



Town of Brookline Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0055
36 OSBORNE ROAD

Petitioner Michael Courtney applied to the Building Commissioner for permission to construct a rear addition to create a new dwelling unit at 36 Osborne 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 April 27, 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 April 13, 2023, & April 20, 2023, in the Herald, 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, April 27, 2023

Location: Virtual Hearing

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

Petitioner: Michael Courtney

Address: 36 Osbourne Road

Subject: Make changes to the exterior of existing building and add large addition to rear

Nature of Action/Relief:

§4.07 – TABLE OF USE REGULATIONS, USE #05;

§5.05 – CONVERSIONS;§5.09.2.N – DESIGN REVIEW

§5.60 - SIDE YARD REQUIREMENTS;§5.70 - REAR YARD REQUIREMENTS;§5.91 - MINIMUM USABLE OPEN SPACE;§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://www.brooklinema.gov/DocumentCenter/Index/4064>

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: 4/13/2023 & 4/20/2023

On April 27, 2023, the Zoning Board of Appeals held a virtual 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., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was the Petitioner and the project architect, Dennis Greenwood, Sousa Design Architects, 81 Boylston Street, Brookline, Massachusetts.

Zoning Board of Appeals Chair Schneider called the virtual 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 the Petitioners. Attorney Allen stated that 36 Osborne Road is an existing single-family home in the T-5 Zoning district and is also in the Graffam-McKay Local Historic District. He stated that the proposal is to create a two-family dwelling by constructing an addition to the rear of the existing home. Attorney Allen stated the proposal

underwent substantial review by the Preservation Commission that began in November of 2022. He noted that the Preservation Commission approved the proposed project. He stated that the proposed design successfully adds an additional housing unit to the neighborhood while preserving the existing streetscape and restores some of the original historic features of the home. Attorney Allen stated that the proposed addition is approximately 3,529 square feet and noted that approximately half of that square footage is located in the basement; four parking spaces would be provided and there would be a significant increase in the impervious and open space areas, as the existing lot is covered almost entirely with pavement.

Mr. Greenwood presented the proposal to the Board of Appeals. Using a digital presentation, Mr. Greenwood reviewed the existing and proposed site plans and architectural floor plans and elevations of the proposal. He described the reintroduction of a front porch and described how the proposed addition complements the existing Queen Anne style home.

Attorney Allen then reviewed the requested zoning relief. He stated that a special permit is sought under **Table 4.07, Use #04A** for the proposed two-family use; special permit relief is also sought to waive the provisions of **Section 6.04.5.C.2** for the driveway setback and noted the setback if approximately 1.3-feet at the closest point pursuant to **Section 5.43** of the Zoning By-Law. Attorney Allen stated that the existing building has a side yard setback of 3.6-feet but the proposed addition would comply with the required 10-foot side yard setback. Attorney Allen stated that the Board of Appeals may waive setback requirements if adequate counterbalancing amenities are provided. He stated that the proposed counterbalancing amenities were a landscape plan that would decrease pervious pavement and improve the aesthetics of the property. In addition, Attorney Allen stated that the Petitioner will also preserve the existing structure and restore a historic porch along the front façade. With respect to the usable open space, Attorney Allen stated

that there currently is no usable open space due to the lot being paved over. The proposed addition would now comply with the 30% usable open space requirement.

Upon inquiry from Board Member Meiklejohn, Attorney Allen stated that the areas that are not paved cannot be counted towards the usable open space, because they do not have the minimum 15-foot dimension.

Attorney Allen then reviewed the Special Permit Standards as enumerated in Section 9.05, stating the following: 1) Specific site is an appropriate location for such use: The proposed two-family use is allowed and is an appropriate use in the T-5 Zoning District. 2) Use will not adversely affect the neighborhood: The proposed addition is modest in size and no new shadow or privacy impacts are anticipated. The LHD standards have also been met after over a year of review with the Preservation Commission and the Planning Board. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: The proposal will use an existing curb cut and one curb cut will serve both units. 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use: Adequate and appropriate facilities will 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 create an additional housing unit.

Chair Schneider then called for public comments in support of or in opposition to the Proposal. No comments were submitted and no one requested to speak.

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

FINDINGS

§4.07 – TABLE OF USE REGULATIONS, USE #05

§5.09.2.N – DESIGN REVIEW

§5.60 - SIDE YARD REQUIREMENTS

§5.70 – REAR YARD REQUIREMENTS

§5.91 - MINIMUM USABLE OPEN SPACE

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

§8.02 - ALTERATION OR EXTENSION

ZBL §8.02 - Alteration or Extension - Pre-Existing Non-Conformities: Side Yard Setbacks, Front Yard Setbacks and Height Maximum, Usable Open Space

| ZONING: T-5 | Requirements | Existing Conditions | Proposed Conditions | Relief Required |
|---|---------------------|--------------------------------|--------------------------------|---|
| Usable Open Space (30% of GFA) | 2,369.4 sf | 0 | 2,060 sf | <u>Special Permit</u> ¹ |
| Side Yard Setback (Main House) | 10' | 3.6' | 3.6' | <u>Special Permit</u> ¹ |
| Side Yard Setback (Driveway) | 5' | 0 | 1' – 3" | <u>Special Permit</u> ¹ |

¹ 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.

§4.07 – TABLE OF USE REGULATIONS, USE #5: Attached dwelling occupied by not more than one family in each unit between side walls is allowed by special permit in T Districts, provided that no row of such units shall consist of more than two such units.

~~**§5.09.2.N – DESIGN REVIEW:**~~ Plans updated during the Preservation review process are now compliant since the basement is being finished.

§5.60 - SIDE YARD REQUIREMENTS: While the existing structure is pre-existing nonconforming, the attached structure is compliant.

~~**§5.70 – REAR YARD REQUIREMENTS:**~~ Plans updated during the Preservation review process are now compliant.

Section 8.02, Alteration or Extension: A special permit may be granted for Alterations or Extensions of a Non-conforming Structure.

PLANNING DEPARTMENT STAFF COMMENTS

Ms. Anthony stated that the Planning Department Staff is pleased with the addition of one more unit to this property, increasing the housing supply in a central area of Brookline. She added

that despite the fact that the final structure will be larger than the existing houses at Osborne Road, 36 Osborne Road is one of the largest lots on the street. Ms. Anthony further stated that the proposed addition is completely positioned at the rear with limited visibility to the street and complies with the required setbacks; the addition will not be imposing over the historical structure since it will have a lower roofline and higher setbacks than the main house. She stated that the significant increase in FAR is in part influenced by the basement which will be finished and the existing paved area of the driveway will be significantly reduced, making space for landscape. She added that staff is aware of the several changes made during the Preservation design review process which reduced the zoning relief being requested.

PLANNING BOARD COMMENTS

Ms. Anthony stated that the Planning Board is supportive of this proposal and added that the Board is pleased that the existing building is being preserved and feels that the addition is well designed and made great improvements during the Preservation Review process. She noted that the Board believes the addition would be aesthetically and functionally better with a steeper sloped roof, the addition of a canopy over the entrance, and a decorative gable to integrate the addition with the existing structure. Nevertheless, Ms. Anthony stated, the Board understands the property is located in a Local Historic District and the Preservation Commission may not be supportive of some of the suggestions.

Ms. Anthony therefore stated that the Planning Board recommends approval of the site plans by SCOTT M. CERRATO, PLS, dated February 14, 2023, and architectural plans prepared by SOUSA DESIGN ARCHITECTS, dated February 14, 2023, 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 or designee 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 Schneider then called upon Deputy Building Commissioner Campbell 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 Petitioners to ensure conformance with the Board's decision and all applicable building codes.

Upon inquiry from Board Member Meiklejohn regarding movement of vehicles at the site, Mr. Campbell stated that the section of the by-law that requires cars not be backed out of driveways does not apply to parking lots with six or fewer parking spaces.

In deliberation, Chair Schneider stated that she thought it was a good project and appreciated the effort to work with the Preservation Commission and Planning Board to find a compromise. She added that the project was a good example of adding an additional unit of housing while also preserving a historic structure. She stated that **Section 9.05** was met and would be in support of the requested zoning relief. Board Member Meiklejohn concurred and stated that the project was well done and added that he appreciated the effort to preserve the character of the street. Mr. Meiklejohn noted that the project would comply for the open space requirements based on the new construction and added that the standards under **Section 9.05** were satisfactorily met. Board member Oge concurred.

The Board determined, by unanimous vote that based on the information presented by the Petitioner, the proposal met the requirements for a special permit under **Section 4.07**, Table of Use

Regulations, Use #04 to allow a two-family dwelling. The Board of Appeals also voted to grant a special permit to waive the setback requirement for parking under Section 6.04.5.c.2 pursuant to Section 5.43 and found that the proposed counterbalancing amenities were sufficient.

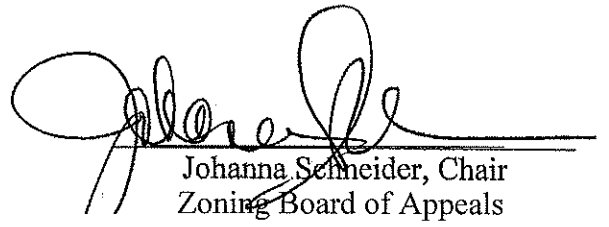
In addition, the Board made the following specific findings under Section 9.05 based on the evidence submitted at the hearing and the Board's deliberation:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not 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 or designee for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape 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.

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