



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Geller  
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Lark Jurev Palermo

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Benjamin Kaufman, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
145 MIDDLESEX ROAD  
CASE NO. ZB-2023-000039

Petitioners, John and Blair Wylie, applied to the Building Commissioner for permission to construct a small addition and extend the existing deck at the rear of a single-family 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 September 14, 2023, at 7:00 PM, virtually, as the 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 August 31, 2023 and September 7, 2023 in the Boston 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, September 14, 2023**

**Location: Virtual Hearing**

**Virtual Registration Link: <https://bit.ly/3sA24Wi>**

**Petitioner:** John & Blair Wylie

**Address:** 145 Middlesex Road

**Subject:** Construct a small addition and extend existing deck at the rear of a single-family home

**Nature of Action/Relief:**

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS §5.60 -  
SIDE YARD REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

*Plans and submissions may be viewed online at*

<https://www.brooklinema.gov/DocumentCenter/Index/4452>

*Interested persons may provide comments at the public hearing or by submitting written comments by email to [npare@brooklinema.gov](mailto:npare@brooklinema.gov).*

*Assistive Listening Devices are available upon request:*

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

**Publish: 8/31/2023 & 9/7/2023**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chair Lark Palermo and Board members Neil Wishinsky and Paul Bell. Also present at the hearing were Zoning Coordinator/Planner, Nicole Pare, and Deputy Building Commissioner, Paul Campbell.

Chair Palermo called the hearing to order at 7:00 p.m.

The case was presented by the architect for the project, Nick Landry, Design Resource Team, LLC, 546 East Broadway, Boston, MA 02127. Also present at the hearing were the Petitioners, John and Blair Wylie. Mr. Landry waived a reading of the public notice.

Mr. Landry provided a PowerPoint presentation showing the floor plan, elevations, and renderings of the proposed addition. Mr. Landry stated the proposed 125 square-foot addition at the rear of the home would increase the existing non-conforming FAR from .34 to .35. The required FAR for the site is .30. He explained that the required side yard setback is 10 feet, the existing side yard setback is 9.9 feet, and the proposed side yard setback is 9.9 feet, and that the

proposed addition at the rear of the property will not increase the level of nonconformity of the side yard setback from its existing condition. He explained that because the home is older the kitchen is small and that the intent is to create a dining space for the family. He then stated that IPE wood decking and a new black steel gridded rail system is proposed for the expanded deck which will connect to the new addition. There is no change to the front of the home. He stated that the windows of the addition will match the existing windows of the home.

The denial letter from Deputy Building Commissioner, Paul Campbell, cited Zoning Bylaw Sections §5.20, §5.43, §5.60, and §8.02 as needing relief.

Chair Palermo asked members of the Board if they had any questions for Mr. Landry. Mr. Bell asked the architect to elaborate on the requested relief. Mr. Landry clarified the increase in FAR is minor, increasing from an existing FAR of .34 to a proposed FAR of .35, and that a small portion of the proposed addition will encroach into the 10-foot side yard setback required, therefore, relief is requested pursuant to Zoning Bylaw Section §5.43.

Chair Palermo asked if anyone present wished to speak in support or opposition to the proposal. No one was present to speak in support or opposition.

Chair Palermo then called upon Nicole Pare, Zoning Coordinator/Planner for the Town of Brookline, to deliver the findings of the Planning Board. Ms. Pare reported the following:

**FINDINGS**

**§5.20 - FLOOR AREA RATIO**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§8.02 - ALTERATION OR EXTENSION**

**ZBL §8.02 - Alteration or Extension - Pre-Existing Non Conformities:**

**FAR Maximum, Side Yard Setbacks, Front Yard Setbacks and Height Maximum**

<b>ZONING: S-10</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>FAR</b>	<b>0.30</b>	<b>0.34</b>	<b>0.35</b>	<b>Special Permit<sup>1</sup></b>
<b>Side Yard Setback</b>	<b>10 feet</b>	<b>9.9 feet</b>	<b>9.9 feet</b>	<b>Special Permit<sup>1</sup></b>

<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.

**Section 8.02, Alteration or Extension:** A special permit is required for the alteration of a non-conforming structure.

**PLANNING DEPARTMENT COMMENTS**

Planning Staff is supportive of the proposal to add a one-story addition to provide an enlarged kitchen for the single-family home and the reconstruction and enlargement of the deck. The structure has pre-existing non-conforming side yard setbacks and the addition will be built to respect those setbacks, the enlargement of the deck is minimal, and all work is proposed in the rear yard and will not be visible from the street. Therefore, staff does not feel the proposal will be significantly detrimental to the neighborhood.

**PLANNING BOARD COMMENTS**

The Planning Board is supportive of this proposal. The Board finds the addition to be fairly modest. The relief needed is minor and will only slightly intensify the pre-existing nonconforming FAR and side yard setback. This change is unlikely to be significantly detrimental to the neighborhood.

**The Planning Board recommends approval of the site plan by SPRUHAN ENGINEERING, P.C., dated June 1, 2023 and architectural plans by DESIGN RESOURCE TEAM, LLC, dated June 20, 2023, subject 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 Palermo then called upon Paul Campbell, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department had no objections to the relief sought under the zoning bylaws for the project and that the Building Department will work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In deliberation, Board Member Neil Wishinsky stated that the proposal was a very nice project, the relief required was modest and would increase the livability of the home. He stated that the Board needs to make a finding under MGL 40A Section 6 for this project. He did not believe the project would be any more detrimental to the neighborhood than the existing structure. Board Member Paul Bell agreed with Mr. Wishinsky that the project was not substantially more detrimental to the neighborhood than the existing structure, therefore, the project meets the requirements of MGL 40A Section 6. Furthermore, Mr. Bell stated that the findings of Zoning Bylaw Section 9.05 could be made. Chair Palermo stated she supports the issuance of a special permit addressing the very small increase in FAR and side yard setback requirement.

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.

The Board then voted unanimously to approve 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

SEP 21 2023



Lark Jurev Palermo, Chair

Filing Date \_\_\_\_\_

A True Copy

ATTEST:



Ben Kaufman

Clerk, Board of Appeals