



BOARD OF APPEALS
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Lark Palermo

Town of Brookline Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2023-00007
69 RANDOLPH ROAD

Petitioners, Arthur J. Bowman and Stephen Morrison applied to the Building Commissioner for permission to construct an addition at the rear of a single-family dwelling. The application was denied, and an administrative 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 30, 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 16, 2023, and March 23, 2023, in the *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, March 30, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/4296elh>

Petitioner: James Stephen Morrison and Arthur J. Bowman, III

Address: 69 Randolph Road

Subject: Appeal from the denial of the issuance of the building permit and in the alternative request for a finding of no substantial detriment under MGL ch. 40A Section 6

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/3902>

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: 3/16/2023 & 3/23/2023

On March 30, 2023, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Randolph Meiklejohn and Wadner Oge. The case was presented by the attorney for the Petitioner, Robert Allen, Jr., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance were James Stephen Morrison and Arthur J. Bowman, the Petitioners, and Chris Johns, the project architect, Thoughtcraft Architects, LLC, 75 Commercial Street, Boston, Massachusetts.

Zoning Board of Appeals Chair Schneider called the hearing to order at 7:00 pm. Chair Schneider 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 Petitioners. Attorney Allen stated that 69 Randolph is a single-family home built in 1920 and located in the S-10 zoning district. He continued that the neighborhood is mostly single-family homes of similar size, with many being in the same “colonial revival” style as 69 Randolph Road. Attorney Allen then stated that the existing home at 69 Randolph is a Georgian Revival and has maintained its street presence over the last 100 years, despite many of its rooms and the kitchen being much smaller and darker than those in modern

homes. He noted that one of the major goals of the project had been to maintain the building's existing façade while making the necessary interior modifications.

Attorney Allen then stated that the project had not triggered the partial-demolition by-law, a fact that he considered evidence of the proposal's modest nature. He continued that, by constructing a rear addition to the home and adding windows, the proposal would substantially improve the home's circulation and increase the availability of natural light. Attorney Allen noted that the proposal would add 394 square feet, increasing square footage by 5% and the FAR from 0.54 to 0.57.

Attorney Allen then stated that the present matter was an appeal from the Building Commissioner's denial of the building permit application. Attorney Allen opined that case law regarding the provisions of M.G.L. Ch. 40A Section 6, including the Deadrick line of cases, made it clear that some small-scale projects may, as a matter of law, proceed as of right as long as the proposal does not change the "nature" of the nonconformity.

Attorney Allen then stated that the existing structure, having been built in 1920, was a preexisting nonconforming structure, because it was in existence at the time the zoning by-laws were adopted. He continued that the existing single-family structure, therefore, was entitled to the protections afforded to single and 2-family homes by M.G.L. Ch. 40A Section 6. Attorney Allen noted that the existing structure's FAR of 0.54 is a preexisting nonconformity, as the maximum allowed in the S-10 district is 0.35. He then stated that the project, in essence, constituted a 400 square-foot addition. Attorney Allen described the proposal as a "small scale" project, which would allow the Building Commissioner to issue the building permit without a finding of no substantial detriment from the Board of Appeals.

Chair Schneider then clarified that Attorney Allen was requesting that the Board find, of its own accord, that this project was of the sort considered "small-scale" by the court in Bellalta.

Attorney Allen responded that he was asking for such a finding and added that the court in Bellalta had considered dormers, porches, sunrooms, and two-car garages to be small-scale. He continued that the latter two of these options were unlikely to be under 400 square feet, as was the present project, and that the request was to direct the Building Commissioner to issue the permit by right. Attorney Allen further stated that, in the alternative, he requests a finding that the modification of the preexisting-nonconforming FAR is not substantially more detrimental to the neighborhood than the existing nonconformity under M.G.L. Ch. 40A Section 6.

The Board discussed the request and Chair Schneider stated that the while the Board lacked authorization to determine that the project was a “small scale project” that did not require zoning relief, it was willing consider the request pursuant to M.G.L. 40A, Section 6.

Attorney Allen noted that the project would not create any new nonconformities, then stated that the Board had previously used the Special Permit requirements of **Section 9.05** to determine whether a change to a preexisting nonconformity would constitute substantial detriment to the neighborhood. Attorney Allen then stated the following: 1) Specific site is an appropriate location for such use: The property is located in a residential neighborhood and the addition will maintain this use. 2) Use will not adversely affect the neighborhood: The house is located on an oversized lot and the addition will not change the streetscape of the neighborhood. Four neighbors have written in support, and no concerns were raised by any of the twelve total neighbors contacted about the proposal. 3) There will be 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 of the proposed use: 5) There will be no effect on the supply on housing available for low and moderate income people.

Board Member Oge stated that he found the design to be beautiful, adding that he was appreciative of the addition’s location at the rear of the home, where it was unlikely to have any

detrimental effect on the neighborhood. He concluded by stating that he would be in favor of making the requested finding.

Chair Schneider then asked Madison Anthony, the Planning and Zoning Coordinator, whether there was a Planning Board report for the present matter, in light of its status as an administrative appeal. Ms. Anthony noted that there was no Planning Board report.

Chair Schneider then called upon Paul Campbell, the Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department had no objection to the proposal.

Chair Schneider then called for public comments in favor of or against the proposal. No public comments were made.

The Board then deliberated. Chair Schneider stated that Board Member Oge's comments had been noted as in favor of making the requested finding under Chapter 40A, Section 6.

Board Member Meiklejohn stated that he was in favor of the modest nature of the proposal. He continued that he was pleased to see that the existing home would be preserved. Board Member Meiklejohn further stated that the increased FAR in the proposal was modest and that he would vote in favor of granting the request.

Chair Schneider then stated that, like Board Member Meiklejohn, she appreciated the modest nature of the proposal and the minor effect that the addition would have on the existing home and the rest of the neighborhood. She continued that she found the finding of no substantial detriment to be an easy one. Chair Schneider then stated that she would also vote in favor of the requested relief.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding of no substantial detriment under M.G.L. Ch. 40A, Section 6 and to allow for the proposed addition to be constructed.

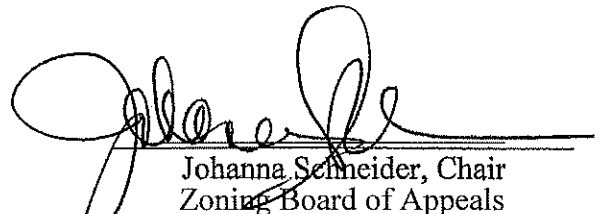
The Board also made the following specific findings under Section 9.05 based on the evidence submitted at the hearing and the Board's deliberation:

- 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, with architectural plans by Thoughtcrafts Architects, dated March 18, 2023, as read into the record by Attorney Allen at the Board of Appeals hearing:

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.

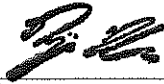
Unanimous Decision of
The Board of Appeals



Johanna Schneider, Chair
Zoning Board of Appeals

Filing Date: 5/25/2023

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals