



# *Town of Brookline Massachusetts*

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

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Benjamin Kaufman, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2023-00036  
202 MASON TERRACE

Petitioners, Yuan Zhao and Anne E. Gao, applied to the Building Commissioner for permission to demolish a single-family dwelling and detached garage and to construct a new single-family dwelling with an attached garage. 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 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 August 31, 2023, and September 7, 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, September 14, 2023**

**Location: Virtual Hearing**

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

**Petitioner:** Yuan Zhao & Anne E. Gao

**Address:** 202 Mason Terrace

**Subject:** Demolish a single-family dwelling and detached garage and construct a single-family dwelling with attached garage

**Nature of Action/Relief:**

§5.09.N – DESIGN REVIEW (future build-out)

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 – PROJECTIONS INTO FRONT YARDS

*Plans and submissions may be viewed online at*

<https://www.brooklinema.gov/DocumentCenter/Index/4479>

*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**

On September 14, 2023, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Lark Palermo and Board Members Paul Bell and Neil Wishinsky. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was the project architect, Kent Duckham, Duckham Architecture and Interiors, 53 Central Avenue, Needham Heights, Massachusetts.

Zoning Board of Appeals Chair Palermo called the virtual hearing to order at 7:00 pm. Chair Palermo 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. She stated that 202 Mason Terrace is located in the S-7 Zoning District on a lot of 12,134 square feet. Attorney Dopazo Gilbert continued that special permit relief was required for the front yard setback of 5 feet under **Section 5.51**, as well as for a future attic and basement space under **Section 5.09.2.n**. She noted that the special permits were available through **Section 5.43**, according to which special permit

relief may be granted upon the provision of counterbalancing amenities. Attorney Dopazo Gilbert noted that counterbalancing amenities included an extensive landscaping plan as well as a tree protection plan.

Attorney Dopazo Gilbert then stated that the home at 202 Mason Terrace is not in a Local Historic District and not on the National Register nor eligible for being listed on the Register. She continued that the Preservation Commission had upheld a 12-month stay on demolition at the site which had since expired. Attorney Dopazo Gilbert added that the immediate rear abutter, Todd Shannon, 31 Jordan Road, had submitted a letter to the Zoning Board of Appeals in support of the proposal. She continued that the concerns raised by the abutter to the left, 196 Mason Terrace, would be addressed prior to construction.

Attorney Dopazo Gilbert also noted that the Petitioners proposed addressing the concerns of the abutter at 210 Mason Street regarding the protection of trees located on their property, by imposing additional conditions for the preservation and protection of the trees. She stated that the Petitioners would support a condition requiring the preparation of a tree protection plan by a certified arborist to protect three previously identified trees located on the abutter's property: a Ginko, a Walnut, and a Hemlock. In addition, the Petitioners would agree to provide 48 hours advance notice to the abutters prior to the cutting of the roots or branches of the three trees.

Attorney Dopazo Gilbert then discussed the requested zoning relief. She stated that special permit relief was required for the home's proposed front yard setback, as the proposed porch would protrude more than 3.5 feet toward the front property line. Attorney Dopazo Gilbert added that potential future basement and attic space also required special permit relief under **Section 5.09**. She further noted that the Planning Board had extensively discussed the specific findings required under **Section 5.09.2.n** and had concluded that the mass, scale, footprint, and height of the

proposed building were not substantially greater than, and the setbacks not substantially less than, those of the abutting structures or of other structures in the neighborhood. Attorney Dopazo Gilbert added that the proposed structure would, in fact, be more compliant with the zoning than the existing structure in terms of both height and front yard setback.

Kent Duckham, the project architect, then reviewed the proposed landscaping and site plans. In reliance on a digital presentation, Mr. Duckham stated that the floor area ratio required for the lot was 0.35. He noted that the proposed home was designed to comply with this FAR, but the basement and attic could be finished in the future, resulting in noncompliance. Mr. Duckham then stated that the project complies with minimum required setbacks, with the exception of the front porch, which projects 5 feet into the required front yard setback. He continued that the existing structure was built in 1923 and includes a detached garage. Mr. Duckham noted that the garage is not structurally sound. He also stated that the site is a topographically challenging one, as the elevation of the lot increases by some 30 feet from its front to the rear.

Mr. Duckham then reviewed the proposed structure, stating that the first floor and roof would be lower than those of the existing home. He also noted that the new garage would be situated under the home. Mr. Duckham further stated that the home will be energy code-compliant and include solar panels. He added that the home's façade would utilize brick on the front and sides. Mr. Duckham further stated that existing stairs would be replaced at the front of the house and that retaining walls would be installed at the rear of the lot. He subsequently discussed the tree management plan and the extensive landscaping plan. Mr. Duckham noted that one tree would be replanted at the rear of the property, with additional landscaping to serve as screening on all sides of the property.

Attorney Dopazo Gilbert then stated that the abutter at 210 Mason Terrace had asked the home to be moved closer to the abutter at 196 Mason Terrace. She noted that such a move was not possible for several reasons, including violation of minimum setback requirements and danger to a public street tree as well as the overall impact on the design. Mr. Duckham added that changing the location of the proposed home would be unlikely to have any additional benefit on the trees' root systems.

Board Member Bell inquired as to whether the project complies with the front setback requirement. Chair Palermo stated that the front of the house does comply with the requirement, except for the front porch, which protrudes five feet into the setback, whereas a maximum protrusion of 3.5 feet is allowed. Board Member Bell then inquired as to whether the FAR calculation included the potential basement and attic space. Attorney Dopazo Gilbert responded that the calculation does include space in the basement and attic, as the project would comply with FAR if not for those spaces. Attorney Dopazo Gilbert also added that if the spaces were converted into living space, the conversion would have to abide by the provisions of **Section 5.22**. Board Member Bell then asked whether excavation of the front slope would occur to accommodate construction of the garage. Mr. Duckham responded that the area would be graded out to accommodate the garage. Board Member Bell then inquired into what aspect of the project implicated **Section 5.09.2.n**. Attorney Dopazo Gilbert responded that the section was implicated by the potential future livable space in the attic and basement.

Board Member Wishinsky inquired into what aspects of the home would be handicap accessible. Mr. Duckham responded that an elevator was proposed at the interior of the home. Board Member Wishinsky then inquired as to whether all other requirements of the Zoning By-laws were satisfied. Mr. Duckham confirmed that this was the case.

Chair Palermo then inquired into aspects of the project relating to handicap accessibility and energy efficiency. Mr. Duckham responded that the project would include an interior elevator, allowing elderly residents to avoid the stairs needed to access the front door. Mr. Duckham also identified the proposed location of solar panels on the roof. Chair Palermo inquired as to what levels of the home the elevator reached. Mr. Duckham responded that the elevator would go from the basement to the second floor of the home.

Chair Palermo then called for public comments in support of, or in opposition to, the proposal.

Attorney Scott Gladstone, representing Orin and Nama Beat-Arie, 210 Mason Terrace, spoke in opposition. Attorney Gladstone sought the input of Paul Campbell, the Deputy Building Commissioner, as to the imposition of additional conditions relating to the protection of three trees at 210 Mason Terrace. Mr. Campbell stated that he was unsure as to who would approve the specified tree protection plan prior to the issuance of a building permit and who would enforce the 48-hour minimum notice period prior to the cutting of any trees. Attorney Dopazo Gilbert responded that the tree protection plan, which would have to be created and submitted by a certified arborist, would only need approval from the Building Department and the specific items to be addressed in the plan would be outlined in the condition. She further stated that the notice period could be enforced by copying members of the Building Department in relevant emails, thereby ensuring that the 48-hour notice period is satisfied or an email read receipt could be provided. In response to further inquiry by Mr. Campbell, Attorney Dopazo Gilbert stated that noncompliance with the notice period could be met by notice of violation and a stop-work order, as the conditions were effectively special permit conditions. Attorney Gladstone added that under **Section 9.05.2.h**, the Zoning Board of Appeals can require provisions relating to communications between

construction liaisons and abutters as part of the conditions of a special permit. Mr. Campbell stated that in any event, he was comfortable with the imposition of the additional conditions as outlined by Attorney Dopazo Gilbert.

Attorney Gladstone further stated that he would like the conditions to include, as it relates to the identity of one of the trees, a reference to a Walnut/Butternut tree. Attorney Dopazo Gilbert assented to this change. Attorney Gladstone then stated that his clients also request that the project be located further from their property line. He continued that the Zoning By-laws allow the Zoning Board of Appeals to increase minimum setback requirements. Attorney Gladstone added that under Section 5.09.2.n, the proposal's provision of potentially livable basement and attic space meant that the Board must find that the setbacks of the structure are not substantially less than those of abutting structures and of others in the neighborhood. He also raised objections to the proposed massing, after which he offered photographs of other structures in the neighborhood.

Orin and Nama Beat-Arie, 210 Mason Terrace, spoke in opposition. They stated that they were grateful for the agreement to include tree protection conditions but that they reiterated the other concerns offered by Attorney Gladstone.

Barbara Akiba, 193 Mason Terrace, spoke in opposition. Ms. Akiba stated that she was opposed to demolishing the existing home.

David Lowe, 177 Mason Terrace, and Town Meeting Member spoke in opposition. Mr. Lowe stated that he had concerns about the massing of the proposal. He also noted concerns about available green space and the streetscape.

Chair Palermo then called upon Nicole Paré, Planner, to present the Planning Board report.

## FINDINGS

### **§5.09.N – DESIGN REVIEW (future build-out)**

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

**§5.51 – PROJECTIONS INTO FRONT YARDS**

| <b>ZONING:<br/>S-7</b>                           | <b>Requirements</b> | <b>Proposed<br/>Conditions</b> | <b>Relief Required</b>                   |
|--|---------------------|--------------------------------|--|
| <b>FAR<br/>(Future Attic/Basement)</b>           | <b>.35</b>          | <b>.40 in future</b>           | <b><u>Special Permit</u></b>             |
| <b>Front Yard Setback<br/>(Projecting Porch)</b> | <b>3.6'</b>         | <b>5'</b>                      | <b><u>Special Permit<sup>1</sup></u></b> |

<sup>1</sup> Under **Sec. 5.43**, a special permit may waive yard setbacks if counterbalancing amenities are provided. In this case, extensive new landscaping is proposed.

**PLANNING STAFF COMMENTS**

Ms. Paré stated that staff has no objection to the proposal to construct a new home at 202 Mason Terrace. She continued that the design of the house is attractive, that the garage is no longer in the front yard, and that the proposed landscaping is very extensive.

**PLANNING BOARD COMMENTS**

Ms. Paré then stated that the Planning Board is supportive of the proposal. She continued that the house and the landscape are thoughtfully designed and organized. Ms. Paré noted that despite being larger than some of the nearby houses, per section 5.09.2.n, the Planning Board believes that the massing, scale, footprint, and height of the proposed building are not substantially greater than, and setbacks are not substantially less than, those of abutting structures. She added that the Planning Board had concerns about the construction impact on nearby mature trees. She further stated that the Planning Board, therefore, recommended pruning the exposed roots to allow roots to heal and avoid fragmentation. Ms. Paré continued that it is also suggested that an arborist be onsite to manage and supervise the process to ensure trees are protected. She then stated that therefore, the Planning Board recommends approval of the site plan prepared by HANCOCK ASSOCIATES, PLS, dated May 30, 2023, and architectural plans prepared by DUCKHAM ARCHITECTURE, RA, dated July 19, 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 for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit landscaping plans, stamped and signed by a registered engineer or landscape architect, to the Assistant Director for Regulatory Planning for review and approval.
3. If the applicant chooses to convert the basement and or attic into habitable space, provisions specified under Section 5.22 shall be met.
4. 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 house 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 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 Petitioner to ensure conformance with the Board's decision and all applicable building codes.

Attorney Dopazo Gilbert then stated that Section 5.09.2.n was aimed at preventing immediate renovation of unused attic and basement spaces. Attorney Dopazo Gilbert added that no proposed ceiling met or exceeded twelve feet in height and that no side setback figures or FAR calculations had been offered to suggest that the present proposal was not consistent with the setbacks of abutting structures or those of others in the neighborhood. She further stated that the Planning Board had concluded that the requirements of Section 5.09.2.n were satisfied. Attorney Dopazo Gilbert noted that the Zoning Board of Appeals may increase the minimum side yard setback if it is necessary to protect the neighborhood as provided in Section 9.05(2).

Attorney Dopazo Gilbert then stated that she believed that the proposal met the requirements for Special Permit relief under **Section 9.05** and added the followings: 1) Specific site is an appropriate location for such use: The property is located in an S-7 district, and single-family use is allowed. 2) Use will not adversely affect the neighborhood: The new house will be smaller than the existing home both in height and in front yard setbacks. 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians. Most other homes on the street have two-car garages toward the front of their lots. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use. The project will comply with all energy and trash requirements. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people. The project proposes demolition and replacement of an existing single-family home, therefore, it will not have any effect on the supply of housing available for low- and moderate-income people.

In discussion, Board Member Bell stated that he believed the key point of discussion involved massing, scale, footprint, height, and setbacks under **Section 5.09.2.n**. He continued that the Planning Board had found that the requirements were satisfied. Board Member Bell added that **Section 5.09.2.n** was only implicated by the proposed unfinished attic and basement space. He concluded by saying that he believed the project was appropriate and met the standard of relief required.

Board Member Wishinsky agreed with Board Member Bell's focus on **Section 5.09.2.n**. Board Member Wishinsky stated that visually, the project appeared to be appropriate with the neighborhood. He also stated that the proposed landscaping plan was extensive for a single-family home. He concluded that he would vote in favor of the proposal, agreeing with the Planning Board's findings and recommendations.

Chair Palermo stated that she had recently visited the area of the proposed project. She continued that taken as a whole, the neighborhood was home to structures of similar size and setbacks when compared to the proposed project. She concluded by stating that she agreed with the findings of the Planning Board as to **Section 5.09.2.n** and that she would vote in favor of granting the requested relief.

Board Member Bell then stated that he would also vote in favor of granting the requested relief.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under Zoning By-Law **Section 5.09.2.n**, as the building's massing, footprint, and height would not be substantially greater than, and its proposed setbacks not substantially less than, those of abutting structures and of others in the neighborhood and voted to grant a special permit under **Section 5.09**. The Board also voted to grant Special Permit relief from the front yard setback requirements under **Section 5.51** pursuant to **5.43**.

In addition, the Board made the following specific findings under **Section 9.05** based on the evidence submitted at the hearing, the Planning Board's report 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 for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit landscaping plans, stamped and signed by a registered engineer or landscape architect, to the Assistant Director for Regulatory Planning for review and approval.
3. If the applicant chooses to convert the basement and or attic into habitable space, provisions specified under Section 5.22 shall be met.
4. 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 house 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.
5. Prior to receiving a building permit, the applicant shall provide a tree protection plan describing steps to be taken to mitigate the impact of construction on the root systems and branches associated with the three trees (Ginko, Walnut/Butternut (referred to as an Ash in Applicants' plans), and Hemlock) on the abutting lot at 210 Mason Terrace, including but not limited to (i) a requirement that any roots or branches, which must be cut, shall only be cut under the supervision of a certified arborist following best practices to preserve the trees; and (ii) appropriate material shall be placed on the ground, within the root zone, that in the opinion of the Applicant's arborist will protect the roots while operating any heavy equipment within the root zone of the three trees on the abutting lot at 210 Mason Terrace.
6. Prior to any cutting of roots or branches of the Ginko, Walnut/Butternut, and Hemlock on the abutting lot at 210 Mason Terrace, an agent of the owners of 202 Mason Terrace shall give notice at least 48 hours in advance to the owner of 210 Mason Terrace (Beit-Aries) of the date and time of such cutting.

Unanimous Decision of  
The Board of Appeals

SEP 21 2023

Lark Jurev Palermo

Lark Jurev Palermo, Chair  
Zoning Board of Appeals

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

A True Copy  
ATTEST:



\_\_\_\_\_  
Benjamin Kaufman  
Clerk, Board of Appeals