



Town of Brookline Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0057
127 WOODLAND ROAD

Petitioners, Devon White and Dwight Angelini applied to the Building Commissioner for permission to construct additions to the existing single-family dwelling at 127 Woodland Road. 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 October 13, 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 September 29, 2022, & October 6, 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, October 13, 2022

Location: Virtual Hearing

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

Petitioner: Devon White & Dwight Y Angelini

Address: 127 Woodland Road

Subject: Construct additions to existing single-family home

Nature of Action/Relief:

§5.20 – FLOOR AREA RATIO

§5.43 – EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 – SIDE 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: 9/29/2022 & 10/6/2022

On November 10, 2022, the Zoning Board of Appeals held a virtual public hearing.¹ Present at the hearing were Chair Jesse Geller and Board Members Paul Bell and Wadner Oge. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was the project architect, George Warner, Warner + Cunningham, Inc., 397 Newton Street, Chestnut Hill, MA 02467.

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 presented the case for the Petitioners, stating that the single-family home located at 127 Woodland Road is in an S-15 Zoning District at the corner of Woodland and Glenoe Roads and that the neighborhood is comprised of similarly sized single-family homes. She stated that the proposal is to make some modest improvements to the existing

¹ The Board of Appeals met on October 13, 2022 at 7:00pm and continued the hearing without testimony to November 10, 2022 at 7:00pm, virtually, as the time and place of the continued hearing.

single-family home that include: 1) expanding the mudroom on the east elevation onto the existing deck; 2) adding a family room and exercise room at the rear of the house and enclosing the existing porch to create a breakfast room; and 3) constructing open deck and stairs at the northwest corner off the living room and family room.

Attorney Dopazo Gilbert then stated that the Petitioners reached out to all their abutters and have not been made aware of any opposition and a letter in support of the proposal was submitted from the property owner at 25 Glenoe Road. In addition, she added, the Planning Board was unanimously supportive and recommended a condition that the Petitioners were amenable to that would require the Planning Board to have final design review should the Preservation Commission request modifications to the design that involve substantive changes.

Attorney Dopazo Gilbert stated that the Petitioner is requesting a finding under M.G.L. Ch. 40A, Section 6 to allow for the increase of the preexisting nonconforming FAR: the maximum allowed FAR is .25, the existing FAR is .3, and the proposal would increase the FAR to .34. In addition, she added, a so-called Section 6 finding is requested for the preexisting nonconforming side yard setback: the minimum side yard setback required is 15-feet, the existing is 12.2-feet and the proposed is 14.5-feet. She noted that no new nonconformities would be created and there would not be any detriment to the neighborhood due to the 767 square foot increase.

Mr. Warner presented the architectural and site plans to the Board of Appeals. In reliance on a digital presentation, Mr. Warner reviewed the existing and proposed site plans and architectural floor plan and elevations of the proposal.

Upon inquiry from Board Member Bell, Attorney Dopazo Gilbert explained how the proposed additions triggered the Demolition Delay By-Law and noted that the Petitioners will request to lift the stay of demolition based on the modest alterations. Board Member Oge noted

that based on his site visit and proposed plans, the proposal does not appear to have an adverse impact to the character of the neighborhood.

Attorney Dopazo Gilbert then stated that under Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539), the Board of Appeals may allow for the extension of a preexisting nonconformity as long as no new nonconformities are created and there is no substantial detriment to the neighborhood. She argued that the minor additions will not create any new nonconformity and there will be no substantial detriment to the neighborhood.

Attorney Dopazo Gilbert then noted that the Board of Appeals has used the special permit requirements enumerated in **Section 9.05** to review substantial detriment in previous cases stating the following: 1) Specific site is an appropriate location for such use: The property is located in a residential neighborhood and the addition will maintain this use. 2) Use will not adversely affect the neighborhood: There will be no change to the use and the proposed addition will not adversely affect the neighborhood. A letter of support was submitted to the Board and there has been no known opposition. 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians. 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 and no one requested to speak. Chair Geller noted a letter of support submitted into the record.

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

FINDINGS

| ZONING: S-15 | Requirements/Allowed | Existing Conditions | Proposed Conditions | Relief Required |
|--|-----------------------------|--------------------------------|--------------------------------|-------------------------|
| Floor Area Ratio | 0.25 (100%) 4277.5 sf | 0.30 5,073 sf | 0.34 5,840 sf | <u>Note 1</u> |
| Side Yard Setback Northeast | 15 feet | 12 feet | 10' | <u>Note 1, 2</u> |

1. Under M.G.L. c.40A Sec. 6 a pre-existing non-conformity may be extended by Special if the Board determines that there is no substantially increased detriment to the neighborhood.
2. The Board may waive dimensional requirements by Special Permit under Section, 5.43 if a counterbalancing amenity is provided.

PLANNING STAFF COMMENTS

Ms. Anthony stated that the Planning Department Staff does not believe the additions will be detrimental to the neighborhood. However, she added, the Preservation Commission has yet to comment on this proposal.

PLANNING BOARD COMMENTS

Ms. Anthony stated that the Planning Board supports the proposed additions to the house at 127 Woodland Road and finds them attractively designed. She added that it was noted that an abutter submitted a support letter and no opposition letters were submitted. Ms. Anthony stated that, in recognition that the Preservation Commission, if it were to impose a demolition delay, might lift it after approving revised plans, the Planning Board recommends adding condition #2 below to its standard conditions.

Therefore, Ms. Anthony stated, the Planning Board recommends approval of the site plan by Wayne C. Jalbert, Hancock Associates dated 6/1/2022, and architectural plans by George Warner, Warner Cunningham Architects dated 6/3/2022, the Planning Department recommends 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. Should revisions to the elevations and design plans be recommended by the Preservation Commission as a condition of a lift of stay, and if the Assistant Director of Regulatory Planning determines that the revisions are significant, the plans shall be referred back to the Planning Board for its review and approval.
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 Deputy Building Commissioner Campbell to deliver the findings of the Building Department. Mr. Campbell 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, Chair Geller stated that the Board has looked to **Section 9.05** of the Zoning By-Law as guidance as to whether or not such an expansion might create a substantial detriment and noted that, based on the standards to be applied under **Section 9.05**, the proposal is not substantially more detrimental to the neighborhoods. Chair Geller further added that the proposal was attractive, sensitively designed, and noted that the property is not in a local historic district and, in his opinion, it was not required to have the Preservation Commission approval prior to the ZBA hearing (since the project remains subject to the preservation ordinance requirements). Board Member Bell concurred and felt that the proposal was modest and thoughtfully designed. He also appreciated that the modifications would allow the house to be preserved and that the changes were minimally visible to the public way. Board Member Oge concurred and reiterated that his

concerns were ameliorated based on the drawings and his site visit. He did not believe there would be an adverse impact to the neighborhood and preserving the home would be a positive outcome.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6 allowing for an alteration or increase to the preexisting nonconformity from the provisions of Section **5.60** of the Zoning By-Law (increasing the encroachment into the side yard setback resulting in a reduced side yard dimension of 12.2-feet) and under **5.20** under the Zoning By-Law to permit an increase in the preexisting nonconforming FAR from a 0.30 to a 0.34.

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 deliberation:

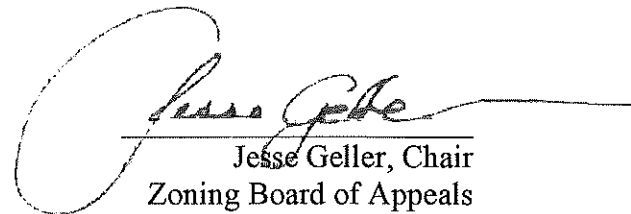
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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. Should revisions to the elevations and design plans be recommended by the Preservation Commission as a condition of a lift of stay, and if the Assistant Director of Regulatory Planning determines that the revisions are significant, the plans shall be referred back to the Planning Board for its review and approval.
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Unanimous Decision of
The Board of Appeals



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 12/8/2022

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals