



Town of Brookline

Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
30 LYON ROAD
CASE NO. ZB-2023-000037

Petitioners, Nemit and Niketa Shroff, applied to the Building Commissioner for permission to connect the principal structure, a single family home, to an accessory structure, a garage, via a mudroom addition. 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: Nemit & Niketa Shroff

Address: 30 Lyon Road

Subject: Connect principal and accessory structure via mudroom addition for single-family home

Nature of Action/Relief:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.70 - REAR YARD REQUIREMENTS

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/4470>

Interested persons may provide comments at the public hearing or by submitting written comments by email to 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, Owen Thomas, Owen Thomas Architecture, 2 Old Colony Terrace, Boston MA 02125. Also present at the hearing was the Petitioner, Nemit Shroff. Mr. Thomas waived a reading of the public notice.

Mr. Shroff, 30 Lyon Road, explained that the project proposes to connect the home to the garage in order to protect the family during inclement weather, serve as a passageway between the garage and the home, and provide an enclosed trash/recycling storage area. Mr. Thomas shared a PowerPoint presentation showing the plot plan, site plan, floor plan, and elevations of the proposed mudroom. He explained that the proposed mudroom addition requires relief

pursuant to Zoning Bylaw Section 5.43 and 5.70 for relief from the setback requirement of 30 feet. He showed the location of the single-story mudroom addition, between the home and the garage. He explained that the existing cedar fence at the rear property line will shield the rear abutter from views of the new mudroom.

The denial letter from Deputy Building Commissioner, Paul Campbell cited Zoning Bylaw Sections §5.43 and §5.70 as needing relief.

Chair Palermo asked about proposed counterbalancing amenities. She explained that pursuant to Zoning Bylaw Section §5.43, counterbalancing amenities are required to mitigate any negative impacts to the neighborhood when granting a Special Permit under the section. Mr. Thomas looked to the board for input on what should be provided as a counterbalancing amenity. He explained that there are some existing bushes at the rear of the home and an existing cedar fence, and said the Petitioner could provide additional landscaping at the rear of the home. Mr. Bell stated that although it seems like a dramatic reduction in the setback requirement, the relief is required due to the fact that the garage will now be connected to the primary structure, so it's considered part of the primary structure and subject to setback requirements for primary structures which are 30 feet. He asked the architect to clarify the existing setback condition. Mr. Thomas clarified that the existing setback of the single-family home is 30 feet but once attached to the garage, the structure will only have a setback of 5.6 feet. Mr. Bell asked the architect to explain the counterbalancing amenities proposed. He said that existing site improvements cannot count as proposed counterbalancing amenities. Mr. Wishinsky pointed out that if no counterbalancing amenities are shown, the Board would be relying on Planning staff to confirm that counterbalancing amenities are provided prior to issuance of a building permit.

Chair Palermo asked if anyone present wished to speak in support or opposition to the proposal. Susan and Paul Trevithick, 25 Craftsland Road, rear abutters, asked if there were any trees being removed with the proposal, and asked to see a rendering from the rear of the property. Mr. Thomas responded that no trees are proposed to be removed. He articulated that some bushes were being removed but the large and small trees at the rear of the property would be unaffected. He showed a rendering of the rear of the mudroom and explained that the roof of the proposed mudroom is a flat roof which aligns with the roof eave of the garage.

Chair Palermo asked what exterior siding material is proposed for the mudroom. Mr. Thomas responded that fiber cement clapboard is proposed to match the house.

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

FINDINGS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.70 - REAR YARD REQUIREMENTS

ZONING: S-7	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Rear Yard Setback	30'	30'	5.6'	<u>Special Permit</u>¹

¹ **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from setback requirements can be granted through this section if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the provisions of the Zoning By-law.

PLANNING STAFF COMMENTS

The Planning Staff is supportive of the proposed addition. The mudroom is well-designed and will enhance the family's mobility and daily functionality. Since the garage will become part of the main structure, relief is needed for the rear yard setback. Granting the requested relief is unlikely to yield any adverse impacts to the neighborhood or abutting properties.

PLANNING BOARD COMMENTS

The Planning Board is supportive of this proposal. The Board considers the addition fairly modest and unlikely to negatively impact the neighborhood. Even though the zoning aspects seem straightforward, the Board acknowledges that the site is located on a wetland and might need further approval from the Conservation Commission.

The Planning Board recommends approval of the site plan by MCKENZIE ENGINEERING GROUP, PLS, dated April 5, 2023 and architectural plans by OWEN THOMAS ARCHITECTURE, RA, dated May 16, 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. This approval is strictly with respect to zoning. This project may need review and approval by the Conservation Commission before a building permit is obtained.**
- 3. 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.**
- 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 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.**

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.

During deliberation, Chair Palermo asked the applicant if they had any information on whether Conservation Commission approval is required for the project and stated that it was unusual to have a condition requiring Conservation Commission approval, which was a recommended condition from the Planning Board. Chair Palermo told the applicant they needed to find out from the Conservation Commission if they are in the buffer zone or not. Chair Palermo also stated that it would be preferable to have more details on the proposed counterbalancing amenities. Mr. Shroff said that the neighbors at 20 Lyon Road have some arborvitaes along their property line, and one idea would be to continue the arborvitaes at the rear of the subject property. Mr. Thomas stated that he would suggest specifying the quantity, type, and height of the proposed plantings in the conditions of approval.

Mr. Campbell stated that if it makes the Board more comfortable, Condition #2 (above), relating to Conservation Commission approval, which was recommended by the Planning Board, could be stricken, and the Building Department would ensure that prior to building permit issuance, the Applicant has obtained approval from the Conservation Commission, if applicable. The Board agreed with Mr. Campbell's suggestion.

Chair Palermo proposed adding a condition requiring evergreens to be planted at the rear of the property as a counterbalancing amenity, subject to review and approval by the Assistant Director for Regulatory Planning. Paul Bell stated he was in favor of granting the requested relief with the modified conditions. Neil Wishinsky agreed. Chair Palermo stated that she supported the issuance of a special permit with the proposed conditions modified to delete Condition #2 related to the Conservation Commission and modifying Condition #3 by referencing, specifically, evergreens at the rear of the property.

The Board agreed to granting relief under Zoning Bylaw Sections §5.43 and §5.70, and 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 **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, evergreens to be planted at the rear of the property, 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 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.**

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