



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

# *Town of Brookline*

## *Massachusetts*

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**Benjamin Kaufman, Clerk**

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JUN 22 '23 AM 10:28

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-00079  
161 HYSLOP ROAD

Petitioners, Nicole and Paul Lipson applied to the Building Commissioner for permission to alter the existing dwelling to construct exterior additions at the rear of the home. 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 May 25, 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 May 11, 2023, & May 18, 2023, in the Herald, a newspaper published 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, May 25, 2023**

**Location: Virtual Hearing**

**Virtual Registration Link: <https://bit.ly/3nJi7PM>**

**Petitioner: PAUL A & NICOLE G LIPSON**

**Address:** 161 Hyslop Road

**Subject:** Alter existing dwelling to construct exterior additions at rear of home

**Nature of Action/Relief:**

§5.20 - FLOOR AREA RATIO;§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS;§5.52 - FENCES AND TERRACES IN FRONT YARDS;§5.71 - PROJECTIONS INTO REAR YARDS;§6.04.5.C.3 - DESIGN OF ALL OFFSTREET PARKING FACILITIES; §8.02 - ALTERATION OR EXTENSION

***Plans and submissions may be viewed online at***

<https://www.brooklinema.gov/DocumentCenter/Index/4159>

***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: 5/11/2023 & 5/18/2023**

On May 25, 2023, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing was the Chair Jesse Geller and Board Members Randolph Meiklejohn and Saul Feldman. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, First Floor, Brookline, Massachusetts. Also in attendance was the project architect, John Gasset, Shope Reno Wharton, 18 Marshall Street, Suite 114, South Norwalk, Connecticut, and the Petitioners, Nicole and Paul Lipson.

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 Dopazo Gilbert waived a reading of the published notice.

Attorney Dopazo Gilbert presented the case for the Petitioners. Attorney Dopazo Gilbert stated that the single-family home located at 161 Hyslop Road is in an S-25 Zoning District and that the Petitioners are proposing three modest additions to the home that add approximately 423 square feet. In terms of the design, she stated that the details had been reviewed by the Preservation Commission and added that the Commission unanimously agreed to lift the stay of demolition on May 9, 2023. She stated that the Planning Board was also unanimously supportive and noted that

one board member commented that it was a “small thoughtful addition to a beautiful house” and she added Planning Board Chair Heikin commented that he found “no issues with the modifications, it's a thoughtful interior and exterior update.” Attorney Dopazo Gilbert noted that the Petitioners had also reached out to their neighbors, and no opposition had been expressed, with one neighbor submitting a letter of support.

Attorney Dopazo Gilbert stated that the Petitioner is requesting a finding under M.G.L. c. 40A, Section 6, as interpreted by Deadrick referenced below, to allow for the increase of the preexisting nonconforming FAR and rear yard setback. She noted that no new nonconformities would be created and there would be no substantial detriment to the neighborhood due to the 423 square foot increase.

John Gassett, the project architect, then presented the proposed drawings. The Board of Appeals had no questions for the architect.

Attorney Dopazo Gilbert reviewed the requested zoning relief, stating that a finding under M.G.L. c. 40A, Section 6 is sought to allow for the increase of the preexisting nonconforming FAR and rear yard setback. She continued that 161 Hyslop Road has a preexisting nonconforming FAR of .34, where there is an allowed maximum of .2. Attorney Dopazo Gilbert added that the 423 square foot increase would increase the FAR to a .35. Attorney Dopazo Gilbert stated that a finding is also sought for a preexisting nonconforming rear yard setback. She stated that the required rear yard setback is 50-feet and the existing condition for the structure is 18’9”. She stated the proposed bay window is setback 29.1-feet and the proposed basement addition has a rear yard setback of 35.9-feet. In addition, Attorney Dopazo Gilbert stated that relief is sought under Section 6 for the driveway. She stated that the required rear yard setback is 5-feet and the existing condition ranges from approximately 3-feet to 4-feet. She noted that the driveway will remain mostly the same, but will be slightly widened along a portion.

Attorney Dopazo Gilbert stated that under Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539 (2014)), the Board of Appeals may allow for the extension of a preexisting nonconformity as long as no new nonconformities are created and there is no substantial detriment to the neighborhood. She argued that the minor additions will not create any new nonconformity and there will be no substantial detriment to the neighborhood. Attorney Dopazo Gilbert cited the small size of the addition, lack of neighbor opposition and letter of support and support of the Planning Board and Preservation Commission as evidence of the lack of detriment as a result of the proposal.

Attorney Dopazo Gilbert noted that the Board of Appeals has used the special permit requirements enumerated in **Section 9.05** of the Zoning By-Law to review whether substantial detriment is created in previous cases, stating 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 allowed use. 2) Use will not adversely affect the neighborhood: There will be no change to the use and the proposed addition will not adversely affect the neighborhood. 3) 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 and proposed use. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Upon inquiry from Board Member Meiklejohn, Attorney Dopazo Gilbert clarified that the bay projection does not meet the standards under **Section 5.71** of the Zoning By-Law and therefore no new non-conformity is created. Deputy Commissioner Campbell confirmed that no new non-conformity exists as a result of the projection. Mr. Campbell explained that the proposed bay window exceeds the maximum one-third width of the wall and so is thus not considered a projection under the Zoning By-Law.

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

No comments were submitted.

Chair Geller then called upon 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
- ~~§5.52 - FENCES AND TERRACES IN FRONT YARDS~~
- §5.71 - PROJECTIONS INTO REAR YARDS
- §6.04.5.C.3 – DESIGN OF ALL OFF-STREET PARKING FACILITIES
- §8.02 - ALTERATION OR EXTENSION

<b>ZONING: S-25</b>	<b>Requirements/Allowed</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>Floor Area Ratio</b>	0.20	0.34 (9,066 sq. ft)	0.35 (9,489 sq. ft)	<b><u>Special Permit</u></b> <sup>1</sup>
<b>Minimum Rear Yard Setback</b>	50'	18'9"	18'9"	<b><u>No Change</u></b> <sup>1</sup>
<b>Fences &amp; Terraces in Front Yards</b>	6' height max.	N/A	<6'	<b><u>Complies</u></b> <sup>2</sup>
<b>Projections into Rear Yards</b>	33.3'	N/A	29.1'	<b><u>Special Permit</u></b> <sup>3</sup>
<b>Driveway Setback</b>	5'	3.8'	3.8'	<b><u>No Change</u></b> <sup>4</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.

<sup>2</sup> **§ 5.52 FENCES AND TERRACES IN FRONT YARDS** Subject to § 5.45, the provisions of § 5.50 shall not apply to front fences, hedges, or walls not over six feet high above the natural grade in the required front yard nor to terraces, steps, uncovered porches, or other similar features not over three feet high above the level of the floor of the ground story. Piers, pilasters, columns, and posts not over sixteen inches square as supports may exceed the height limitation by not more than twelve inches. Uncovered porches or decks may not extend into the yard more than fifty percent of the required yard setback but in no case closer than six feet to the property line.

<sup>3</sup> **§5.71 PROJECTIONS INTO REAR YARDS** Bays and porches, balconies, open fire escapes, chimneys and flues, all of which occupy not over one-third the length of the rear wall, may project into a required side yard not more than one-third of its width and not more than four feet in any case. Belt courses, fins, columns, leaders, sills, pilasters, lintels and ornamental features may project not more than one foot, and cornices and gutters not more than two feet, over a required rear yard. No such projection shall come within three feet of any side lot line. In no case can projections be within 10 feet of a rear lot line or within eight feet of an accessory building.

<sup>4</sup> **§6.04.5.C.3 DESIGN OF ALL OFF-STREET PARKING FACILITIES** In S, SC, T, F, and M-0.5 Districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back in accordance with the following requirements, and such setback area shall be landscaped and continuously maintained substantially in accordance with the original approved plan: from the side and rear lot lines in the rear yard, a minimum of five feet. Such setback shall be seven feet where two feet of setback area is included in minimum stall depth as provided in paragraph 2., subparagraph b. of this section: Standard stall depth shall be at least 18 feet for angle parking and 21 feet for parallel parking; compact stall depth shall be 16 feet for angle parking and 18 feet for parallel parking. Such dimensions may include no more than two feet of any landscaped setback area adjacent to the front or rear of a stall used for bumper overhang.

#### **PLANNING STAFF COMMENTS**

Ms. Anthony stated that the proposed additions will provide the residents with additional living space. She added that although they increase the non-conformity of the FAR, they are relatively minor increases and will not be detrimental to the surrounding neighborhood. The changes to the yard will be an aesthetic improvement. The subject lot and surrounding lots are all fairly large, meaning the changes will likely have little impact on the surrounding houses.

#### **PLANNING BOARD COMMENTS**

Ms. Anthony stated that the Planning Board is supportive of this proposal. She noted that the Board agrees the additions are fairly modest and unlikely to be detrimental to the neighborhood and that the additions are thoughtful and well done.

Ms. Anthony therefore stated that the Planning Board recommends approval of the site plan prepared by GOLDSMITH PREST & RINGWALL INC, PLS, dated 10/6/22 and architectural plans prepared by SHOPE RENO WHARTON, dated 10/10/22, subject to the following conditions<sup>1</sup>:

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<sup>1</sup> The drawing set was re-issued and dated April 14, 2023.

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 then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

The Board then deliberated. Board Member Meiklejohn stated that the proposal was nicely done and concurred with Attorney Dopazo Gilbert's analysis that the proposal was modest. He noted that the modifications focus on the rear and side of the property and would not be substantially detrimental to the neighborhood. Board Member Feldman concurred. Chair Geller stated that he agreed with Board member Meiklejohn and was satisfied, to the extent necessary, that the standards under M.G.L. Ch. 40A, Section 6 were met. He noted that it was a relatively modest proposal.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6 allowing an alteration or increase to preexisting nonconforming conditions from application of the requirements as established under **Section 6.04.5.C.3** of the Zoning By-Law for the driveway setback, Section **5.70** of the Zoning By-Law for the rear yard requirements, and **5.20** of the Zoning By-Law to permit an increase in the preexisting nonconforming FAR from a 0.34 to a 0.35.

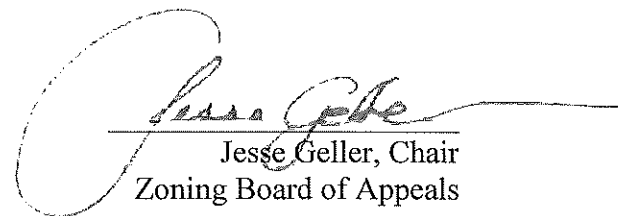
In addition, the Board made the following specific findings under **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberation:

- 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: 6/22/2023

A True Copy  
ATTEST:





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Benjamin Kaufman  
Clerk, Board of Appeals