

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

**ZONING BOARD OF APPEALS
ARLINGTON, MASSACHUSETTS**

In the matter of:

125-127 Webster Street
ARLINGTON, MASSACHUSETTS

Docket No. 3668

Bruce McKenna,
Applicant

PETITION FOR SPECIAL PERMIT OR VARIANCE

HEARING DATES: October 12 and 26, November 9, 2021
DECISION: December 21, 2021

DECISION OF THE BOARD

Christian Klein, RA, Chair
Patrick Hanlon, Vice-Chair
Roger DuPont, Esq.
Kevin Mills
Stephen Revilak

On June 15, 2021, the applicant, Bruce McKenna, applied for a Special Permit under Section 8.1.3(B)(Nonconforming Single- and Two-Family Dwellings) of the Zoning Bylaw of the Town of Arlington (the “Zoning Bylaw”). The applicant sought to provide additional space in the attic of a 2.5 story dwelling in order to provide room for a multigenerational family unit. Since the additional space in the attic would cause the building’s top floor to violate the Zoning Bylaw’s 2.5 story limit, necessitating a variance, the application was advertised as an application for a variance as well. During the course of the hearing, the applicant provided a separate plan that met the 2.5 story height limitation and sought a special permit for that plan as an alternative, in the event the Board denied his variance.

The subject property is located in the R2 zoning district and is nonconforming with respect to lot size, front-yard and rear-yard depth, and usable open space.

The Zoning Board of Appeals heard the petitioner’s application on October 12, 2021, October 26, 2021, and November 9, 2021. The petition was advertised as a “Special Permit” under § 8.1.3(B) of the Zoning Bylaw and as a Variance under § 6 [sic]. The successive hearings were held remotely via “Zoom” (Meeting IDs 879 0063 0635, 821 5943 3053, and 819 7595 3254, respectively.

The documents before the Board are identified in Appendix A hereto.

SUMMARY OF THE HEARING

Session of October 12, 2021

The Chair asked the applicant, Mr. Bruce McKenna, describe what he wished to do.

The applicant explained he has a two-family dwelling and would like to be able to raise the roof in order to allow his son and future daughter-in-law to have some living space upstairs. The Chair put the applicant’s drawings on the screen in order to discuss the proposal more exactly. He noted that the total floor space proposed for the attic appeared to be more than 50% of the area of the floor below and asked if that was correct.¹ The applicant replied that it was. He added

¹ Section 5.4.2.A of the Zoning Bylaw limits building height in the R2 district to 2.5 stories. The application of this limitation often turns upon whether proposed additional square footage on a third floor counts as a half story. Section 2 of the Zoning Bylaw defines “Story, Half” as follows: “A story which is under a gable, hipped, gambrel roof, or other sloped roof with a minimum slope of 2:12, where less than one half the floor area measured from the underside of the roof framing to the finished floor below has a clear height of 7 feet 0 inches or more.” Thus, if the floor area proposed for the attic is greater than 50%, measured in accordance with the requirements of the Zoning Bylaw, the attic would count as a full story. The resulting 3-story building would exceed the 2.5-story height restriction in § 5.4.2.A.

that that was already true already: the proposed plans only increased the existing nonconformity by about another 30 feet.

The Chair asked Richard J. Vallarelli, the Board's Administrator, whether the Inspectional Services Department ("ISD") agreed with that position. Mr. Vallarelli replied that the applicant was proposing much more floor space in the attic under 7 feet than the 50% and was therefore proposing a third story, by definition.

The Chair observed that the actual increase in floor area in the attic seemed to be more than the 30 feet the applicant claimed and asked Mr. Vallarelli to go through the numbers. Mr. Vallarelli replied that, according to the application, the existing space of 7' or higher is 1,084 square feet. The proposal would add 234 square feet, bring the total space in the attic to about 1,318 square feet. The area of the floor below is 1,800 square feet. Mr. Vallarelli estimated that to be roughly 75%. The Chair asked if a nonconformity already existed. Mr. Vallarelli said that ISD could not provide independent confirmation of that.

The Chair asked if the Board had any questions.

Mr. Hanlon noted there are strict state standards for granting a variance under state law. The applicant has not submitted any written statement explaining how his proposal meets those criteria, and Mr. Hanlon asked the applicant to provide that explanation now.

The applicant referred to the recently enacted town bylaw allowing accessory dwelling units (ADUs), which he understood did not apply against the square footage numbers. He also pointed out that the storage area in the attic would be unheated, and much of the attic square footage would be in that area. The applicant's son, Mr. Luke McKenna, added that the plans include solar panels on the roof, which could not be done in the same way if the variance were not granted.

Mr. Revilak observed that the application had been advertised as a variance, but he wasn't sure if it was actually for a variance or for a special permit. He inquired whether the applicant could provide drawings from an architect showing that the floor area of the existing attic exceeds the amount that would qualify as a half-story. If so, Mr. Revilak stated that the attic would already be a nonconforming third story, and then the Board would then be dealing with an alteration to a nonconforming structure. On the other hand, if the third floor is currently in conformance with the Zoning Bylaw, the Board would be looking at a variance. This is important because there are two different sets of criteria.

Mr. Luke McKenna said that the applicant too had been confused whether the application was properly construed as a variance or was a special permit.

Mr. Hanlon explained that the first criterion for a variance was as follows:

“Circumstances relating to soil conditions, shape, or topography of the land or structure must especially affect such land or structure but not generally affect the zoning district in which it is located.”²

Mr. Hanlon enumerated the other criteria but said the hardest part was the requirement that the applicant’s hardship must be caused by soil conditions, shape, or topography of the land and structures. The Board cannot grant a variance just because the proposal seems to be a good idea. On the basis of what the Board has been told so far, Mr. Hanlon thought it extremely unlikely the Board could grant a variance here. Mr. Hanlon agreed with Mr. Revilak that the only way the applicant’s proposal could be approved would be if it were alteration that extended a prior nonconformity.

The Chair concluded that the determination hangs on whether the existing attic floor is over 50% of the floor below. If so, the structure is already nonconforming with regard to the 2.5-story height limitation, and extension of the nonconformity would be governed by § 8.1.3(B) of the Zoning Bylaw, which allows the Board to grant a special permit. However, if the existing attic area is currently less than 50% of the floor below, then applicant’s proposal would lead to a new nonconformity, which would require a variance. The Chair noted that the drawings submitted by the applicant state that the existing floor area in the attic exceeds 50% of the floor below, but no specific drawing shows that.

The applicant suggested that the Board could do the math at the hearing. Mr. Hanlon was not comfortable deciding the case on the basis of a back-of-the-envelope calculation. If the Board is going to proceed on the basis of § 8.1.3(B), it should have, at the very least, an application that shows what the actual situation is. In addition, Mr. Hanlon said, even if it is proper to rely on § 8.1.3(B), the applicant has not shown that his proposal meets the requirements of that section. He felt the appropriate way to proceed was to get the basic papers in and continue this application to October 26th so that the Board could have a suitable record before it.

The Chair opened the hearing for public comment. No one appeared to address this application.

After closing the public comment period, the Chair stated that, based on the discussion from the Board, it sounded like there was a desire to continue this hearing until October 26th. For the next hearing, the Chair asked the applicant to work with Mr. Vallarelli to come up with a figure for the existing area of the attic floor, since that determine how the Board needs to proceed.

In addition, the Chair noted that the proposed elevations did not show much alignment between the windows on the second floor versus the third floor. He asked for the windows to appear less out of alignment. For example, the bathroom window on the third floor did not appear to line up with the lower floor windows in the same area. The applicant stated that the windows would line up and the drawings were inaccurate in this respect. After some additional discussion of design elements, the Chair made clear that the dimensional sheets accompanying the application would

² Mr. Hanlon was referring to the Board’s application form. The statutory language is quoted in full at ¶ 15 of the Findings of Fact, below.

have to be updated in order to be sure that they reflected any new information that arose from the inquiry regarding existing square footage on the attic floor.

Mr. Hanlon moved to continue the case to October 26, 2021, with the consent of the applicant. Mr. Mills seconded, and the motion was approved unanimously.

Session of October 26, 2021

The Chair reopened the hearing and asked Mr. Vallarelli about the status of the case. Mr. Vallarelli said that about an hour previously the applicant had filed new papers seeking a variance or, in the alternative, a special permit. Mr. Vallarelli said that he had not yet had the opportunity to review them.

Mr. Hanlon, Mr. Mills, and Mr. Dupont all expressed discomfort with proceeding with a hearing when the Board has not yet seen the materials to be presented.

Mr. Hanlon moved to continue the case further to November 9, 2021. Mr. Dupont seconded, and the motion was approved unanimously.

Session of November 9, 2021

The Chair announced the continuance of Docket #3668 125-127 Webster Street and then called on the applicant to begin his presentation. The applicant advised the Board that his son, Mr. Luke McKenna, would be providing the information.

Mr. Luke McKenna told the Board that the applicant had decided to enter two requests, one for the original design, which they now understand to be a variance request, and the other one for a special permit. Mr. Luke McKenna noted that their priority and preference would be for the variance. He explained that they are just looking to add some extra space; however, due to the way the law is written, it puts them over a half-story. They are seeking relief from that in order to make more living space for a three-generational home.

The Chair asked the Board how it wished to proceed.

Mr. Hanlon suggested that the applicant address the variance first since that is his primary request. He encouraged the applicant to focus on what it is about the soil conditions, the topography, or the shape of the lot that is unique to this property and that causes the special hardship that is the predicate for a variance. Mr. Hanlon stated that no matter how good a case the applicant has in other respects, he will still have to satisfy this highly restrictive criterion. Mr. Hanlon noted that the lot does not have an odd shape; it has the same soil conditions as most other lots in East Arlington, and the topography is flat. He suggested that if the applicant could not make a plausible showing on this criterion, it might be wise to spend most of his time on the special permit.

The Chair displayed the variance package on the screen. He stated that the rules for variances are established in State law and may not be amended by the town. There are four criteria, of which the first one is as follows:

Describe the circumstances relating to the soil conditions, shape, or topography especially affecting such land or structures but not affecting generally the Zoning District in which it is located that would substantiate the granting of a variance.

The applicant said that that criterion doesn't really apply to what he wants to do. He is building within the existing footprint, and soil conditions are irrelevant. He observed that, if he had to satisfy this criterion, he would be unable to seek a variance for anything other than a new structure. He added that, if he did not qualify for a variance, he did not understand why he would not fall under the new ADU specifications, which he believed would bypass a lot of the otherwise applicable requirements.

The Chair responded that, although the ADU bylaw would allow an additional unit, it does not allow noncompliance with the applicable height limitations. The applicant argued that he was not going beyond any height requirement. The Chair explained that he was: the proposed plan would result in a 3-story structure, which would exceed the 2.5-story height limitation in the Zoning Bylaw. To be sure, the proposed plan exceeded a half-story only by a relatively small amount, but it still proposes something beyond what is permitted by the Zoning Bylaw. The applicant has the right to apply for a variance, but variance requests, under State law, are intended to be few and far between, and the established criteria are fairly rigid.

The Chair advised that the first test the Board is required to administer is the one about soil conditions, shape, and topography of the existing lot. There has to be something about the lot that prevents the applicant from following the Zoning By-law. The Chair noted that the applicant's proposed justification does not have to do with any feature of the lot that prevents him from conforming to the Zoning Bylaw. Rather, the applicant argues that the Zoning Bylaw prevents him from adding as much space as he would like. That is not a criterion that the Board is allowed to accept.

The applicant sought clarification that two-families houses are not allowed to have an ADU in Arlington except to provide housing for lower income families.

The Chair explained that owners of two-family houses could add an ADU on the first and another ADU on the second, thus bringing the total number of dwelling units in the house to four. Nothing was preventing the applicant from doing that. However, the applicant cannot put more than a half-story on the third floor of his house.

The Chair recognized that the applicant had submitted photographs suggesting that others in the neighborhood had expanded into the third floor in the way that the applicant proposed to do. The applicant's home is basically two floors under a primary roof, and the applicant is now proposing what will be almost entirely a 3-story structure. Regardless of whether the Board believes the proposal is the right design, it needs a variance, because it would result in floor area that is more than 50% of the area of the second floor.

The applicant replied that he understood that but did not see why the provision on soil conditions would have any bearing in this case. There clearly will never be any soil conditions within the structure.

Mr. Hanlon agreed that the first criterion may rule out a variance for a project that would simply add space within an existing structure. That, however, that may be exactly what the State intended in phrasing the law in the way that it did. The state legislature that adopted this provision was operating against a framework of almost never granting variances, and it is still exceedingly rare that variances are granted. A principal reason for rejecting variances is that the criterion of the soil conditions, topography, and shape of the lot are not met. Mr. Hanlon explained that variances may sometimes be justified by the shape of the lot and that topography is often a basis for granting a variance, especially in the western part of the county where there are very steep slopes as well as rock formations and other hindrances. These are the situations that the legislature anticipated as justifying a variance, not the addition of space to an attic.

Mr. Hanlon sympathized with the applicant's request. Creation of a multigenerational house would be a great thing. But he noted it was still not within the Board's power to grant a variance unless the project met all of the applicable criteria, including the first. The criteria are not standards the Board can weigh against each other: rather the applicant must meet them all separately to qualify for a variance. Mr. Hanlon noted, however, that the Zoning Board can allow, and has allowed, for the expansion of the building by special permit, as long as the 2.5-story height limitation is observed.

The applicant asked how zoning might be changed in an area, so as to allow a 3-story home. Mr. Hanlon replied that that would require a change in the bylaw or the zoning map. A variance is a separate procedure for when someone is seeking special relief because they cannot comply with the zoning ordinance but does not seek to change the rules everywhere. The town can change the zoning ordinance or the zoning map if Town Meeting approves, but it has not currently eliminated the 2.5-story restriction.

The applicant stated that he would move on to the special permit since changing the zoning was not going to happen.

The Chair stated that the criteria for a special permit are much more within the purview of the Board. The Chair then displayed the proposed special permit floor plan for the attic and asked the applicant to explain the intended use of the proposed spaces. The applicant replied that he had not labeled the uses, because a number of design problems still needed to be worked out. The challenge was to fit the staircase, the dormer, and the bathroom into the space without having multiple rooflines all around. Sidewalls going down into a roof always create an issue of water infiltration. The applicant noted that roofing materials are different now and roofers no longer are as thorough as they used to be. This house has been around for a 100 years, and the applicant would like it to last another 100 years.

The Chair stated that his only concern in reviewing the plans was that the roof might not meet the minimum ceiling height requirement under the State Building Code in some places where the roof is set down lower. Mr. Vallarelli assured the Board that the Building Code issue would be picked up during the plan review.

Seeing no further discussion from the Board, the Chair opened the hearing for public comment.

Steve Moore (Piedmont Street): Mr. Moore recalled that a memorandum from the Planning Department written at the time of the initial application had said there was insufficient information for the department to make a recommendation. He asked if the Planning Department generally follows up with a revised memorandum once additional information is provided.

The Chair did not believe that the Planning Department generally revises its memoranda. Mr. Vallarelli confirmed the Chair's impression.

Mr. Moore thanked the Chair, adding that he had not been sure of the process in a situation like this. Mr. Moore also commended the Chair Klein and Mr. Hanlon for explaining the situation as they did. He noted that it was quite clear, thorough, and straightforward and added that that type of communication is absolutely necessary for what the Board does.

The Chairman asked if there were any further comments or questions from the public. Seeing none, the Chair noted that the Board had received several letters from nearby residents in support of the application. Although these had been included in the Board's variance package, he supposed that they would apply to the special permit request as well.³ Following this announcement, the Chair closed the public comment period.

The Chair summarized the state of the matter so far. The Board had before it a special permit request which would allow additional space in the attic up to 2.5 stories. The application is before the Board, because the property is nonconforming with regard to usable open space, as so many other properties in East Arlington are. Under the Zoning Bylaw, the usable open space requirement is expressed as a ratio between usable open space and gross floor area. Thus, as gross floor area increases, the usable open space requirement increases as well. Here, the property has no usable open space, and none will be created as a result of the proposed project. In a sense, therefore, it might be thought that the usable open space nonconformity would be extended by the increase in floor area, because the deficiency in usable open space has been increased. However, the Board has standing precedent that going from zero to a larger degree of zero has no meaning under the Zoning Bylaw and therefore is not considered a hindrance to approving a special permit in this regard.

The Chair asked if there are any further comments from the Board.

Mr. Hanlon said that he was sympathetic to what the applicant is trying to do and wishes the Board could do more. While the variance seems beyond the authority of the Board, there should be no obstacle to the special permit. The usable open space deficiency, under the Board's precedent, cannot be held against this application. Mr. Hanlon stated it was clear to him, and to the neighbors who submitted letters in support, that this project is altogether compatible with the character of the neighborhood. He added that this was his neighborhood, and he sees this property all the time. If he were not on the Board and Mr. McKenna had asked him for a letter of support, he would have provided one. Mr. Hanlon was perfectly comfortable with the special permit.

³ The public letters of support are noted in Appendix A

The Chair stated that the Board usually attaches three conditions to special permits. (These conditions appear as Conditions 1-4, below.⁴) The Chair asked if any member of the Board wished to propose an additional condition. Seeing none, the Chair closed the public hearing.

THE BOARD'S FINDINGS OF FACT

1. The subject property is a two-family dwelling in the R2 Zoning District. The second floor of the structure is occupied by the owner (the applicant) and his family. The first floor is rented to an elderly mother in need of care. The third floor of the structure is currently used as an attic and does not count as a "story" under the Zoning Bylaw.
2. The applicant seeks to convert much of the attic into living space by decreasing the slope of the roof and constructing an office, entertainment center, bedroom, and bathroom. The alteration would be entirely within the existing foundation of the structure. Initially, the applicant proposed to increase the gross floor area in the attic to 1,318 square feet. This would exceed the amount allowed as a half-story (in this case, according to the applicant's calculation, 904 square feet) and would result in the structure being considered 3 stories.⁵ This would exceed the 2.5-story maximum height in the R2 Zoning District.
3. At the Board's October 12 hearing on the application, a question arose as to whether, as the applicant contended, the gross floor area in the attic already exceeded a half-story. If so, the house would already be 3 stories and thus nonconforming with respect to the maximum building height in stories. In that event, the applicant could seek an extension of the existing nonconformity by special permit under § 8.1.3(B) of the Zoning Bylaw. If the structure were currently in compliance, however, then the proposed expansion of gross floor area in the attic would create a new nonconformity, requiring a variance. The Board continued the hearing in order to give the applicant an opportunity to determine the current gross square footage of the attic.
4. The applicant's new analysis concluded that the gross floor area of the existing attic was 725 square feet, which was 41% of the gross floor area of the second floor (1756 square feet). This analysis showed, and the Board finds, that the height of the existing structure is 2.5 stories and thus in conformance with the requirements of the Zoning Bylaw.
5. At the Board's continued hearing on November 9, 2021, the applicant sought a variance to allow the addition of 1079 gross square feet to the attic. This addition would be 61% of the

⁴ At the time of the hearing, the Board proposed three conditions. For clarity, this written decision separates the first condition into two parts, bring the total number of conditions to four.

⁵ The applicant's initial calculations were not done in full compliance with the Zoning Bylaw, but it is conceded that the applicant's initial proposal would result in the attic's gross floor area exceeding 50% of the gross floor area of the second story.

gross floor area of the second floor, above the 50% limit for a half-story. This was the applicant's preferred plan. However, the applicant also proposed a more modest plan that would result in 874 square feet of gross floor area in the attic, which comes out to 49.8% of the gross floor area of the second floor. This plan would comply with the half-story limitation in the Zoning Bylaw, and the resulting building would continue to be 2.5 stories in height and thus in conformity with the bylaw.

6. The existing structure is nonconforming with regard to lot area, front-yard and rear-yard depths, and usable open space. Neither of the applicant's proposals would lead to an extension of the nonconformities relating to lot area and front-yard and rear-yard depths. The subject property has no usable open space now and will not have any under either of the applicant's proposals. The Zoning Bylaw requires usable open space in the R2 district in an amount at least equal to 30% of gross floor area. Because the applicant's proposal will increase gross floor area, there is a technical extension of the current deficiency. As explained below, however, the Board has the authority under § 8.1.3(B) to grant a special permit allowing the extension of the non-conformity and has consistently done so in cases similar to this.
7. The applicant justifies both plans as needed to allow the creation of a multi-generational household, in which the applicant's son and his intended spouse can reside comfortably with the applicant in the family house. The Board takes note of the many statements of neighbors and other Arlington residents supporting the applicant's project.

The Variance

8. Section 3.2.2.D of the Zoning Bylaw gives the Zoning Board of Appeals authority to grant petitions for variances under Massachusetts General Laws, Chapter 40A, Section 10.
9. Chapter 40A, Section 10 sets forth (among other things) the standards for granting a variance:

The permit granting authority shall have the power . . . to grant . . . upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. . . . (Emphasis added.)

10. These standards may be reduced to four criteria:

Criterion 1: Circumstances relating to the soil conditions, shape, or topography especially affecting [the subject] land or structures but not affecting generally the Zoning District in which it is located that would substantiate the granting of a variance.

Criterion 2: Literal enforcement of the provisions of the Zoning Bylaw, “owing to” the circumstances that meet the requirements of Criterion 1, would involve substantial hardship, financial or otherwise, to the petitioner.

Criterion 3: Desirable relief may be granted without substantial detriment to the public good.

Criterion 4: Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

11. Criteria 1 and 2, taken together, limit the sort of circumstances that can be considered in deciding if a variance has been substantiated. Under the statute, substantial hardship that is not related to soils, shape of the lot, or topography will not justify a variance, nor will circumstances that are not specific to particular land or structures but rather generally applicable to the zoning district in which the property is located. These criteria, and the interaction between them, substantially narrow the sorts of hardship on which a variance can be based.
12. The Board is required by state law to apply the statutory standards strictly, and all of the statutory standards must be met. Even if the Board believes that a proposal is beneficial to the public good and fully consistent with the purpose of the Zoning Bylaw, it may not grant a variance if either criterion 1 (unique conditions relating to soil, shape, or topography) or criterion 2 (substantial hardship) are not met.
13. The applicant’s hardship in this case arises from his desire to have more living space in the attic than the Zoning Bylaw allows. Even assuming that that might count as “substantial hardship” under criterion 2, it is plainly not owing to any unusual soil conditions, lot shape, or topography relating to the applicant’s property. On the contrary, the applicant’s lot is regular in shape; his land is flat; and no unusual soil conditions contribute to his current difficulty. In all of these respects, the applicant’s property is typical of other nearby R2 properties in this neighborhood.
14. Under these circumstances, the applicant’s request for a variance clearly fails to meet criterion 1 and cannot be granted by the Board. In light of this finding, it is not necessary to decide whether the other criteria are met, and the Board expresses no opinion on that matter.

The Special Permit

15. The applicant seeks, in the alternative, a special permit under § 8.1.3(B) of the Zoning Bylaw, which provides as follows:

No alteration, reconstruction, extension, or structural change to a single or two-family residential structure that increases the nonconforming nature of

said structure shall be permitted unless there is a finding by the Board of Appeals that the proposed alteration, reconstruction, extension, or structural change will not be substantially more detrimental to the neighborhood.

16. Although the subject property is nonconforming in a number of respects, no nonconformity other than usable open space is even arguably increased by the applicant's proposal. However, the property does not conform to the Zoning Bylaw's "usable open space" requirement (30% of gross floor area). Currently, it has zero open space that meets the Zoning Bylaw's definition of "Usable Open Space," and that will continue to be true after the proposed addition. While in a sense an increase in gross square footage increases the extent of the deficiency, the Board has consistently held that going from zero percent open space to a larger degree of zero was not meaningful under the bylaw. For this reason, consistent with precedent, the Board finds that the proposed addition will not increase the nonconforming nature of the structure with respect to usable open space.
17. The alteration proposed by the applicant would clearly not be more detrimental to the neighborhood than the existing nonconformity with respect to usable open space. The amount of usable open space (and open space generally) will not change. The proposed increase in gross square footage is relatively modest and does not involve any expansion of the footprint of the building. The special permit plans will fully conform to the Zoning Bylaw's limitation of maximum building height to 2.5 stories. The Board heard from a considerable number of neighbors who supported the applicant's plans.⁶
18. In addition to the special provision of § 8.1.3(B), the application is subject to the special permit requirements of § 3.3.3 of the Zoning Bylaw. That section provides as follows:

Unless otherwise specified herein, special permits shall be granted by the Special Permit Granting Authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the characteristics of the site and of the proposal in relation to that site. The determination shall include findings that all of the following criteria for granting a special permit are met:

A. The use requested is listed as a special permit use in the use regulations for the applicable district or is so designated elsewhere in this Bylaw.

B. The requested use is essential or desirable to the public convenience or welfare.

C. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

D. The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested

⁶ The communications received by the Board supported the applicant's request for a variance, but the Board finds that those statements of support would also apply to the less ambitious alternative proposed by the applicant.

use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety or the general welfare.

E. Any special regulations for the use as may be provided in this Bylaw are fulfilled.

F. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare.

G. The requested use will not, by its addition to a neighborhood, cause an excess of the use that could be detrimental to the character of said neighborhood.

(Emphasis added.)

19. The Board finds, pursuant to Section 3.3.3, that adverse effects of the proposed alteration will not outweigh the beneficial impacts to the town or the neighborhood. The Board does not believe that there will be any adverse impacts for the reasons stated in paragraph 17. The Board has received considerable correspondence from neighbors supporting the applicant's proposal, and no one has expressed any opposition. Leaving to one side the benefits of improving the subject property to better meet the needs of the applicant and his family, it is Town policy to promote a diversity of choices of housing arrangements, which is furthered by the proposal before the Board. The inability of the children of Arlington residents to find housing in the town has been a significant concern in recent years, and the multigenerational use proposed here helps address that problem.

20. The Board also makes the following findings on the specific criteria in Section 3.3.3 A-G.

- A. Special Permit use. The use requested is listed as a special permit use in § 8.1.3(B) of the Zoning Bylaw
- B. Public convenience or welfare. The requested use would be desirable for the public convenience or welfare. For the reasons stated in paragraph 19, the proposed alteration will enable the existing house to better meet the needs of applicant's family and will address the town's need for a diversity of housing choices.
- C. Traffic congestion and pedestrian safety. The requested additional attic space will not generate additional traffic or affect roads or circulation patterns in any way, and will not otherwise affect traffic congestion or pedestrian safety.
- D. Public services. The requested use will not result in any additional burden to municipal systems.
- E. Special regulations. No special regulations are applicable other than § 8.1.3(B) itself.
- F. Integrity, character, health, and welfare. For the reasons stated in paragraphs 16, 17, and 19, the Board finds that applicant's proposal will be consistent with the integrity and character of the neighborhood and will not be detrimental to the health and welfare.

G. Cumulative effects. The applicant's proposal will not contribute to any cumulative impact that might be detrimental to the character of the neighborhood. The renewal of the town's housing stock through alterations such as the one proposed here is beneficial rather than detrimental. Alterations of this kind have made the houses in the community more livable and helped adapt structures built long ago to meet the needs of today.

21. The Board finds that the proposal is consistent with the Zoning Bylaw and should be approved subject to conditions.

DECISION OF THE BOARD

At the close of the hearing, Mr. Hanlon moved that the applicant's request for a variance be denied on the ground that any hardship was not owing to soil conditions, topography, or shape of the lot and further moved that the request for a Special Permit be granted, subject to the conditions listed below. The motion was seconded by Mr. Dupont and approved unanimously. The members voting were Chairman Klein, Mr. Hanlon, Mr. DuPont, Mr. Mills, and Mr. Revilak.

1. The final plans and specifications approved by the Board for the permit shall be the final plans and specifications submitted to the Building Inspector of the Town of Arlington in connection with this application for zoning relief. There shall be no deviation during construction from approved plans and specifications without the express written approval of the Arlington Zoning Board of Appeals.

2. The Building Inspector is hereby notified that he is to monitor the site and should proceed with appropriate enforcement procedures at any time he determines that violations are present. The Building Inspector shall proceed under Section 3.1 of the Zoning Bylaw, under the provisions of Chapter 40, Section 21D, and institute non-criminal complaints. If necessary, the Building Inspector may also approve and institute appropriate criminal action, also in accordance with Section 3.1.

3. The Board shall maintain continuing jurisdiction with respect to this Special Permit grant.

4. The final plans and specification approved by the Board for purposes of condition 1, above, shall be the plans and specifications submitted to the board in November 2021 in support of the application for special permit approved by the Board and shall not include the plans and specification submitted in support of the request for a variance.

The Board hereby makes a detailed record of all its proceedings relative to this appeal; sets forth the reasons for its decision and finding; directs that this record be filed in the office of the Redevelopment Board and in the office of the Town Clerk and shall be a public record, and that

notice of this decision be made forthwith to each party in interest. Appeals to this decision, if any, shall be made pursuant to Section 17 of the Zoning Act (Massachusetts General Laws, Chapter 40A), and shall be filed within twenty days after the date of filing of such decision in the Office of the Town Clerk.

Signature Page

Christian Klein, RA, Chair

Patrick Hanlon, Vice Chair

Roger DuPont, Esquire

Kevin Mills

Stephen Revilak

Appendix A: Documents Before the Board

Initial ZBA Package

1. Notice of Hearing
2. Administrator's Comments
3. Request for Special Permit, Town of Arlington (June 15, 2021)
 - a. Town of Arlington Dimensional and Parking Information for Applications to the Zoning Board of Appeals
 - b. Town of Arlington Open Space/Gross Floor Area Information for Applications to the Zoning Board of Appeals
 - c. Attachment, Special Permit Criteria (3.3.3)(Statement of Applicant)
 - d. Plot Plan dated May 3, 1999 (same as # xx, below)
 - e. Photographs of Other Houses in the Neighborhood (included in # xx, below)
 - f. Existing Attic
 - g. Basement
 - h. 1st Floor
 - i. 2nd Floor
 - j. 3d Floor Proposed
4. Photograph of 125/127 Webster Street and Revised Permit Drawings Dated 6/15/2021
 - a. G1.00 - General Notes G1.00
 - b. A1.00 - Existing and Proposed Floor Plans
 - c. A1.01 - Proposed Roof Plan and Framing Plan Section and Details A1.01
 - d. A1.02 - Existing/Demo Elevations A1.02
 - e. A1.03 - Proposed Elevations A1.03
 - f. Various computer-generated illustrations

November 2021 Special Permit Package

5. Request for Special Permit (undated, submitted November 2021)
 - a. Attachment: Special Permit Criteria (revised, November 2021)
 - b. Town of Arlington Dimensional and Parking Information for Applications to the Zoning Board of Appeals (Revised November 2021) SP
 - c. Town of Arlington Open Space/Gross Floor Area Information (Revised November 2021) SP

6. Bruce McKenna 125-127 Webster Street Existing Floor Space over 7'
7. Revised Permitting Set (11/1/2021) Cover omitted
 - a. G1.00 General Notes
 - b. A1.04 Existing Second Floor Plan
 - c. Special Permit 49% Over 7' 2nd Fl. GFA
 - d. Framing (Roof Designs)
 - e. Elevations

November 2021 Variance Package

8. Town of Arlington Request for Variance (Revised November 2021).
 - a. Town of Arlington Dimensional and Parking Information (revised November 2021) V
 - b. Town of Arlington Open Space/Gross Floor Area Information for Applications to the Zoning Board of Appeals (applying to plans of 11/1/2021) V
9. 3rd Floor ("Variance Required 1079 Square Feet Total Addition of 7 Feet 61% of Second Floor GFA
10. 2nd Floor GFA 1756 Square Feet
11. 1st Floor, Living Area 1580 Square Feet
12. Basement, Living Area 1242 Square Feet
13. Plot Plan dated May 3, 1999
14. Letter of Support from Theresa Vaughan, 47 Palmer Street
15. Letter of Support from Sheila Berry and Richard Berry, 93 Warren Street
16. Petition signed by 23 residents of Arlington
17. Photographs of 4 other structures in the neighborhood that assertedly violate the 2.5 story height limit
18. 125/127 Webster Street Permit Set 06/15/2021, modified 11/1/21 Cover
 - a. G1.00 General Notes G1.00
 - b. A1.00 (?) Existing Floor Plan Space over 7'
 - c. A1.00 (?) Third Floor ("Variance Required 1079 Square Feet Total Addition of 7 Feet 61% of Second Floor GFA") *See # 7, above.*
 - d. A1.01 Proposed Roof Plan and Framing Plan Section and Details A1.01
 - e. A1.02 Existing/Demo Elevations A1.02
 - f. A1.03 Proposed Elevations "Optimal Design Gambrel style side walls"

- g. Various computer-generated illustrations

Other Documents

- 19. Memorandum to the Zoning Board of Appeals from Jennifer Raitt, Director, Department of Planning and Community Development dated October 7, 2021, re Docket 3668 – 125-127 Webster St; Special Permit under Zoning Bylaw Section 8.1.2 (Nonconforming Single-Family or Two-Family Dwellings), Variance under Zoning Bylaw Section 5.4.2 (Dimensional and Density Requirements (“Planning Department Memorandum”))