



**BOARD OF APPEALS**  
Jesse Geller, Chair  
Johanna Schneider  
Lark Palermo

# *Town of Brookline*

## *Massachusetts*

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-0045  
182 WALNUT STREET

Petitioner Liss-Riordan Family Trust applied to the Building Commissioner for permission to construct a pergola in the front yard setback. 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 September 1, 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 August 18, 2022, & August 25, 2022, in the Boston Globe, a newspaper in general circulation in Brookline. A copy of said notice is as follows:

**TOWN OF BROOKLINE – Zoning Board of Appeals**

**NOTICE OF HEARING**

**The Brookline Zoning Board of Appeals will hold a public hearing on**

**Date/Time: Thursday, September 1, 2022**

**Location: Virtual Hearing**

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

**Petitioner:** Harold L. Lichten

**Address:** 182 Walnut Street

**Subject:** Construct pergola in front yard

**Nature of Action/Relief:**

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

*Plans and submissions may be viewed online at*

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

*Interested persons may provide comments at the public hearing or by submitting written comments by email to [manthony@brooklinema.gov](mailto:manthony@brooklinema.gov).*

*Assistive Listening Devices are available upon request:*

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

**Publish: 8/18/2022 & 8/25/2022**

On September 1, 2022, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Randolph Meiklejohn 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 landscape architect, Lynne Giesecke, Studio 2112 Landscape Architects, 705 Centre St, Boston, Massachusetts.

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 Allen waived a reading of the published notice.

Attorney Allen presented the case for the Petitioner stating that 182 Walnut Street is located in the Pill Hill Local Historic District and has two front yards and two side yards. He continued that the Preservation Commission approved the proposed pergola structure on April 14, 2022, and noted that during that process, the height of the pergola was reduced and location altered to address site visibility concerns. Attorney Allen described the proposed structure as behind an existing

fence, and noted that additional landscaping would be provided as the counterbalancing amenity under the Zoning By-Law. He added that the Planning Board provided unanimous support for the proposal without known opposition. Attorney Allen concluded, that the setback relief requested would be minimal and would not have an impact on any abutters.

Attorney Allen continued that the proposed pergola structure requires relief for the front yard setback because the Zoning By-law requires a 20-foot front yard setback and the proposed front yard setback is 9.65-feet. He commented that special permit relief may be granted pursuant to **Section 5.43** of the Zoning By-Law, if an appropriate counterbalancing amenity is provided. Attorney Allen opined that the proposed landscaping satisfies the counterbalancing amenity requirement.

Attorney Allen reviewed the Special Permit standards enumerated in **Section 9.05** noting the following: 1) Specific site is an appropriate location for such use: The property is located in S-10 residential zoning district and the pergola structure is consistent as a use accessory to a single-family dwelling; 2) Use will not adversely affect the neighborhood: The pergola was reviewed and modified in design to meet the request of the Preservation Commission and has received its approval. No opposition has been raised; 3) No nuisance or serious hazard to vehicles or pedestrians: There is no change to the existing site circulation and the proposed structure is not expected to have any impact to vehicular or pedestrian traffic; 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 Geller then called for public comments in support of or in opposition to the Proposal. No comments were submitted.

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

**FINDINGS**

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

**§5.50 - FRONT YARD REQUIREMENTS**

<b>S-10</b>	<b>Required / Allowed</b>	<b>Existing</b>	<b>Proposed</b>
<b>Front Yard Setback</b>	20 feet	20 feet	9.65 feet*

(\*)Pursuant to Sec. 5.43: Under a special permit after a hearing the Board of Appeals may permit, in lieu of the requirements for yards or setbacks specified in this By-law, the substitution of such other dimensional requirements as shall assure the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law, as measured by off-setting a reduction in the depth or area of a required yard or setback by an increase in the depth or area of another yard or setback or by the provision or preservation of a condition or a facility not otherwise required that will counterbalance such a reduction; provided, however, that under this section the Board of Appeals shall not reduce the depth of a required front yard below 15 feet in M Districts.

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the Planning Department is supportive of this proposal, which underwent extensive review and revision with Preservation Commission pursuant to the Chapter 40C process, Historic District Regulations.

PLANNING BOARD COMMENTS

Ms. Anthony stated that the Planning Board is supportive of the proposed pergola with the reduced height requested by the Preservation Commission Chair, so that the height of the pergola would be consistent with the height of the Maple Street fence. She added that the Planning Board was also pleased to learn of the plan to extensively renovate the overall landscaping to beautify the entire property.

Therefore, Ms. Anthony stated, the Planning Board recommends approval of the site plan prepared by D. O' Brien Land Surveying, PLS, dated April 12, 2022, and architectural plans prepared by Studio 2112 Landscape Architecture, dated March 23, 2022, the Planning Department recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final plans and elevations stamped and signed by a registered landscape 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 for consistency with the plans referenced in the Preservation Commission's Certificate of Appropriateness dated April 14, 2022.
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 implemented 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 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 Ms. Anthony to deliver the findings of the Building Department. Ms. Anthony stated that the Building Department had 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 deliberation, Board Member Meiklejohn stated that within the context of the broad, open lawn, the pergola was sited appropriately on the property and was supportive of the requested special permit relief. Board Member Wishinsky concurred, stressed the importance of the property as an anchor of the Pill Hill Historic District, and found that the pergola structure had been

appropriately reviewed by the Preservation Commission and the Planning Board. Chair Geller stated that the requested relief was de minimis, and that the proposal satisfied the standards for the grant of a special permit.

The Board then determined, by unanimous vote, that the proposal met the requirements for a special permit granting relief from application of the provisions of **Section 5.50** pursuant to **Section 5.43** of 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 deliberations:

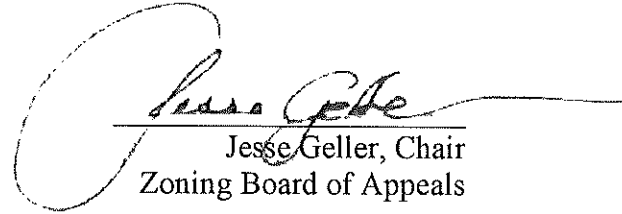
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 plans and elevations stamped and signed by a registered landscape 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 for consistency with the plans referenced in the Preservation Commission's Certificate of Appropriateness dated April 14, 2022.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to review of and approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be implemented 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 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: 9/15/22

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals