



Jesse Geller, Chair
Johanna Schneider
Lark Jurev Palermo

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Benjamin Kaufman, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000064
83 STEARNS ROAD

Petitioners Kathryn Becker and Samuel Polk applied to the Building Commissioner for permission to construct a single-story addition to the rear of their home at 83 Stearns Road, Unit #1. 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 December 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 December 1, 2022, & December 8, 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, December 15, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3u3LMCR>

Petitioner: Samuel Polk & Kathryn Becker

Address: 83 Stearns Road

Subject: Construct a single-story rear addition, demolish shed and construct new accessory structure

Nature of Action/Relief:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS; §5.60 - SIDE YARD REQUIREMENTS; §5.70 - REAR YARD REQUIREMENTS; §8.02 - ALTERATION OR EXTENSION

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/3379>

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: 12/1/2022 & 12/8/2022

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. Also in attendance were Attorney Jacob Walters, business address 27 Harvard Street, Brookline, MA, the petitioners, Kathryn Becker and Samuel Polk, and architect Jason Lagorga, DXO Architects, 631 Lagrange Street, West Roxbury 02132.

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 Walters waived a reading of the published notice.

Attorney Walters presented the case for the petitioners, describing the proposed addition as modest, as the applicants are seeking to add 375 square feet of living space at the rear of Unit

#1, to create an extra bedroom in order to accommodate their growing family. Mr. Walters stated that the relief needed could be granted by two Special Permits, one under **Section 5.43** of the Zoning By-Law, and the other pursuant to **Section 8.02** of the Zoning By-Law.

Mr. Walters stated that the existing side yard setback to the west of the building is 2'4" and the side yard setback of the proposed addition would be 3'9", while the existing rear yard setback is 29'1" while the proposed rear yard setback would be 14'9". He continued, explaining that because the setbacks described are less than the existing requirements, a Special Permit under **Section 5.43** is required. Pursuant to **Section 5.43**, the Zoning Board of Appeals can provide relief from setback requirements if an applicant can provide adequate a counterbalancing amenity. The applicants are offering the following counterbalancing amenities: (1) a flower garden where the existing storage shed is located, (2) the construction of a new fence at the rear of the property to replace the existing chain link fence, (3) shrubs or other plantings along the western side of the addition and (4) additional landscaping throughout the rear and side yards of the property.

The second required Special Permit according to Mr. Walters would be under **Section 8.02** alternation or extension, needed because the dwelling being altered is a pre-existing non-conforming structure.

Mr. Walters stated that although the lot in question is the largest on the block, the applicants are not seeking to maximize their addition, as evidenced by the fact that FAR relief is not required. Mr. Walters also stated that several months before this hearing the petitioners showed and discussed the proposed plans with their abutters. Mr. Walters added that the neighbors at the rear of 83 Stearns Road were supportive of the applicants' addition, as are the owners of the

condominiums at 89 Stearns Road – the abutters to the east – and the owner of Unit #2 at 83 Stearns Road.

Mr. Walters went on to say that the requested Special Permits conform with the requirements of **Section 9.05** of the By-Law in that: (a) the specific site is an appropriate location for the proposed structure and use, (b) the use as developed will not adversely affect the neighborhood, (c) there will be no nuisance or hazard to vehicles or pedestrians, (d) adequate and appropriate facilities will be provided for the proper operation of the proposed use and (e) the proposed addition will not have a significant adverse effect on the supply of housing available to low and moderate income people. Mr. Walters concluded his remarks by saying the modest scope of the addition, which will not be visible from the street Washington Street, the support of most of the abutters and the Planning Board's unanimous recommendation of approval warrant this Board granting the requested Special Permits.

Mr. Meiklejohn asked for clarification on if the setbacks of the proposed addition on the site plan were measured to the building or the overhang. The project architect, Mr. Lagorga, in reliance on a digital presentation, displayed the site plan and clarified that the setbacks were measured to the wall of the building itself, rather than the overhang.

In response to Mr. Wishinsky's inquiry, Mr. Lagorga clarified that the scope of this project was constructing the addition and reconstructing a shed and moving it from where the existing shed was formerly.

The Chairman then asked if anyone in attendance wished to speak in support of or in opposition to the petitioner's proposal.

James Viola and Donna Viola, the owners of 81 Stearns Road asked to be heard. Mr. & Mrs. Viola expressed their concerns about the side setback of the proposed addition being too

close to their property and indicated they wished for more time to study and consider the applicants' proposal. Mr. and Mrs. Viola questioned whether the applicants had the legal standing to add an addition to a condominium unit. Mr. & Mrs. Viola continued, stating they did not believe the counterbalancing amenities offered by the applicants were sufficient and asked that some additional items be made conditions of any grant of relief.

Chair Geller asked Deputy Building Commissioner Paul Campbell for confirmation on if the applicants having evidenced their legal interest in the subject property to the Building Department. Mr. Campbell confirmed that they did submit evidence of ownership/rights.

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

FINDINGS

- §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**
- §5.60 - SIDE YARD REQUIREMENTS**
- §5.70 - REAR YARD REQUIREMENTS**
- §8.02 - ALTERATION OR EXTENSION**

ZONING: T-5	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Side Yard Setback for addition	10'	2.4'	3.9'	<u>Special Permit</u> ¹
Rear Yard Setback for addition	30'	29.1'	14.9'	<u>Special Permit</u> ¹

¹ Under Sec. 5.43, a special permit may waive a yard setback if a counterbalancing amenity is offered. In this case, additional landscaped and usable open space is being offered to serve as a counterbalancing amenity.

Section 8.02 - A special permit may be granted for Alterations or Extensions of a Non-conforming Structure.

PLANNING DEPARTMENT STAFF COMMENTS

The proposed addition is simple and in line with the architectural style of the existing house. It will not significantly increase the FAR and will only involve minor demolitions. Since the addition is all at the rear of the lot, it will not have a significant impact to the streetscape. Extending the existing yard setback nonconformity should have no negative impact on the surrounding neighborhood. After the proposed addition, the property would still provide more than the minimum required usable and landscaped open spaces. The proposed garden shed is within the maximum allowed area for accessory structures and meets the required setbacks.

PLANNING BOARD COMMENTS

The Planning Board was supportive of the single-story addition at the rear of the house, which would provide more comfort to a growing family. The addition was considered modest and respectful of the neighborhood's character. The Planning Board appreciates that the proposal will preserve the existing structure instead of replacing it with larger units and would even support a similar addition to the second floor in the future. Acknowledging the concerns raised by the abutters at 81 Stearns Road, who claimed they were not informed about the project in a timely manner and were concerned about the impacts of the extension on their property, the Board advised that the applicant take the time to further discuss the proposal with the neighbors.

The Planning Board recommends approval of the site plan by PETER NOLAN & ASSOCIATES, PLS, dated 4/ 27/2022 and architectural plans by DXO, dated 9/6/2022, the Planning Department staff 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. 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.

The Chairman then called upon Paul Campbell to provide the Building Department report.

Mr. Campbell stated that the Building Department has no objections to the request for relief and stated if the Board grants relief the Building Department will ensure compliance with the Building Code.

Chair Geller asked Attorney Walters if the applicants had met with the Violas to discuss some of the concerns they have with the project. Jacob Walters confirmed that discussions took place, but the requests of the Violas during these discussions were architecturally impossible and would delay the project by a couple months. Mr. Wishinsky then noted the letter sent by the Violas with a list of requested amenities.

The hearing was then continued until 9:15 P.M. at the applicants' request, at which time the hearing was re-opened and the applicant agreed to work with the neighbors to address some of their concerns and agreed that a landscaping plan should be added as a condition.

In deliberation, Mr. Wishinsky stated he was pleased the applicant had agreed to work with the neighbors and believes the applicant has met the standards for relief. Mr. Meiklejohn stated that the addition was reasonable, adding that he was also pleased the applicant was willing to work with their neighbors and stated he is in favor of granting the requested relief. Chair Geller agreed with his fellow Board Members that the proposal meets the standard for relief and would be in favor of granting it.

The Board then determined, by unanimous vote, to grant the requested Special Permits and that the petitioner has satisfied the requirements necessary for relief under **Sections 5.43** and **8.02.2** of the Zoning By-Law. In addition, 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.

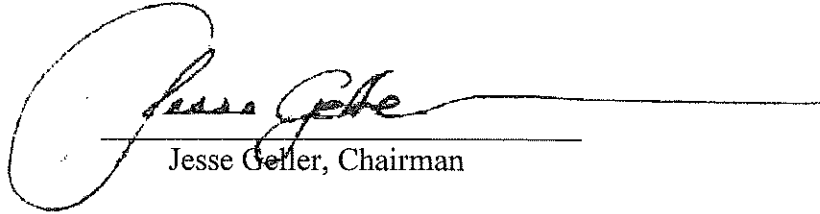
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final plans and elevations stamped and signed by a registered architect and a final site plan, signed and stamped 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. The materials of the exterior of the addition shall be consistent with the exterior of the existing dwelling, the new foundation will be screened by plantings to a reasonable degree, the proposed A/C unit as shown on the plans shall not be moved closer to the western edge of the lot and trash and/or recycle bins shall not be stored on the western boundary of the applicants' lot.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) the site plan, floor plans and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning, and 2) 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

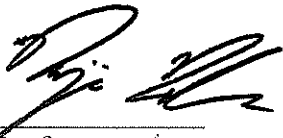
The Board of Appeals

Filing Date: 1/5/2023



Jesse Geller, Chairman

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals