



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

# *Town of Brookline*

## *Massachusetts*

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**Benjamin Kaufman, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2023-00003  
65 ALBERTA ROAD

Petitioners Rajat Babbar and Alka Mahajan applied to the Building Commissioner for permission to construct a 1,422 square foot addition to the rear of their existing home. 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 March 2, 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 16, 2023, and February 23, 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, March 2, 2022

**Location:** Virtual Hearing

**Virtual Registration Link:** <https://bit.ly/3xj20tp>

**Petitioner:** Rajat Babbar & Alka Mahajan

**Address:** 65 Alberta Road

**Subject:** Construct 1,422 square foot addition to rear of existing home

**Nature of Action/Relief:**

§5.20 - FLOOR AREA RATIO

§8.02 - ALTERATION OR EXTENSION

*Plans and submissions may be viewed online at*

*<https://www.brooklinema.gov/DocumentCenter/Index/3707>*

*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: 2/16/2023 & 2/23/2023**

On March 2, 2023, the Zoning Board of Appeals held a public hearing and continued the hearing without testimony to March 16, 2023.

Present at the continued hearing on March 16, 2023 were Chair Lark Palermo and Board Members Randolph Meiklejohn and Wadner Oge. The case was presented by the attorney for the Petitioners, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance were the Petitioners, Alka Mahajan and Rajat Babbar, and the project architect, Alan Christ, Alan Christ Architects, LLC, 251 Harvard St #5, Brookline, MA.

Attorney Dopazo Gilbert presented the case for the Petitioners, stating that the property is located at 65 Alberta Road in the S-10 zoning district, near The Country Club and the West Roxbury Parkway. She described the neighborhood as quiet, with other homes resembling the Petitioners' in size and lot coverage, except on the lots to the left of Petitioners home, which are vacant. Attorney Dopazo Gilbert noted that the addition would be built at the rear of the home and contain 1,422 square feet. She further stated that great effort had been made to ensure that the proposed addition was appropriate for the lot, taking into account the significant topographic changes in the land.

Attorney Dopazo Gilbert then stated that the proposal had not triggered demolition under the demolition by-law. She continued that Petitioners had discussed their plans with their

respective abutters at 57, 60, and 68 Alberta Road, with each offering their support. She further stated that the Planning Board had offered its unanimous support in favor of the proposal.

Attorney Dopazo Gilbert then reviewed the requested zoning relief, noting that relief was needed only for an increase in the home's preexisting nonconforming floor area ratio. She stated that, under the interpretation of M.G.L. Ch. 40A, Section 6 articulated in Deadrick v. Zoning Bd. of Appeals of Chatham, a finding was sought from the Board of Appeals that (1) the project would not create new nonconformities and (2) that it would not be substantially more detrimental to the neighborhood than the existing nonconformity.

Project Architect Alan Christ then presented the site plans to the Board of Appeals. In reliance on a digital presentation, Mr. Christ displayed a comparison of the existing and proposed building footprints. He stated that the project, which consisted of constructing an addition to the rear of the home along its north-facing façade, would contain an improved kitchen, dining and living space, and guest room on its first floor. Mr. Christ continued that the addition's second floor included two new bedrooms with ensuite bathrooms, as well as an outdoor deck. He further stated that one of the primary goals of the project was to provide a single floor, accessible living space for use by Petitioners' relatives, who regularly visit Petitioners for long periods of time.

Mr. Christ then reviewed the abutting lots, noting that the other homes were of similar size as Petitioners' and that, to the west, two heavily wooded lots remain undeveloped. He added that several of the lots contained dramatic topographic changes, with landscaping, retaining walls, and partially exposed basements being common for homes in the area. Displaying a rendering of the proposed design, Mr. Christ stated that the rear addition at 65 Alberta would "step down" in massing because of a slope at the rear of the lot. He continued that the proposal complies with all setback and height requirements for the S-10 district and that the front and sides of the structure would remain unchanged, save some minor changes to the home's windows.

Mr. Christ then stated that the addition was intended to be a simple stucco volume, anchored by two major pillars on the east and west of the mass. He continued that the outdoor deck had been designed to minimize intrusion into the rear yard and that additional wooden columns would be installed for structural support. Mr. Christ further stated that the addition's casement windows had been designed to match those of the existing home. He reiterated that the addition is largely not visible from the street and that large trees shielded the area from view from the north.

Attorney Dopazo Gilbert then detailed the requested zoning relief, again stating that under M.G.L. Ch. 40A, Section 6, said relief could be granted by the Board upon its finding that no new nonconformities would result and that the proposal would not be substantially more detrimental to the neighborhood than the existing structure. Noting that the Board of Appeals had previously used the more stringent special permit standards found in **Section 9.05** to make the "substantial detriment" finding, Attorney Dopazo Gilbert stated the following: 1) Specific site is an appropriate location for such use: The addition is to the rear of the home and will maintain the permitted residential single-family use. 2) Use will not adversely affect the neighborhood: There will be no change to the existing use, and the proposed addition is located to the rear of the property. There are two empty lots to one side, while the next closest home to the rear is more than 100 feet away and screened by mature vegetation. Petitioners have spoken with the immediate abutters, who are supportive of the plans. There is no expectation that the addition would create any privacy issues or cast any new shadows on abutting properties. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: There will be no change in the occupancy of the unit. Therefore, there will be no nuisance or serious hazard to vehicles or pedestrians. 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 single family dwelling. 5) There will be no effect on the supply on housing available for low and moderate income people.

Chair Palermo then called for public comments in support of or in opposition to the proposal. No public comments were made.

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

**FINDINGS**

§5.20 - FLOOR AREA RATIO

§8.02 - ALTERATION OR EXTENSION

ZBL §8.02 - Alteration or Extension - FAR Maximum, Lot Size Minimum, and Lot Width Minimum

ZONING: S-10	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Floor Area Ratio	0.30	0.40	0.55	<u>Special Permit</u> <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.

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

**PLANNING DEPARTMENT COMMENTS**

Ms. Anthony stated that the Planning Department staff has no objection to the proposal. She continued that the addition is located at the rear of the house and meets all of the required yard setbacks. Ms. Anthony further stated that despite the considerable increase in FAR, the construction is unlikely to significantly impact the streetscape because it will be well-screened by large mature trees surrounding the property. She added that extending the existing FAR nonconformity should have no negative impact to the surrounding neighborhood. Ms. Anthony noted that even with the proposed addition, the property would still contain more than the minimum amount of required usable and landscaped open spaces.

Ms. Anthony then stated that the Planning Board had no objections to the proposed expansion of the house, finding that the project was well done and fitted to the highly sloped terrain. Ms. Anthony also mentioned that after noting the proposal was unlikely to have any adverse impact on the neighborhood, the Planning Board recommended that the Petitioners speak with their rear abutter.

Ms. Anthony then stated that therefore, the Planning Board recommended approval of the site plan by C & G Survey Company, PLS, dated December 5, 2022, and architectural plans by Alan Christ Architects, LLC, RA, dated December 8, 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 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 Palermo 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 compliance with the Board's decision and all applicable building codes.

The Board then deliberated. Board Member Meiklejohn stated he was in favor of granting the relief because the neighborhood, like some others in Brookline, exhibited a strong pattern in which lots with severe topographic changes contained houses of approximately the same size and layout in relation to the street,- and he believed that the proposed design appropriately fit this pattern. He then stated that M.G.L. 40A, Section 6 relief was available because no new

nonconformities had been created and the addition would cause little or no detriment to the neighborhood. Board Member Meiklejohn further noted that the addition's location at the rear of the home would allow the size and layout of the existing structure to appear largely unchanged from the street. Mr. Meiklejohn concluded by stating that he would vote in favor of granting the requested relief, stating that it was warranted under M.G.L. Ch. 40A, Section 6.

Board Member Oge then stated that he would also vote in favor of granting the relief. He continued that he believed the relief was warranted because Petitioners had satisfied the conditions of **Section 9.05**. Board Member Oge further stated that Petitioners had sufficiently demonstrated that the relief, particularly in light of the topography of the lot, would allow for an increase in the preexisting nonconforming FAR without resulting in new nonconformities or causing substantial detriment to the neighborhood. He also noted that the addition at the rear of the home was difficult to see from the street and that the design appeared consistent with that of nearby homes. Board Member Oge concluded by voting in favor of granting the requested relief.

Chair Palermo stated that she agreed that the design would not be substantially more detrimental to the neighborhood than the existing structure, noting that Petitioners had met the requirements of **Section 9.05**. Chair Palermo concluded by voting in favor of granting the requested zoning 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 structure and that it would create no new 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:

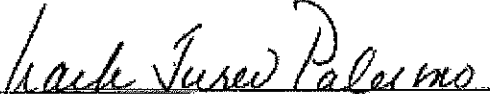
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.

- 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: a special permit allowing an increase in the home's preexisting nonconforming floor area ratio, 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

  
Lark Jurev Palermo, Chair  
Zoning Board of Appeals

Filing Date: 5/23/23

A True Copy

ATTEST:



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Benjamin Kaufman  
Clerk, Board of Appeals