



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0018
PATRICK AND KATHLEEN SCANLON
71 FRANCIS STREET, BROOKLINE, MA

Petitioners, Patrick and Kathleen Scanlon, applied to the Building Commissioner for permission to construct an attached two-car garage in the rear yard that includes a roof deck. 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 May 5, 2016 at 7:30 p.m., in the Selectmen's Hearing Room 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 April 21, 2016 & April 28, 2016 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at: **71 FRANCIS ST – CONSTRUCT AN ATTACHED GARAGE IN THE REAR YARD THAT INCLUDES A ROOF DECK, in a T-5, Two Family and Attached Single Family, residential district, on May 5, 2016, at 7:30 PM in Town Hall Room 111 (Petitioner/Owner: SCANLON JAMES P JR & KATHLEEN M) *Precinct 3***

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.60: Side Yard Requirements**
- 3. Section 5.70: Rear Yard Requirements**
- 4. Section 6.04.5.c.3: Design of All Off-Street Parking Facilities**
- 5. Any Additional Relief the Board May Find Necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Johanna Schneider and Stephen Chiumenti. Zoning Coordinator Jay Rosa was also present on behalf of the Planning Department and the Building Department. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were the Petitioners, Patrick and Kathleen Scanlon, along with project architect, Dan Hisel, Dan Hisel Architect, 1165 Massachusetts Avenue, Arlington, MA 02476. Chairman Geller called the hearing to order at 7:30 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen presented to the Board a background of the Petitioners and the proposal stating: 71 Francis Street is located in a T-5 district and backs up to the Lawrence Playground.

He stated that the neighborhood is comprised of single, two-family and multi-family homes.

Mr. Allen stated that the proposal is to replace their dilapidated and unusable two car garage with a new two car garage. The existing garage is 415 square feet, and the proposed garage will be 598 square feet to accommodate modern size vehicles. The new garage will have a roof deck and be connected to the house via a bridge. Mr. Allen noted that the Preservation Commission found the existing two car garage to be non-significant.

The architect, Dan Hisel, presented the project to the Board. He stated that the Petitioners wanted to incorporate a contemporary addition. He stated that the existing garage has overgrown vines that completely cover the roof area.

Board Member Chiumenti asked whether the proposed project will impact the privacy of the neighbors at 67 Francis Street. Mr. Hisel indicated that the proposed project incorporates garage walls which are pulled up, solid railing for screening, and built in benches which will afford the neighbors some level of privacy. He noted that the Petitioners worked with the neighbors, who are in full support, to develop this proposal which incorporates a balance between privacy and accessibility. The Petitioners incorporated a fence with growing vines to mimic the look of the existing garage and to screen the proposed garage from the view of 67 Francis Street. Mr. Hisel stated that there will also be a garden at the rear of the garage to further provide privacy to the neighbors.

Attorney Allen stated that the Petitioners request relief from the dimensional requirements which may be waived by special permit under **Section 5.43** of the Zoning By-Law. Attorney Allen stated that although the rear façade of the proposed garage will come closer to the rear lot line, it will not adversely affect any neighbors because the Lawrence Playground abuts the home to the rear. Attorney Allen then indicated that he believes the requirements for special

permit under **Section 9.05** of the Zoning By-Law have been satisfied and stated the following:

(1) the specific site is an appropriate location for such use since the proposed garage will be constructed in the same location as the existing garage and other homes on the street have garages located at the rear of the property; (2) the use will not adversely affect the neighborhood where direct neighbors at 63 Francis Street, who would be most affected by this proposal have expressed support, along with neighbors at 75-77 Francis Street, 3 Lawrence Road, and 79 Stearns Street; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because current vehicular patterns will be preserved; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply on housing available for low and moderate income people.

Zoning Board of Appeals Chairman Jesse Geller asked if there was anyone present who wished to speak in favor of or in opposition to this application.

Robert Leinbach, 67 Francis Street, spoke in support of the proposal. He stated that a number of homes in the neighborhood have decks in the rear yard. He noted that the proposal would be consistent with rear additions in the neighborhood.

Zoning Board of Appeals Chairman Jesse Geller called upon Jay Rosa, Zoning Coordinator for the Town of Brookline, to deliver the findings of the Planning Board:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 6.04.5.c.3 – Design of All Off-Street Parking Facilities

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Side Yard Setback (Garage)	7.5'	8 ^{3/4} '	1'	Special Permit *
Rear Yard Setback (Garage)	30'	8'3"	6'1"	Special Permit *

** Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements if a counterbalancing amenity is provided.*

Mr. Rosa stated that the Planning Board is supportive of the proposal. They feel that the new garage does not come any closer to the side lot line than the existing garage does. They also felt that although the rear façade of the garage will come two feet closer to the rear lot line, the abutting property is part of the playground for the school. Board members support the garage design and the increase of the usable open space.

Therefore, the Planning Board recommended approval of the site plan and elevations by DHA, Inc, dated 2/3/2015 subject to the following conditions.

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan and elevations, with materials indicated, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Mr. Geller suggested revision of Condition #2 to incorporate the phrase “indicating all counterbalancing amenities.”

Mr. Rosa, on behalf of the Building Department, stated that the Building Department supports the proposal. He noted that the addition meets the 6 foot requirement for an accessory structure, however, the connecting bridge, makes the addition a part of the primary structure which then requires a 30 foot setback. The Building Department commends the Petitioners efforts to work with neighbors. If the Board finds that the grant meets the standards for a special permit, the Building Department will work with the Petitioner to ensure compliance.

Board Member Chiumenti stated that he is supportive of the proposal. Chairman Geller and Board Member Schneider also stated their support.

The Board then determined, by unanimous vote that the requirements for a special permit for relief from application of the provisions of Sections 5.60, and 5.70 of the Zoning By-Law pursuant to Sections 5.43 and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- 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:

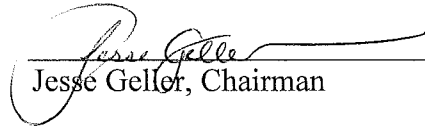
- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan and elevations, with materials indicated, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2016 MAY 26 A 11: 50

Unanimous Decision of
The Board of Appeals

Filing Date: 5/26/16



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals