



Town of Brookline Massachusetts

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

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2023-000004
24 YORK TERRACE

Petitioners Fabio Fachin & Heidi J. Rayala applied to the Building Commissioner for permission to construct a first and second story addition to the rear of the existing home and a roof deck with a stairway at 24 York Terrace. 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 April 13, 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 March 30, 2023, and April 6, 2023, in the *Boston Herald*, 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, April 13, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3lOk9Nr>

Petitioner: Fabio Fachin & Heidi J. Rayala

Address: 24 York Terrace

Subject: Proposed 2 story addition above existing basement walk-out with existing 1st floor deck above to increase living and bedroom space

Nature of Action/Relief:

§5.20 - FLOOR AREA RATIO

§5.22.3.B.1.C - EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS

§8.02 - ALTERATION OR EXTENSION

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/4003>

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: 3/30/2023 & 4/6/2023

On April 13, 2023, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing was Chair Jesse Geller and Board Members Neil Wishinsky and Wadner Oge. The case was presented by the project's architect, Edrick VanBeuzekom, EVB Design, 1310 Broadway #200, Somerville, MA 02144. Also in attendance were the petitioners and homeowners Fabio Fachin and Heidi Rayala

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. Mr. VanBeuzekom waived a reading of the published notice.

Mr. VanBeuzekom presented the case for the Petitioners. In reliance on a digital presentation, he began by displaying a plot plan demonstrating the existing conditions, pointing out the existing terrace, deck, and location of the basement space. He explained that a previous Zoning Board of Appeals decision from ten years ago created an entrance, a mud room entry to the house, and a guest bathroom. He continued, stating, the site is sloping down, as shown by the contour lines on the plot plan. He then presenting images of the existing structure of the house.

Mr. VanBeuzekom stated that the Petitioners are proposing a two-story addition that would be above the existing one and the deck on the rear of the house. So, going up from the basement level, the addition would go up two stories with a new first floor and second floor. He explained that the primary reason for expanding family needs. He continued, stating that a special permit is needed because the addition would result in a non-conforming Floor Area Ratio. He displayed the proposed floor plans, stating the proposal is to move the deck further into the rear yard and then build the addition in the space previously occupied by the deck. He explained that the work on the second floor will consist of adding additional floor area to increase the size of the two bedrooms occupied by the family's children. In addition, he stated the bathroom will be moved and improved and a home office will be added.

Mr. VanBeuzekom displayed the elevations of the proposed house with alterations and compared them to the existing house. He demonstrated the view of the house from the neighbor across the street's point of view and described the size as modest and indicated where the deck would be located.

Mr. VanBeuzekom explained that the proposal would increase the FAR to 0.412, which is less than that of all these adjacent properties. He noted that the Petitioners have received letters of support from both immediate neighbors and that the project would comply with the new stretch energy code that will be going into effect soon.

Mr. Fachin spoke to explain that the proposal is to help create more living space for their family as their children grow up..

Mr. VanBeuzekom stated that the Petitioners are seeking relief for FAR under **M.G.L. Chapter 40A Section 6**, since the proposal involves extending a pre-existing non-conformity. He continued, stating that the proposal meets the criteria set forth by **Section 9.05** of the Zoning By-Law, since this specific site is an appropriate location for such a use and the use will not adversely affect the neighborhood, there will be no nuisance or serious hazard to vehicles or pedestrians, adequate and appropriate facilities will be provided for the proper operation of the proposed use, and the development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Chair Geller asked whether any additional parties wished to offer testimony in support of or in opposition to the proposed relief. No additional parties offered testimony.

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

FINDINGS

- §5.20 - FLOOR AREA RATIO
- §5.22.3.B.1.C - EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS
- §8.02 - ALTERATION OR EXTENSION

ZONING: SC-7	Requirements/Allowed	Existing Conditions	Proposed Conditions	Relief Required
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Floor Area Ratio	0.35	0.349 (2,611 sq. ft)	0.407 (3,050 sq. ft)	<u>Special Permit</u> ¹
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¹ Under Section 5.22.B.1.C A special permit may be granted from non-conforming FAR in a SC District for a combination of an interior conversion and exterior addition that is less than or equal to 30% of the permitted gross floor area, provided that the additional floor area attributable to exterior construction (which shall include the floor area included within dormers, penthouses, cupolas, and the like) does not exceed 35% of the additional floor area allowed by special permit.

PLANNING STAFF COMMENTS

The proposed addition will provide the residents with additional living space to accommodate their family. The addition will have a minimal impact on the public way because it is at the rear of the house and is therefore unlikely to be substantially more detrimental to the neighborhood than the existing structure.

PLANNING BOARD COMMENTS

The Planning Board has no objections to the proposed addition and was please that support from two of the three direct abutters was secured. The Board recommended reaching out to the rear abutter to discuss the plans.

The Planning Board recommends approval of the site plan prepared by BOSTON SURVEY PLS, dated 10/27/22 and architectural plans prepared by EvB DESIGN, dated 10/27/22, 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 Geller 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 objection 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. He then added that the additional FAR appears to comply with Section 5.22.3.B.1.C of the Zoning By-Law.

In deliberation, Board Member Wishinsky stated that the Petitioners' proposal involves relatively minor relief and will help the owners' family stay in Town as their family grows. He added that he appreciates that the abutters are supportive of this project and it appears to fit the criteria under **Section 9.05** of the By-Law. He stated that he will be voting in favor of the requested relief.

Board Member Oge stated that he agreed and that we should encourage families who need more living space to add additions to their existing homes, rather than demolishing. He stated he will be voting in favor of granting the requested relief.

Chair Geller stated he agreed with his fellow Board Members and is in favor of granting the requested relief.

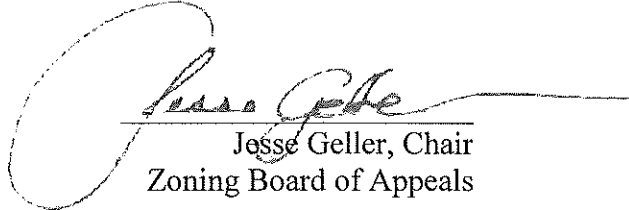
The Board then determined, by unanimous vote, to grant the requested Special Permits and that the Petitioners have satisfied the requirements necessary for relief under **Sections 5.09.2.J, 5.22.3.B.1.C, and 8.02** of the Zoning By-Law. In addition, the Board made the following specific findings under 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 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: 5/23/2023

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals