



Town of Brookline

Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2023-000023
39 LAGRANGE STREET

Petitioners Sumura Lopez and Roni Lopez applied to the Building Commissioner for permission to alter a single-family dwelling to extend the living space on the first floor. 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 August 3, 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 Petitioners, 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 July 20, 2023 and July 27, 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, August 3, 2023

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3D1gGuQ>

Petitioner: Sumara Lopez & Roni Lopez

Address: 39 Lagrange Road

Subject: Alter single family dwelling to extend living room space, build deck, and make modifications to front of the house

Nature of Action/Relief:

§5.20 - FLOOR AREA RATIO

§5.22.3.B.1.B – 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/4419>

Interested persons may provide comments at the public hearing or by submitting written comments by email to manthonyx@brooklinema.gov.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

Publish: 7/20/2023 & 7/27/2023

On August 3, 2023, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Paul Bell and Saul Feldman. The case was presented by the general contractor, Fabio Oliveira, Peniel Home Improvement, Inc., 18 Old Birch Street, Franklin, MA 02038 and the project architect, Irina Beaufort, RAV & Associates, Inc., 21 Highland Avenue, Needham, MA 02494. The Petitioners, Sumara Lopez and Roni Lopez, 39 Lagrange Street, Brookline, Massachusetts, were also in attendance.

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. Ms. Anthony read the published notice at the request of the applicant.

Architect Irina Beaufort presented the case for the Petitioners. Ms. Beaufort stated that the property at 39 Lagrange Street is located in the S-15 Zoning District and has a maximum Floor Area Ratio (FAR) of .25, an existing FAR of .27 and a proposed FAR of .29. Ms. Beaufort cited MGL Chapter 40A, Section 6, which states “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” as the basis for the requested relief.

Mr. Oliveria briefly discussed the proposed improvements and stated that there will be no changes visible from the street. Ms. Beaufort described the addition as in the rear of the building, not visible from the street, and located only on the first floor as well as a deck accessed from the first floor and a covered patio. On inquiry from Mr. Feldman, Mr. Oliveria confirmed that the garage would remain a one-car garage.

Chair Geller called for public comments in support of or opposition to the Petition. Ms. Anthony responded that no public comments were submitted.

Chair Geller called upon Ms. Anthony to deliver the report on behalf of the Planning Department. Madison Anthony, Planner and Zoning Coordinator, delivered the findings of the Planning Board.

FINDINGS

§5.20 - FLOOR AREA RATIO

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

§8.02 - ALTERATION OR EXTENSION

ZONING: S-15	Requirements	Existing Conditions	Proposed Conditions	Relief Required
FAR	.25 3,957.5 sq. ft	.27 4,308 sq. ft	.29 4,614 sq. ft	<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.

Section 8.02 – Alterations or Extensions of a Non-conforming Structure

PLANNING STAFF COMMENTS

The Planning Department Staff has no objection to the proposal. The addition is relatively small and positioned at the rear of the house. It will be designed to match the existing materials. Extending the existing nonconforming FAR should have no negative impact on the surrounding neighborhood. After the proposed additions, the property would still comply with all the other dimensional requirements.

PLANNING BOARD COMMENTS

The Planning Board is supportive of the proposal and believes that extending the pre-existing nonconforming FAR should have no negative impacts on the neighborhood. The Board appreciates the modifications made to address previous concerns regarding materials and accuracy of the drawings. The Board found the drawings clearer than before and the use of hardie plank siding for the addition makes more sense than the initially proposed brickwork.

The Planning Board recommends approval of the site plan by MATTHEW BELSKI JR., dated January 11, 2023 and architectural plans prepared by RAV & ASSOCIATES INC, PE, dated June 27, 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 of the garage, 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 of the garage 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.

Ms. Anthony read into the record a correction to change the word "garage" to "addition" in Conditions No. 1 and No. 2.

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 the proposal meets the requirements under **Section 9.05** of the Zoning By-Law (which is used by the Board to interpret whether the proposed expansion is substantially more detrimental to the neighborhood) for the following reasons: the specific site is an appropriate location for such a use, structure, or condition; the use as developed 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 development will not have any effect on the supply of housing available for low- and moderate-income people. Mr. Campbell 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.

In deliberation, Saul Feldman asked the applicant to clarify the FAR increase. Ms. Beaufort clarified that the gross floor area would increase by 306 square feet as shown on the plans. Mr. Feldman concluded the increase was minimal. Chair Geller stated that the proposal meets the requirements for relief and continued that the impacts of the proposal are not substantially more detrimental to the neighborhood than the existing condition and that he agreed with the findings stated by the Building Commissioner. Mr. Bell agreed with Mr. Feldman and Mr. Geller.

The Board determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6 allowing for an alteration or increase in the preexisting nonconforming conditions in violation of Section 5.20 of the Zoning By-Law to permit an increase in the preexisting nonconforming FAR from a 0.27 to a 0.29.

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 of the addition, 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 of the addition 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, Chairman

Filing Date:
 AUG 17 2023

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals