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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000036

Petitioner Daniel Epstein applied to the Building Commissioner for permission to construct a 1.5 story addition to the rear left corner together with an attached garage at the rear of his home at 779 Washington Street. The application was denied and an appeal was taken to this Board.

On August 1st, 2022, the Board administratively determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals 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, 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 4th and August 11th, 2022, in the Boston Globe, a newspaper published in Boston/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: Daniel Epstein

Address: 779 Washington Street

Subject: Construct addition including attached garage and main suite

Nature of Action/Relief:

§5.09.2.A - DESIGN REVIEW

§5.50 - FRONT YARD REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

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.

Assistive Listening Devices are available upon request:

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

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

At the time and place specified in the notice, this Board held a virtual public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Neil Wishinsky and Randolph Meiklejohn. Attorney Jacob Walters, business address 27 Harvard Street, Brookline, MA presented the case for the petitioner.

Mr. Walters described the proposed addition as modest, since the applicant is seeking to add living space on the 2nd floor, which would be accessed through the attached garage rather than an exterior stairway. Mr. Walters stated that the relief needed could be granted by four special permits under the Zoning By-Law: Section 5.09.2.A for design review, Section 5.43 for encroachment into the front yard setback, Section 6.04.4.C for design of off street parking and

Section 8.02 for alteration of a pre-existing non-conforming structure. Mr. Walters explained that **Section 5.09.2.A** design review is required since the property is within 100 feet of Washington Street. Mr. Walters stated that the Planning Board approved the design, after review of both the plans and the environmental impact statement submitted by the project architect. He continued that, because the front yard setback is less than the existing requirements, a special permit under **Section 5.43** is also required and that pursuant to **Section 5.43** the Zoning Board may provide relief from the applicable setback requirement if the applicant provides an adequate counterbalancing amenity that mitigates the negative impact arising from the requested deviation from the setback requirements. Mr. Walters commented that the applicant is offering landscaping as a counterbalancing amenity. A landscape plan was submitted on behalf of the applicant showing additional plantings at the side and rear of the property. Mr. Walters continued that the applicant is proposing to expand the width of the driveway at the rear of the property beyond the allowed 20', which requires a Special Permit pursuant to **Section 6.04.4.C**. Mr. Walters argued that **Section 6.04.4.C** of the Zoning By-Law allows the Zoning Board to grant relief provided written notice from the Director of Transportation is received specifying that the wider driveway is appropriate for the site and makes ingress and egress safer for the applicant and the neighborhood. The applicant provided a writing from the Director of Transportation supportive of the wider driveway, which the Board reviewed and deemed acceptable. Mr. Walters then stated that the final required Special Permit was under **Section 8.02** and is needed because the dwelling being altered is a pre-existing non-conforming structure. Mr. Walters went on to say that the requested Special Permits conform to the requirements of **Section 9.05** of the Zoning By-Law in that the location of the additions were appropriate, no nuisance would be created and traffic would in no way be affected. Mr. Walters concluded his remarks by saying the modest

scope of the addition, the fact that the same was at the rear of the property and not visible from Washington Street, the lack of any opposition and the Planning Board’s unanimous approval of the design warrant this Board granting the four (4) requested Special Permits.

The Chairman then asked if anyone in attendance wished to speak in support of or in opposition to the petitioner’s proposal. No one from the public asked to be heard.

Madison Anthony, Zoning Coordinator/Planner, delivered the findings of the Planning Department.

Section 5.5 – Front Yard Requirements -

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback (from Bartlett Crescent)	15'	30.8'	10.5'	Special Permit*
Garage Setback	20'	n/a	10.5'	Special Permit*

*Relief from setback requirements can be granted through Section 5.43 which states that relief can 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 By-Law.

Section 5.09.2.A – Design review is required of any structure which fronts on or is within 100 feet of Washington Street. The applicant has submitted an Impact Statement that explains how the project addresses the Community and Environmental Impact and Design Standards.

Section 6.04.4.C – Curb cuts in residential district are limited to 20’, unless the Director of Transportation finds that a wider curb cut will facilitate traffic and is safer and then a special permit may be issued to waive the limitation on the curb cut.

Section 8.02.2 – Alteration or Extension - A special permit is required for the alteration of a non-conforming structure.

Ms. Anthony said the Planning Board is supportive of this proposal and recommended approval for the setback relief under **Section 5.43**, design review under **Section 5.90.2.A**, relief under **Section 6.04.4.C** and Alteration and Extension under **Section 8.02**.

Therefore, the Planning Board recommends approval of the architectural plans by Richard Streetman architect dated 5/20/22 and site plan by VTP Associates dated 12/13/21, 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 showing a dimensional curb cut, 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.

Madison Anthony speaking on behalf of the Building Department stated that the Building Department has no objections to the request for relief and if the Board grants relief the Building Department will ensure compliance with the Building Code.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the petitioner has satisfied the requirements necessary for relief under **Sections**

5.09.2.a, 5.43, 6.04.4.c., 8.02.2, and 9.05 of the Zoning By-Law and made the following specific findings pursuant to said Section 9.05:

- 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.

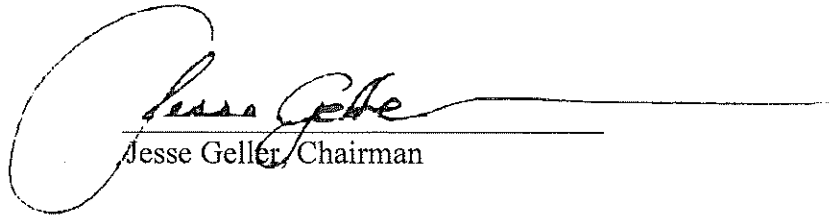
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

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 showing a dimensional curb cut, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
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Unanimous Decision of

The Board of Appeals

Filing Date: 9/29/22



Jesse Geller, Chairman

A True Copy
ATTEST:



Clerk, Board of Appeals