



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Johanna Schneider
Lark Palermo

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Benjamin Kaufman, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0030
128 CLINTON ROAD

Petitioners Eliezer and Lauren Van Allen applied to the Building Commissioner for permission to construct additions on the rear of an existing building. 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 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 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: Eliezer and Lauren Van Allen **Address:** 128 Clinton Road

Zoning: S-10 **Precinct:** 12

Description: Construct additions on rear of existing building.

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):

§5.13 - LOT WIDTH

§5.20 - FLOOR AREA RATIO

§8.02 - ALTERATION OR EXTENSION

Pre-Existing Non-Conformities: FAR and Lot Width Minimum

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 Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The Zoning Board of Appeals voted unanimously to continue the matter of 128 Clinton Road, Case #2022-0030, to July 21, 2022, without discussion.

On July 21, 2022, the Zoning Board of Appeals held a public hearing. Present at the virtual hearing were Chair Johanna Schneider and Board Members Neil Wishinsky and Paul Bell. 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, Timothy Burke, Timothy Burke Architecture Inc., 142 Berkeley Street, Boston, Massachusetts.

Zoning Board of Appeals Chair Schneider called the virtual hearing to order at 7:00 pm. 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 existing structure at 128 Clinton Road was originally built in 1914 and is presently in an S-10 zoning district. He noted that the structure currently contains just under 5,200 square feet and has a floor area ratio of 0.31, which is more than the maximum of 0.30 allowed under Zoning By-Law **Section 5.20**. Attorney Allen also noted that the lot's width of 77-feet is less than the minimum of 85-feet required under **Section 5.13**. Attorney Allen continued, therefore, that the proposal requires a finding under M.G.L. Chapter 40A Section 6 that the proposed design is not substantially more detrimental to the neighborhood than the existing nonconforming structure and no new nonconformity would be created.

Attorney Allen then stated that the Petitioners are proposing to construct an addition to the rear of their home, totaling 1,584 square feet of new living space: 682 in the basement, 568 on the first floor, and 378 on the second floor. He noted that while the resulting FAR would be 0.40, the concentration of most of the new space in the home's lower floors would minimize changes to its exterior appearance. He added that the Petitioners have received six letters in support of the proposal: one each from the rear abutters at 209 and 201 Buckminster, one from a side abutter at 134 Clinton Road, and one from each of the neighbors at 117, 125, and 142 Clinton Road. Attorney Allen continued that the proposal had received the unanimous approval of the Planning Board and

that the Preservation Commission had voted unanimously to remove a stay on demolition after it reviewed changes to the front window design.

Mr. Burke then presented the architectural and site plans. In reliance on a digital presentation, Mr. Burke stated that the proposed addition consists of a kitchen and a family room on the first floor, a bathroom on the second floor, and a family room in the basement. He noted that the addition would be located at the rear of the building to both preserve the structure's appearance and to maximize space for the rear yard. At the request of Board Member Bell, Mr. Burke reviewed the distribution of the additional square footage and noted that the basement would contain more square footage than the first floor because the former requires less mechanical space.

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. He continued that the FAR would increase from 0.31 to 0.40, whereas 0.30 is the maximum allowed under **Section 5.20**. Attorney Allen added that, since the proposal's additional space would mostly be on the home's basement and first floors, it would be hidden from view and would mitigate any detrimental effect on the neighborhood. He further stated that a finding is also sought to maintain the nonconforming lot width of 77 feet, whereas 85 is the minimum required under **Section 5.13**.

Attorney Allen then noted that the Board of Appeals has used **Section 9.05** to review the "substantial detriment" standard for changes to preexisting nonconforming structures in previous cases, stating the followings: 1) Specific site is an appropriate location for such use: The property is a single-family detached dwelling located in an S-10 Single-Family District, and the neighborhood consists of other single-family homes. 2) Use will not adversely affect the neighborhood: The project calls for modifications located primarily to the rear of the home, which

would most directly affect the rear abutters. However, the rear abutters have documented their support for the proposal, and the Preservation Commission has lifted its stay on demolition because of the appropriateness of the proposal. 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the existing site circulation. 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 Schneider then called for public comments in support of or in opposition to the proposal. No public comments were made.

Chair Schneider then called upon the Planner and Zoning Coordinator, Madison Anthony, to present the Planning Board report.

FINDINGS

ZONING: S-10	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	1-family detached dwelling	1-family detached dwelling	
Lot Width	85'	77'	77'	<u>Special Permit</u> ¹
Floor Area Ratio	0.30 (100%) 5,074sf	0.31 (102%) 5,194sf	0.40 (134%) 6,778sf	<u>Special Permit</u> ¹

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.

Other Zoning Relief Needed

Section 8.02, Alteration or Extension: A special permit is required for the alteration of a non-conforming structure.

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the Planning Department is supportive of this proposal. She noted that the additions to the building are well-designed and consistent with the character of the existing building and the neighborhood. Ms. Anthony continued that, given the scale of the existing

building and the property, it is unlikely that the altered structure will be substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD RECOMMENDATION

Ms. Anthony stated that the Planning Board is supportive of this proposal as it feels that the addition is well-designed. She added that the Planning Board has no concerns with the project.

Therefore, Ms. Anthony stated that the Planning Board recommends approval of the site plan by C&G Survey Company, dated 3/2/22, and architectural plans by Timothy Burke Architecture, dated 12/23/21, 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 Mr. Paul 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 Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In deliberation, Board Member Bell stated that the proposal is well-designed and that the lot appears suitable for the additional living space. He added that he believed the project was not substantially more detrimental to the neighborhood than the existing nonconforming structure and that he would, therefore, vote in favor of granting special permit relief to increase the nonconforming FAR, pursuant to M.G.L. Ch. 40A Section 6 and Zoning By-Law **Sections 5.20**

and 8.02, and to maintain the preexisting nonconforming lot width under Section 5.13. Board Member Wishinsky concurred with Board Member Bell. Chair Schneider agreed with Board Members Bell 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 and, therefore, to allow for an increase to preexisting nonconforming FAR from a 0.31 to a 0.40 under 5.20 and to maintain the preexisting nonconforming lot width of 77 feet under 5.13. 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:

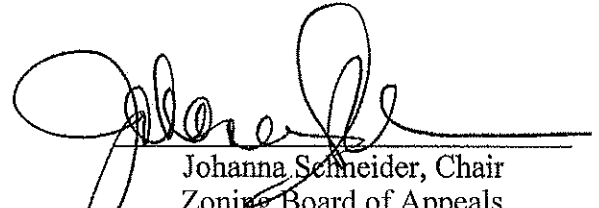
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 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

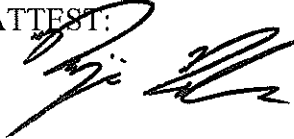


Johanna Schneider, Chair
Zoning Board of Appeals

Filing Date: 8/4/2022

A True Copy

ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals