning Board recommends approval of the site plan by Peter Nolan and Associates dated 4/29/22, and architectural plans by Timothy Burke Architecture, dated 5/2/22, 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. If the applicant chooses to convert the basement to habitable space, no more than 1,945 square feet (all of the proposed unfinished basement space) may be converted to habitable space pursuant to Section 5.22 of the Zoning By-Law. Should Section 5.22 of the Zoning By-Law be amended in the future, the applicant may convert more or less habitable space according to the amended requirements of Section 5.22.
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.

Ms. Morelli stated that the requested revision to modify 1,945 square feet to 2,569 square feet would be acceptable to the Planning Department. Attorney Dopazo Gilbert clarified that the number represents how much space could be finished under **Section 5.22** without a mechanical room.

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 has no objections to the requested relief and added that should the Board grant the requested relief, 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 proposed structure was well designed and found that the standards under Section 5.09.2.N were met. In reference to the conditions provided in Section 9.05, Board Member Wishinsky found that the special permit standards were satisfactorily met. Board Member Meiklejohn concurred and stated that the proposed home fits into the existing established pattern of development in the neighborhood and found that the massing, scale, footprint, and height of the Petitioners' proposed home are not substantially greater than those of abutting structures and of other structures conforming to the Zoning By-Law on similarly sized lots in the neighborhood, and that its setbacks are not substantially less than those of the same structures. Chair Geller stated that, for the reasons previously stated by Board Members Wishinsky and Meiklejohn, the Petition meets the requirements under Section 9.05 and 5.09.2.N for special permit relief.

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 deliberations:

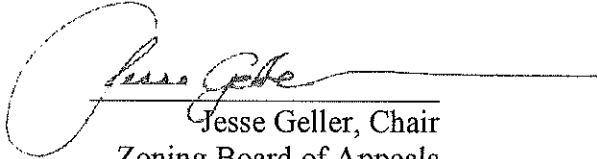
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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. If the applicant chooses to convert the basement to habitable space, no more than 2,569 square feet may be converted to habitable space pursuant to Section 5.22 of the Zoning By-Law. Should Section 5.22 of the Zoning By-Law be amended in the future, the applicant may convert more or less habitable space according to the amended requirements of Section 5.22.
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


Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: JUL 11 2022

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals