



# *Town of Brookline*

## *Massachusetts*

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

Town Hall, 1<sup>st</sup> 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. 2022-000081  
27 HEATH STREET

Petitioners Chad Jessup and Fei-Shiuann Clarissa Yang applied to the Building Commissioner for permission to alter a two-family dwelling to construct dormers. The application was denied and an appeal was taken to this Board.

The Board of Appeals 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 February 16, 2023, 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 February 2, 2023, and February 9, 2023, in the Boston Globe, a newspaper of 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, February 16 2022

**Location:** Virtual Hearing

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

**Petitioner:** Chad Jessup & Fei-Shiuann Clarissa Yang

**Address:** 27 Heath Street

**Subject:** Alter two-family dwelling to construct dormers

**Nature of Action/Relief:**

§5.20 - FLOOR AREA RATIO; §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/3647>***

***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: 2/2/2023 & 2/9/2023**

On February 16, 2023, the Zoning Board of Appeals held a virtual public hearing. At the hearing, the Board unanimously voted to continue the matter of Case No. 2022-00084 to March 2, 2023.

On March 2, 2023, the Zoning Board of Appeals held a continued virtual public hearing at. Present at the hearing were Chair Jesse Geller and Board Members Paul Bell and Saul Feldman. The case was presented by the attorney for the Petitioner, Robert Allen, Jr., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was Chad Jessup, the Petitioner.

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. Attorney Allen stated that the property at 27 Heath Street is located in the T-6 zoning district, just off of Boylston Street, and that the house located on the property is a two-family dwelling. He continued that the Petitioners have received no opposition from neighbors over the proposal and that two letters of support, one

each from 35 Heath Street and 34 Heath Street, had been submitted to the Board. Attorney Allen noted that no letter would be forthcoming from 31 Heath Street, since the Petitioner himself owns the property.

Attorney Allen then stated that the proposal would add dormers on the side of the home and one dormer at the front of the home, noting that the dormers would be entirely within the structure's existing footprint. Attorney Allen continued that the changes, which would add approximately 661 square feet and convert the attic into livable space, would enable the Petitioners to upgrade the building while maintaining its uniformity with the streetscape. He further stated that the present proposal is nearly identical to one that the Board had approved for Petitioner's 31 Heath Street property. Attorney Allen noted that the present proposal had been unanimously supported by the Planning Board, which, in particular, had expressed its approval for elimination of an existing parking space, currently located in the front yard and conversion of that area into open space. He added that there had been no finding of historical significance by the Preservation Commission. Attorney Allen concluded that the proposal was a modest one and that it would improve the existing structure's design.

Board Member Feldman asked for clarification concerning the existing parking spot in the front yard setback. Attorney Allen stated that this parking spot would be removed. Petitioner Jessup added that there was sufficient parking at the rear of the building for at least three cars, plus a spot in the garage.

Attorney Allen then reviewed the requested zoning relief. He stated that a finding was sought under M.G.L. Ch. 40A, Section 6 to allow for an increase of the property's preexisting nonconforming FAR and side yard setbacks. Attorney Allen compared the Zoning By-Laws' dimensional requirements to the property's existing and proposed dimensions, stating that the

minimum permitted lot area under **Table 5.01** is 6,000 square feet, whereas the existing lot area is 5,147 square feet. He continued that the minimum required side yard setback under **Section 5.60** is 10 feet, whereas the existing and proposed setback is 8.9 feet; that the minimum required lot width under **Section 5.13** is 55 feet, whereas the existing and proposed lot width is 52 feet; and that the maximum allowed FAR under **Section 5.20** is 0.75, whereas the existing is 0.77 and the proposed is 0.90, with the addition constituting 661 square feet of gross floor area. Attorney Allen noted that the rear yard setback would not require relief since the rear dormer complied dimensionally with respect to the rear yard setback requirement.

Attorney Allen then stated that, under the interpretation of M.G.L. Ch. 40A, Section 6 articulated in Deadrick v. Zoning Bd. of Appeals of Chatham 85 Mass. App. Ct. 539 (2014), a counterbalancing amenity was not necessary for approval of the project, since the Board of Appeals needed only to find that the project would not be substantially more detrimental to the neighborhood than the existing nonconformities. He continued that two letters in support had been submitted and that a zoning analysis demonstrated that the project would result in no new nonconformities. Noting that the Board of Appeals had previously used **Section 9.05** in determining whether a project would be substantially more detrimental than existing nonconformities, Attorney Allen stated the following: 1) Specific site is an appropriate location for such use: The existing two-family use is a permitted use in the T-6 district. The structure will continue to be used as a two-family dwelling, with long-needed upgrades being made. 2) Use will not adversely affect the neighborhood: The project will result in virtually no change to the building's existing footprint. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: By taking away the existing parking spot in the front setback, there will be no danger to pedestrians or traffic from a car entering or exiting a driveway with limited visibility. 4)

Adequate and appropriate facilities will be provided for the proper operation of the proposed use:

Adequate and appropriate facilities will continue to be provided for the proper operation of a two-family dwelling. 5) There will be NO effect on the supply on housing available for low and moderate income people: The proposal will not change the number of living units.

Chair Geller then called for public comments in support of or in opposition to the proposal.

No public comments were made.

Chair Geller then called upon the 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

§5.70 - REAR YARD REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

Pre-Existing Nonconformities: FAR Maximum, Lot Size Minimum, Lot Width Minimum, Side Yard Setbacks, Rear Yard Setback

<b>ZONING: T-6</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>Floor Area Ratio</b>	0.75	0.77	0.90	<b><u>Special Permit</u></b> <sup>1</sup>
<b>Lot Size Minimum</b>	6,000 S.F.	5,147 S.F.	5,147 S.F.	<b><u>Special Permit</u></b> <sup>1</sup>
<b>Lot Width Minimum</b>	55'	52'	52'	<b><u>Special Permit</u></b> <sup>1</sup>
<b>Side Yard Setback (left)</b>	10'	8.9'	8.9'	<b><u>Special Permit</u></b> <sup>1,2</sup>
<b>Side Yard Setback (right)</b>	10'	8.9'	8.9'	<b><u>Special Permit</u></b> <sup>1,2</sup>
<b>Rear Yard Setback</b>	30'	23.1'	23.1'	<b><u>Special Permit</u></b> <sup>1</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.

2 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.

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the proposed changes will provide the occupants of the home with more interior living space and will be an updated aesthetic improvement to the exterior of the home. She continued that replacing the existing driveway with landscaping will be an improvement to the front yard. Ms. Anthony further stated that all of the nonconformities are pre-existing nonconformities, with FAR being the only nonconformity that is being increased. She added that the proposal should not have any negative impact of the surrounding neighborhood.

Ms. Anthony then stated that the Planning Board has no objections to the proposal and that the Planning Board believes the addition will not be substantially more detrimental to the neighborhood.

Ms. Anthony continued that therefore, the Planning Board recommended approval of the site plan by Peter Nolan & Associates, LLC, dated April 19, 2022, and architectural plans by Finespaces Architecture, LLC, dated October 17, 2022, 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 or site plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning.
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 Paul R. Campbell, Deputy Building Commissioner, 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 Petitioner to ensure conformance with the Board's decision and all applicable building codes.

Attorney Allen then stated that he believed the second condition, referencing a counterbalancing amenity, had been mistakenly included in the Planning Board report. Chair Geller acknowledged that the condition was, in fact, not required where relief was being granted under M.G.L. Chapter 40A, Section 6.

The Board then deliberated. Board Member Bell stated that he frequently passes the neighborhood and believed that the recent changes to Petitioner's other property at 31 Heath Street represented an improvement. He continued that he believed the same was true of the present proposal, with benefits to both the residents and passersby likely to result. Board Member Bell concluded that he would vote in favor of granting the requested relief, since the proposal satisfied the requirements of M.G.L. Ch. 40A, Section 6.

Board Member Feldman concurred with the comments offered by Board Member Bell, stating that he would also vote in favor of the requested relief.

Chair Geller stated that the proposal, having met the requirements of M.G.L. Ch. 40A, Section 6, did not need to provide a counterbalancing amenity to obtain relief under Zoning By-Law Section 5.43. He continued that pursuant to the Board's evaluation of the factors articulated in Section 9.05, the project would not be "substantially more detrimental to the neighborhood" than the existing nonconformities. Chair Geller concluded by voting in favor of the requested relief.

The Board then determined, by unanimous vote, that the proposal, as required by M.G.L. Ch.40A, Section 6, would not be substantially more detrimental to the neighborhood than the existing nonconformities.

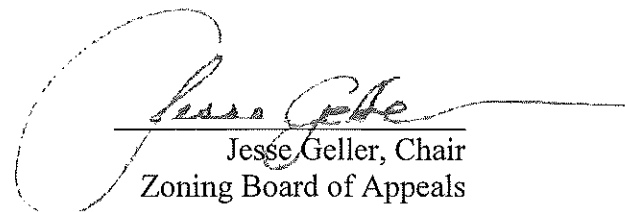
In addition, the Board made the following specific findings under **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberation:

- 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. 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: 3/23/2023

A True Copy

ATTEST:

A handwritten signature in black ink, appearing to read 'B. Kaufman', written over a horizontal line.

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Benjamin Kaufman  
Clerk, Board of Appeal