



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

# *Town of Brookline Massachusetts*

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Benjamin Kaufman, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-0042  
186 LAUREL ROAD

Petitioners, Nalin and Priyanka Rohatgi applied to the Building Commissioner for permission to construct an accessory pool house and expand an existing driveway at 186 Laurel 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 September 15, 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 1, 2022, & September 9, 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 15, 2022**

**Location: Virtual Hearing**

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

**Petitioner: Laurel Development LLC**

**Address: 186 Laurel Road**

**Subject: Construct pool shed and expand driveway parking area**

**Nature of Action/Relief:**

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

§6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

§6.04.5.C.3 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

*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: 9/1/2022 & 9/8/2022**

On November 10, 2022, the Zoning Board of Appeals held a virtual public hearing.<sup>1</sup> 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, Shira Lion, and the homeowners, Nalin and Priyanka Rohatgi.

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 186 Laurel Road is in an S-15 Zoning District on a corner lot in a neighborhood that is comprised of similarly sized single-family homes. She continued 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 to build a pool house, accessory to the single-family dwelling. She stated that

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<sup>1</sup> The Board of Appeals met virtually on September 15, 2022 at 7:00pm and continued the hearing without testimony to November 10, 2022 at 7:00pm, as the time and place of the continued hearing.

the existing FAR is .385 and the 455 square foot pool house would increase the FAR to .40, where a max FAR allowed is .25. Attorney Dopazo Gilbert added that the accessory structure complies with the required six-foot setback requirement and, therefore, no new non-conformities were created.

Attorney Dopazo Gilbert continued that independent of the FAR increase request, the Petitioner seeks to expand an existing driveway to create a parking pad. She stated that the goal is to increase safety by minimizing the amount of shuffling of cars, especially on the corner lot where traffic can be busy. She further stated that the proposed front yard setback for the parking pad is 5.6-feet and the side yard is 2.25-feet where 25-feet and 5 feet are required, respectively. Attorney Dopazo Gilbert commented that relief may be granted for the smaller setbacks under **Section 5.43** of the Zoning By-Law if a counterbalancing amenity is provided and noted the Petitioners propose landscaping to add greenery to the streetscape as the counterbalancing amenity,

Attorney Dopazo Gilbert continued that the Planning Board was unanimously supportive and six letters from the abutters were submitted in support. Further, she noted, there is no known opposition.

Ms. Lion presented the architectural and site plans to the Board of Appeals. In reliance on a digital presentation, Ms. Lion reviewed the existing and proposed site plans and architectural floor plan and elevations of the proposal. She additionally reviewed the proposed landscaping plan and described the unique shape of the lot.

Upon inquiry from Board Member Oge, Mr. Campbell described how the rear and side yard setbacks are determined and confirmed the Petitioner's representation that there is no new non-conformity being created was accurate. The Board discussed the required setbacks for

accessory structures. The Board confirmed with Madison Anthony that the Planning Board staff report should be corrected to provide that 6-feet are required instead of 15-feet noted in their report.

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 accessory parking is consistent with that use and is similar to existing conditions in the neighborhood. 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. Six letters of support, including from direct abutters to the side and across the street have been submitted to the Board. 3) No nuisance or serious hazard to vehicles or pedestrians: The lot is a corner lot and a busy street. The parking pad expansion would improve the existing parking safety since it will substantially decrease the need to shuffle cars around. 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 proposed relief. No comments were submitted and no one requested to speak.

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

## **FINDINGS**

**§5.20 - FLOOR AREA RATIO**

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

**§5.60 - SIDE YARD REQUIREMENTS**

**§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS**

**§6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§6.04.5.C.3 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

| <b>ZONING:<br/>S-15</b>  | <b>Requirements</b> | <b>Existing<br/>Conditions</b> | <b>Proposed<br/>Conditions</b> | <b>Relief Required</b>               |
|--|---------------------|--------------------------------|--------------------------------|--------------------------------------|
| <b>Floor Area Ratio</b>  | 0.25<br>4,139 sf    | 0.385<br>6,378 sf              | 0.404<br>6,683 sf              | <u>Special Permit</u> <sup>1</sup>   |
| <b>Side Yard Setback<br/>within 64.3' of Front<br/>Lot Line<br/>(pool house)</b> | 6'                  | n/a                            | 6'                             | <u>Special Permit</u> <sup>2,3</sup> |
| <b>Front Yard Setback<br/>(parking pad)</b>                                      | 25'                 | n/a                            | 5.6'                           | <u>Special Permit</u> <sup>2</sup>   |
| <b>Side Yard Setback<br/>(parking pad)</b>                                       | 15'                 | n/a                            | 2.25'                          | <u>Special Permit</u> <sup>2</sup>   |

<sup>1</sup> 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.

<sup>2</sup> Under Sec. 5.43, a special permit may waive a yard setback if a counterbalancing amenity is offered. In this case, landscaping is being offered to serve as a counterbalancing amenity.

<sup>3</sup> Under Sec. 5.63, no part of any accessory building or structure situated within 75 feet of the street line, or within a distance equal to three fourths of the lot depth if that be less, shall extend within any required side yard. Elsewhere on the lot such buildings or structures may extend into the side yard one-half the required width, but such setback shall be no less than six feet.

**Section 8.02** – Alterations or Extensions of a Non-conforming Structure

**PLANNING DEPARTMENT STAFF COMMENTS**

Ms. Anthony stated that the Planning Department staff believes the proposed parking pad could function more efficiently if redesigned at an angle between 45° and 60° to facilitate parking maneuvers. She noted that the staff also recommends using permeable pavers for the parking pad. Other than that, she added, the Planning Department staff is supportive of the proposal and the proposed construction of an accessory pool house and driveway extension is within the maximum allowed area for accessory uses and would not significantly increase the property's FAR. She stated that extending the existing nonconformity should have no negative impact on the

surrounding neighborhood and after the proposed additions, the property would still provide more than the minimum required usable and landscaped open spaces.

### **PLANNING BOARD COMMENTS**

Ms. Anthony stated that the Planning Board voted to recommend approval of the site plan by EMB CO., PLS, dated 5/28/22, and architectural plans by STEIN LION DESIGN, RA, dated 4/14/22 with 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 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.

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, Board Member Bell stated that the pool house is an accessory structure that requires a setback of six-feet and therefore complies. He added that the required FAR increase sought under M.G.L. Ch. 40A, Section 6, based on the support of the neighbors, the Planning Board recommendation, and his knowledge of the neighborhood, he did not feel that it would not be detrimental to the neighborhood. Board Member Oge stated that he was in support of the

requested relief and noted that in regards to the parking, the uniqueness of the lot, being a corner, potentially creates safety hazards related to the existing parking conditions. Therefore he was supportive of granting the requested relief. Chair Geller stated that the proposal meets the requirements under M.G.L. Ch. 40A, Section 6 as interpreted under existing case law and the proposed expansion is not substantially more detrimental to the neighborhood as reviewed under **Section 9.05**. He noted that the lot is reasonably sized, letters in support were submitted and no evidence of opposition was received. Chair Geller added that the proposed landscaping satisfies the counterbalancing amenity requirement under Section 5.43 of the Zoning By-Law. Board Member Bell concurred and was also satisfied with the proposed landscaping as sufficient under **Section 5.43**.

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 preexisting nonconforming conditions as established under **5.20** to permit an increase in the preexisting nonconforming FAR as proposed by the Petitioners. In addition, the Board, by unanimous vote, granted special permit relief as requested for the driveway expansion under **Sections 5.43** and **9.05** of the Zoning By-Law.

The Board made the following specific findings under said **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberation:

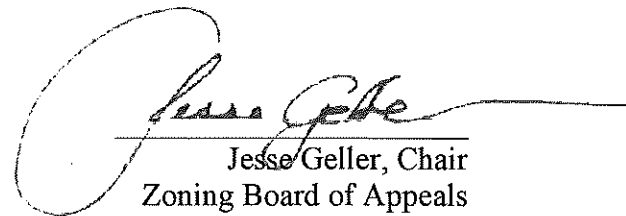
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan 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.

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