



Town of Brookline

Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0050
141 JORDAN ROAD

Petitioners, Wang Chen and Lan Qin, applied to the Building Commissioner for permission to construct a 772 square foot addition to an existing single-family dwelling at 141 Jordan 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 December 8, 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 November 24, 2022, and December 1, 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 8, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3UKn9Xo>

Petitioner: Wang Chen & Lan Qin

Address: 141 Jordan Road

Subject: Construct 772 sf addition to existing single-family dwelling

Nature of Action/Relief:

§5.20 - FLOOR AREA RATIO; §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS; §6.04.5.C.2 – DESIGN OF ALL OFF STREET PARKING FACILITIES; §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: 11/24/2022 & 12/1/2022

On December 8, 2022, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing was Chair Jesse Geller and Board Members Randolph Meiklejohn and Saul Feldman. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance were the Petitioners, Lin Qin and Wang Chen.

Zoning Board of Appeals Chair Geller called the 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 Petitioners stating that the single-family home located at 141 Jordan Road is in an S-7 Single-Family Zoning District and was built in 1930. He continued that the Petitioners reached out to their neighbors and made changes to the design to address concerns that were voiced early on in the process and that the Board of Appeals should have received seven letters in support of the proposal.

Attorney Allen described the design review process, commenting that at the first Planning Board meeting, the Planning Board requested that the Petitioners reduce 1) the driveway area, 2) the roof deck, and 3) the FAR to below 130%. He added that the Planning Board also suggested

that the Petitioners explore ways to increase privacy between the immediate abutter at 137 Jordan Road. Attorney Allen stated that the Petitioners were able to accommodate all these suggestions and at the second Planning Board meeting received unanimous support.

Attorney Allen then stated that the Petitioners are requesting a finding under M.G.L. Ch. 40A, Section 6, to allow for the increase of the preexisting nonconforming FAR. He noted that no new nonconformities would be created and there would not be a substantial detriment to the neighborhood due to the 681 square foot addition. He continued that 141 Jordan has a preexisting nonconforming FAR of .376, where there is an allowed maximum of .35. Attorney Allen added that the addition would increase the FAR to a .453. He continued that the existing driveway is setback 0-feet from the property line and relief is also sought to extend the driveway further down the property line.

Attorney Allen 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 if no new nonconformities are created and there is no substantial detriment to the neighborhood. He argued that the addition would not create any new nonconformity and there will be no substantial detriment to the neighborhood. Attorney Allen cited the seven letters in support from abutters and the unanimous support of the Planning Board.

Attorney Allen 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 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. 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.

Upon inquiry from Board Member Feldman, Attorney Allen clarified that the arborist report provided by the abutter at 137 Jordan Road that cited concerns over the impact to the health of the existing trees between the two properties due to construction was completed under the erroneous assumption that the addition required a new foundation. Attorney Allen stated that the Petitioners' arborist provided a report based on the reuse of the existing foundation and is confident that the trees between the properties will be protected. He added that the Petitioners were amenable to the Board of Appeals requiring a tree protection plan as part of their decision. The Board of Appeals reviewed sheet A1.05 of the architectural drawings and discussed the location of the proposed retaining wall and Board Member Meiklejohn stated that in his opinion, only one or two trees would be potentially impacted by construction.

Chair Geller then called for public comments in support of or in opposition to the requested relief. No public comments were provided.

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

FINDINGS

§5.13 – MINIMUM LOT WIDTH

§5.20 – FLOOR AREA RATIO

§6.04.5C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

§8.02 - ALTERATION OR EXTENSION: A special permit is required for the alteration of a non-conforming structure.

ZONING: M-1.0	Required or Allowed	Existing Conditions	Proposed Conditions	Relief Required
Lot Width	65 feet min	53 feet	53 feet	<u>Pre-existing Non- Conforming</u>

Floor Area Ratio	0.35 8,837sf x 0.35 = 3093 sf	0.376 3,324 sf	0.464 .(reduced to 0.453) 4,096 sf (reduced to 4,005 sf)	<u>Special Permit</u> ²
Setback to Driveway	5 feet or 1/3 the width of driveway if larger	0	0	<u>Special Permit</u> ^{1,2}

¹ **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from setback requirements can be granted through Section 5.43 which states that relief may 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 Bylaw.

² 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.

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that since the September Planning Board meeting, the applicant has submitted a memo (9/26/22) from QLArchitects outlining revisions to the plans, including: downsizing the windows on all four sides, adding a tree in the front yard, reducing the impervious driveway area, reducing the roof deck, adding a grading plan, adding a trellis on the east side of the back deck, replacing the column supported awning with a retractable one, and shrinking the south-north width of the back addition by 1'. The increased floor area would now be 129.4%, reduced from 132% of the maximum allowed. Additionally, she added, a Tree Assessment report was submitted by Howard Gaffin (9/22/22), which provided options for either saving some of the trees or replacing them and recommended a tree protection plan for those trees to be saved.

PLANNING BOARD COMMENTS

Ms. Anthony stated that the Planning Board was pleased that the applicant made revisions to the plans to address its concerns expressed at its 9/1/22 meeting. She added that a list of the applicant's changes is detailed above in the Planning Department Comments and continued that the only remaining concern was related to the roof deck design and the bench surrounding its

perimeter. Ms. Anthony stated that the Planning Board felt that the bench might present a safety hazard if someone stood on it and recommended that instead it be replaced by a planter.

Ms. Anthony concluded that the Planning Board voted to recommend approval of the site plan plans by NEPONSET VALLEY SURVEY ASSOCIATES INC., PLS, dated September 24, 2022, and architectural plans by QLARCHITECT LLC, RA, dated September 22, 2022, 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 and a tree protection 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.

The Board of Appeals confirmed the date of the architectural drawings and survey was accurate and the plan of record shows a rear addition that is 18-feet by 22-feet with a side yard setback of 7.6-feet for a total increase of 681 square feet.

Chair Geller then called upon Ms. Anthony to deliver the findings of the Building Department. Ms. Anthony stated that the Building Department had no objection to the requested relief and would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes. Mr. Campbell added that, in his review, the proposed bench would be able to comply with applicable code requirements.

The Board then deliberated. Chair Geller opined that the request meets the standards under M.G.L. Ch. 40A, Section 6, and added that as presented, the proposal does not meet the threshold of being more substantially detrimental to the neighborhood. Board Member Meiklejohn concurred with Chair Geller. He stated that the proposal meets the requirements for relief and continued that the impacts of the addition do not rise to be more substantially detrimental to the neighborhood than the existing condition. Board Member Feldman concurred.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6, to allow for an alteration and increase to preexisting nonconforming floor area ratio under Section 5.20 (to permit an increase in the preexisting nonconforming FAR from a 0.376 to a 0.453) and under Section 6.04.5.C.2 to permit an increase in the preexisting nonconforming driveway setback of 0-feet.

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:

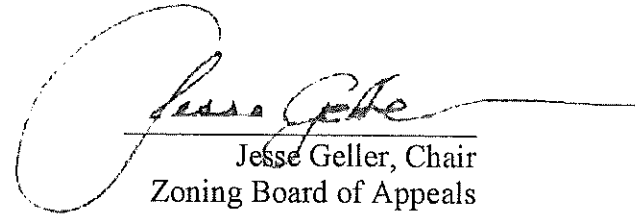
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 revised 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 tree protection plan, subject to the review of and approval by the Town Tree Warden.
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.

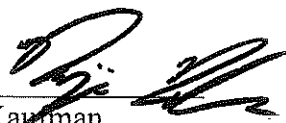
Unanimous Decision of
The Board of Appeals



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 1/26/2023

A True Copy
ATTEST:



Benjamin Kauffman
Clerk, Board of Appeals