



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000016
30 NAPLES ROAD

Petitioner 30 Naples Road LLC applied to the Building Commissioner for permission to convert a single-family dwelling to a two-family dwelling and make several additions. 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 14, 2022, & April 21, 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: 30 Naples Road LLC **Address:** 30 Naples Road

Zoning: T-5 **Precinct:** 8

Description: Demolish and reconstruct attached garage and mudroom connection

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):

§5.05 – CONVERSIONS

§5.20 – FLOOR AREA RATIO

§5.51 – PROJECTIONS INTO FRONT YARDS

§5.60 – SIDE YARD REQUIREMENTS

§5.70 – REAR YARD REQUIREMENTS

§5.91 – MINIMUM USABLE OPEN SPACE

§6.04.5.C – DESIGN OF ALL OFF-STREET PARKING FACILITIES

ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY

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>

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

On April 28, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The Zoning Board of Appeals voted unanimously to continue the matter of 30 Naples Road, Case #2022-000016, to May 12, 2022, without discussion.

On May 12, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Lark Palermo and Board Members Mark Zuroff and Paul Bell. At this meeting, the matter of 30 Naples Road, Case #2022-000016, to May 12, 2022, was granted continuance to June 23, 2022.

On June 23, 2022, the Zoning Board of Appeals held a public hearing. 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 by, Ken Goldstein, Goldstein & Herndon, LLP, 822 Boylston Street, Suite 300, Chestnut Hill, MA 02467. Also in attendance was the Petitioner, Scott Schuester, and the project architect, Evan Stellman, Khalsa Design Inc., 17 Ivaloo St, Somerville, MA 02143.

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 Goldstein waived a reading of the published notice.

Attorney Goldstein presented the case for the Petitioner. Attorney Goldstein stated that 30 Naples Road was built as a single-family house around the turn of the last century, adding it is located in a T-5 zone in a transportation overlay district. He continued that Naples Road was occupied almost entirely by houses of similar design, square-footage, and lot coverage, many of which have already been converted to multi-family housing units. He noted that two-family houses are allowed in a T-zone with the use of a special permit under **Section 5.05** of the Zoning bylaws, which allows for conversion to a two-family dwelling in a T-zone of all dimensional requirements are met or by special permit.

Attorney Goldstein goes on to list the relief being sought, including a front porch that will project into the front yard, but can be allowed under **Section 5.03**, adding that this is one of the few houses on this block that does not yet have a front porch. He recounted the concern that was expressed at the first Planning Board meeting where the project was presented about how the front porch would align with other front porches on the street, stating that the front porches on this block range from six feet to sixteen feet and this project would be well within line in that aspect. He continued listing the relief requested, stating that the side-yard is a preexisting nonconforming condition and just a few inches off from the standard requirement and the proposed rear-yard setback is 23.58, compared to the pre-existing nonconforming 25.2 feet.

Attorney Goldstein then displayed the existing site plan, making note of the existing bump out in the rear-yard that will be moved and expanded in the proposed site plan, which he also displayed for comparison. Attorney Goldstein then noted the relief requested regarding usable open space and uses the existing site plan to demonstrate the current state of usable open space on the lot, describing it as oddly divided and, as a result, difficult to achieve the dimensions required by the bylaw. He reiterates that the footprint of the project on the yard is similar to that of every other property on the block. However, it does not comply with strict application of **Section 5.91**. He continues listing the relief needed, stating the proposal has been cited for design review of off-street parking under **Section 6.04.5C** as well, but it complies with the parking requirements of a transportation overlay district. He continues on the subject of parking, noting that the project plans on eliminating the current front-yard parking and the Planning Board considered this elimination of parking a counter-balancing amenity. He believes the proposed parking plan, which requires rear-yard relief, will be beneficial to the neighborhood and compared the parking plan to the current parking situation at the neighboring 36 Naples

Road where the whole backyard is filled with pavers, decreasing the amount of open space on that particular lot.

Chair Jesse Geller asked Attorney Goldstein if relief was being sought under **Section 5.05**. Attorney Goldstein responded that this was correct. Chair Geller then asked if one of the requirements under **Section 5.05** was that no previously existing nonconformity be increased. Attorney Goldstein responded that a special permit can waive this requirement and stated that this had been done previously with previous cases at past Zoning Board hearing. Board Member Wishinsky noted that the language states no preexisting nonconformity be increased, agreeing with Chair Geller. Attorney Goldstein argued a special permit can waive the preexisting nonconformity issue. Chair Geller responded the bylaw clearly says an existing nonconformity cannot be increased, but is open to Attorney Goldstein's interpretation of the bylaw if he can present him with cases of similar circumstances that were ruled this way for the sake of consistency. Attorney Goldstein responded that this is not something the proposed project was cited for, and a project he represented a year ago (74 Perry Street) faced almost the exact same circumstances and the issue was not raised then. He continued that the setback nonconformity is miniscule and it almost doesn't make sense to say that any existing non-conformity cannot be increased. He added that it would however, make sense if the bylaw required you to legitimize an existing nonconformity, and, to his understanding, the bylaw makes room for this interpretation. Chair Geller responded that he is not sure if he agrees with this interpretation.

Board Member Randolph Meiklejohn then asked to see the portion of the plan that shows the proposed addition and asked if the proposed 23.58 rear-yard setback was from the proposed three-story addition and if the 25.2 foot setback distance was measured from the little addition to be raised. Attorney Goldstein responded that the 25.2 foot setback is for the little addition to be

raised and the 23.58 foot setback is the nearest boundary of the proposed addition. Board Member Micklejohn responded that **Section 5.05** does require that no preexisting nonconformity be increased and the nonconformity in the rear is being proposed to be increased. He then asked why the design requires that the nonconformity be increased. Attorney Goldstein responded that when the architect presents the design, they will see why it is necessary and advantageous, but also added there is nothing in **Section 5.05** that states relief cannot be granted for nonconforming conditions the same way it can be for any other zoning application. Board Member Micklejohn stated that he was not sure if he agrees with that interpretation.

Attorney Goldstein then introduced the project's architect, Evan Stellman. Mr. Stellman, in reliance on a digital presentation, displayed the project's elevations. He noted that the differences in the proposed design are a new porch that faces the street and the existing porch is being filled in on the left side of the ground floor. He continued that a dormer is being added on the top-right side of the house. He then showed the rear elevation, which has decks and the three-story bump-out addition. He mentioned an addition will be added above the porch to the second floor. He then displayed a visual of the proposal from four different angles. Mr. Stellman then presented the floor plans, stating that unit one consists of the first floor and basement and is approximately 2,675 sq ft, with three bedrooms and 2.5 bathrooms. Unit two occupies the second and third floor and is approximately 2,826 sq ft, with three bedrooms and 2.5 bathrooms. He then demonstrates that the bedrooms on all three floors occupy the proposed rear bump-out.

Attorney Goldstein states there has been neighborhood support and only favorable recommendation from planning staff and the Planning Board on this project, adding that Mr. Schuster has reached out to as many neighbors as he could regarding this project and thanked a few neighbors specifically for their supportive letters. He continued that the project will result in

no adverse effects on the neighborhood, parking, or on the supply of adorable housing in the area and that the elimination of the front-yard parking space is a counterbalancing amenity, as is the landscaping. Attorney Goldstein added that the house will eliminate any fossil-fuel-related heating and then concluded by asking for favorable recommendations.

Chair Geller prompted the Board Members to ask Attorney Goldstein and Mr. Stellman any questions they have. Mr. Wishinsky stated that looking at **Section 5.05**, he is still not sure that the proposal fits the requirements for a special permit. He then asked, if the project would work if the bump-out containing the bedrooms on each floor was decreased by 1.5 feet. Chair Geller responded to this inquiry, stating that the existing non-conformity in usable open space is also being increased, so just decreasing the bump-out would not solve the problem. Attorney Goldstein argued that, for the purposes of this bylaw, meeting the conditions with a special permit should be the same as meeting the conditions without a special permit, otherwise it demands an interpretation that he believes does not make sense. He elaborates that it does not make sense for a nonconforming condition to only be able to be made from scratch and to not allow extensions of preexisting nonconforming conditions. Mr. Schuster pointed out that he had met with almost every neighbor and direct abutter, all who were enthusiastic about the project.

Attorney Goldstein then cited **M.G.L. c.40A Sec. 6**, stating that these conditions predated the bylaw and can be granted with or without a special permit under this rule. Mr. Schuster added that his neighbor to the right added an addition that was far greater in size than the proposal and resulted in less open space than what this proposal would result in and was far closer to the property line than what this proposal is planning on. Chair Geller responded that he does not recall this issue coming before the board before and if the board has applied **Section 5.05** in this way before, he is in favor of the Board acting consistently, but would like to know

what cases this was applied to. He added, the absence of meeting the conditions of Section 5.05, an argument under M.G.L. c.40A Sec. 6 should be made instead. Attorney Goldstein responded defer to M.G.L. c.40A Sec. 6, since finding every case where Section 5.05 will be an endeavor but refers to 74 Perry Street as an example. Deputy Director Campbell stated that 40 Strathmore Road was a case where the ZBA chair ruled that FAR could be waived under Section 5.05 if FAR is directly related to open space. Mr. Wishinsky asked if this case was a conversion to clarify if the circumstances were similar. Mr. Campbell responded that the case was a conversion from a three-family unit to a four-family unit.

Chair Geller asked in anyone wanted to speak in favor or opposition of the proposal, and acknowledged the support letters that were received. No one spoke in support or opposition of the project.

Chair Geller then called upon Maria Morelli to read the findings of the Planning Department and Planning Board. Ms. Morelli read the Planning Department and Planning Board Reports into the record.

FINDINGS

Zoning Relief Needed

- §5.05 -- CONVERSIONS
- §5.20 – FLOOR AREA RATIO
- §5.51 – PROJECTIONS INTO FRONT YARDS
- §5.60 – SIDE YARD REQUIREMENTS
- §5.70 – REAR YARD REQUIREMENTS
- §5.91 – USABLE OPEN SPACE
- §6.04.5.C – DESIGN OF ALL OFF-STREET PARKING

ZONING: T-5	Required/ Allowed	Existing	Proposed	Relief
Front Yard (covered deck)	15'	20'	9.8'	Special Permit*
Side Yard (left)	10'	9.9'	9.9'	Special Permit**

Rear Yard	30'	25.2'	24.6'	Special Permit*
Usable Open Space	30%	1,526 sf	910 sf	Special Permit**
Design of Parking (front yard stbk.) (rear yard stbk.)	15' 5'	unknown	3' 0'	Special Permit*

*Under Sec. 5.43, a counterbalancing amenity can serve to waive yard setbacks. Landscaping is proposed as the counterbalancing amenity.

Under **Section 5.05, Conversions: In the case of the conversion of a single-family detached dwelling to a two-family dwelling in a T District, the structure shall conform to all dimensional requirements. However, the Board of Appeals by special permit may waive dimensional requirements except minimum lot size, provided that no previously existing nonconformity to such requirements is increased.

PLANNING DEPARTMENT COMMENTS

The Planning Department is supportive of this proposal. Conversion of this structure from a single-family building to a two-family building adds additional housing, while maintaining the historic character of the building. Adding a front porch is in keeping with many of the buildings in the neighborhood, as 30 Naples Road is one of the few buildings on this street that does not have a front porch.

PLANNING BOARD RECOMMENDATION

The Planning Board feels that the revised design is a significant improvement over the original proposal and that the proposed addition is an acceptable alteration to the property. The Board provided the applicant with a number of suggested minor adjustments to the proposed architecture and otherwise agreed to recommend approval.

The Planning Board recommends approval of the site plan by Neponset Valley Survey Assoc., Inc., dated 5/4/22, and architectural plans by Khalsa Design, dated 4/28/22, 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 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 to 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 Mr. Campbell to deliver the findings of the Building Department. Mr. Campbell stated the Building Department has no objection to the requested relief and is in favor of the project. Should the Board grant the requested relief, the Department will work with the Petitioner to ensure conformance with the bylaw, the Board's decision, and all applicable building codes.

In deliberation, Board Member Wishinsky stated that he liked the project and agrees with the Planning Board that it is an improvement. He stated that he would like to find a way to approve the proposal but is not sure if his interpretation of **Section 5.05** allows for approval of this project under the bylaw. He added that if the Board had previously applied **Section 5.05** in the manner in which Attorney Goldstein is stating, he is in favor of consistency. However, he continued that he would be in favor of granting the proposal under **M.G.L. c.40A Sec. 6**, since it is a conversion from a single-family unit to a two-family unit, the relief is relatively minor, and it will not be detrimental to the neighborhood, rather it will be an improvement.

Board Member Micklejohn agreed with Mr. Wishinsky. He continued that he fears the effects that allowing for increased in nonconformities under **Section 5.05** will have. He then asked if **M.G.L. Ch. 40A, Section 6** could be applied to conversions, to which Chair Geller responded that it applied to one and two-family units. Mr. Micklejohn stated he would approve of granting relief under **M.G.L. Ch. 40A, Section 6**, but would not do so under **Section 5.05**.

Chair Geller stated that he believes the relief can be granted under M.G.L. Ch. 40A, Section 6. He added that the findings under Section 9.05 qualify the proposal for special permit relief.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6 from allowing for an increase to preexisting nonconforming condition. 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 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 to 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
Zoning Board of Appeals

Filing Date: 8/4/22

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals