



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
MAY 10 11 48 23

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0010
PETER & CHRISTA BLEYLEBEN

161 CABOT

Petitioners, Peter & Christa Bleyleben, applied to the Building Commissioner for permission to construct first and second floor additions and connect an existing garage. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed March 23, 2017 at 7:15p.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 March 9, 2017 and March 16, 2017 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:

161 Cabot Street – Construct first and second floor additions and connect existing garage in S-40 (Single-Family) Residence District, on March 23 at 7:15 PM in the 6th Floor Selectmen’s Conference Room (Petitioner/Owner: Peter and Chris Bleyleben) *Precinct 14*

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 5.09.2.j: Design Review**
- 2. Section 5.22.3.b.1.b: Exceptions to Floor Area Ration Regulations for Residential Units**
- 3. Section 5.43: Exceptions to Yard and Setback Regulations**
- 4. Section 5.50: Front Yard Requirements**
- 5. Section 5.60: Side Yard Requirements**
- 6. Section 8.02.2: Alteration or Extension**
- 7. 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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@brooklinema.gov

Jesse Geller, Chair
Christopher Hussey
Jonathan Book

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Christopher Hussey and Kate Poverman.

The case was presented by 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 homeowners Peter and Christa Bleyleben and architect Jeremiah Eck, Eck MacNeely Architects inc., 60 Harrison Ave #403, Boston, MA 02118.

Chairman Geller called the hearing to order at 7:45 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen presented to the Board a background of the Petitioners' proposal, stating that 161 Cabot Street is located in an S-40 District consisting of single-family dwellings, some very contemporary, and others traditional in style.

Mr. Allen stated that 161 Cabot is a single-family dwelling with frontage on both Cabot Street and Heath Street but which faces Cabot Street. He noted that the lot slopes down substantially toward Heath Street. Attorney Allen stated that the existing dwelling was built in the 1950s and modified in the 1960s, and it is in need of substantial renovation and modernization. Attorney Allen continued that the proposal is to construct a second-story addition, connect the home to an expanded garage, and construct some smaller additions to expand the kitchen, bathroom, and generally make the building more livable.

Attorney Allen stated that the proposed additions are attractive and are all designed to modernize the home and that less than 25 percent of the building's exterior will be removed or covered with this project, commenting that the garage addition has been modified so that it does not cover the entire rear wall of the building. He stated that the Petitioners are willing to work with their neighbor to develop an adequate landscaping plan to ensure privacy for both properties. Mr. Allen stated that only the rear garage addition and the front porte-cochere need setback relief.

Jeremiah Eck, Eck MacNeely Architects Inc., 60 Harrison Ave #403, Boston, MA 02118, reviewed the plans with the Board. Mr. Eck stated that the home was built in 1954. He indicated that in 1967, the bay roof was added and the center of home was renovated in a manner which obstructs maneuverability inside the home. Mr. Eck stated that the ceiling height in the basement is low but a small area has a 7ft. ceiling which is proposed in the conversion. He further stated that the proposal also

includes an extension of the first floor kitchen, and the extension of the garage to introduce two car tandem parking and a direct attachment to the primary structure. Mr. Eck noted that the proposal includes energy efficient windows and new insulation throughout the house.

Board Member Hussey referred to the architectural plans and asked whether there is a garden wall on the side of the driveway. Mr. Eck stated that it is currently a hedge used to screen the property from the traffic on Heath Street.

Board Member Poverman commented that the integrity of the house was maintained and that the home is attractively designed.

Mr. Allen then stated that the proposal triggers design review because the exterior additions require floor area relief pursuant to Section 5.22.3.b.1.b of the Zoning By-Law. Mr. Allen reviewed the relevant standards under Section 5.09.2.j of the Zoning By-Law:

a. Preservation of Trees and Landscape: The site has extensive and well-maintained landscaping with a mix of shrubbery, grass and trees on site, including substantial screening plantings and fencing along the lot's perimeter. The proposed additions do not require the removal of significant landscaping, and the applicant plans to add landscaping as a counterbalancing amenity.

b. Relation of Buildings to Environment: The proposal will have minimal impact, if any, on the neighborhood. The additions will not have any shadow impacts on neighboring properties or the streetscape, and the building's appearance will be improved and made more contemporary. Due to the home's location on the sloping lot, many of the additions will not be visible, and the home will continue to comply with height restrictions.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood: The currently existing home is a single-story dwelling with a mostly unusable basement. This proposal will add livable space on a second floor, which is in keeping with the surrounding residential neighborhood of mostly 2 to 2 ½ story single-family dwellings. The other proposed additions modestly expand existing living area or provide covered access to the garage or front drive. The relatively minor setback relief required for the project is for the garage expansion and its connection to the principal dwelling, and the addition of a front porte-cochere.

d. Open Space: The lot will continue to have extensive open space, both landscaped and usable.

e. Circulation: The proposal does not alter the way the lot is currently accessed. The proposal seeks to change an existing two-car garage into a four-car garage by allowing for tandem parking within. Additionally, the new porte-cochere will provide protection from the weather for the front entrance.

f. Stormwater Drainage: The project will comply with all requirements for stormwater management.

g. Utility Service: All utilities will enter and leave the building underground.

Mr. Allen stated that the Petitioners request special permit relief for an area that is within the 120% permitted gross floor area; the allowed floor area in the S-40 District for this lot size is 6,045 s.f., existing floor area is 4,874 s.f., proposed floor area is 7,239 s.f.; the existing floor area percentage is 81% and proposed floor area percentage 120%.

In addition, Attorney Allen noted that the Petitioners request front yard relief pursuant to Section 5.50 of the Zoning By-Law for the porte-cochere and side yard relief pursuant to Section 5.60 of the Zoning By-Law for the garage.

Attorney Allen argued for relief from Sections 5.22, 5.50, and 5.60 of the Zoning By-Law whereby a special permit may be granted pursuant to Section 9.05 of the Zoning By-Law. As for Section 9.05, Mr. Allen argued: (1) the specific site is an appropriate location for such use as the additions are attractive, located in appropriate locations for the home and will overall modernize a dated building, the changes are not expected to impact neighbors, and the home will continue to be a single-family in a single-family district; (2) there will be no adverse effect on the neighborhood because the proposed additions will not result in shadow impacts on neighboring properties, will not negatively affect their privacy, new landscaping will be installed, and the Petitioners have agreed to remove the west corner window at the request of an abutter; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where there will be no change in the occupancy of the unit or in the way the property is accessed; (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.

Mr. Allen next discussed zoning relief under Section 5.43 of the Zoning By-Law, where the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. Mr. Allen restated that the Petitioners propose to develop a significant landscaping plan, which will be subject to the review and approval of the Assistant Director Regulatory Planning if the proposal is approved.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in favor of the proposal. Mr. Geller asked if anyone wished to speak in opposition to the application. No one spoke in opposition to the proposal.

Ashley Clark, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS

Section 5.09.2.j – Design Standards

The most relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape

The site has extensive and well-maintained landscaping with a mix of shrubbery, grass and trees on site, including substantial screening plantings and fencing along the lot's perimeter. The proposed additions do not require the removal of significant landscaping, and the applicant plans to add landscaping as a counterbalancing amenity.

b. Relation of Buildings to Environment

The additions should not have any shadow impacts on neighboring properties or the streetscape, and the building's appearance will be improved and made more contemporary.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood

The existing home is a single-story dwelling with a mostly unusable basement. This proposal will add livable space on a second floor, which is in keeping with many of the surrounding residential homes of mostly 2 to 2 ½ story single-family dwellings. The other proposed additions expand existing living area or provide covered access to the garage or front drive. The relatively minor setback relief

required for the project is for the garage expansion and its connection to the principal dwelling, and the addition of a front porte-cochere.

d. Open Space

The lot will continue to have extensive open space, both landscaped and usable.

e. Circulation

The proposal does not alter the way the lot is currently accessed. The proposal seeks to change an existing two-car garage into a four-car garage by allowing for tandem parking within. Additionally, the new porte-cochere will provide protection from the weather for the front entrance.

Section 5.22.3.b.1. – Exceptions to Maximum Floor Area Ratio (FAR)

Floor Area	Allowed	Existing	Proposed	Allowed by Special Permit	Finding
Floor Area Ratio (% of allowed)	6,045 s.f. .15 (100%)	4,874 s.f. .12 (81%)	7,239 s.f. .18 (120%)	7,858s.f. .195 (130%)	Special Permit*/ Variance

*Under Sec. 5.22.3.b, a combination of an interior and exterior conversion is allowed up to 130%.

Section 5.50 – Front Yard Setback

Section 5.60 – Side Yard Setback

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback (porte-cochere)	30'	n/a	20'	Special Permit*
Side Yard Setback (garage)	20'	14'	14'-14'6"	Special Permit*

*Under **Section 5.43**, the Board of Appeals may by special permit waive yard and setback requirements if counterbalancing amenities are provided. The applicant is proposing to provide additional landscaping as a counterbalancing amenity.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Ms. Clark stated that the Planning Board supported the proposed addition and enlarging the garage and joining it to the house. She stated that the Planning Board indicated that there is a great variation in the sizes and styles on the surrounding blocks. The Planning Board noted the applicants' willingness to eliminate the new second floor window that faces west, toward the neighbor's yard. Therefore, Ms. Clark stated, the Planning Board recommended approval of the site plan by Verne Porter, Land Surveyor, dated 1/20/17 and revised 3/8/17, and the architectural plans by Eck MacNeely Architects, dated 3/9/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations, 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 the 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 floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Deputy Building Commissioner Michael Yanovitch delivered the comments of the Building Department. Mr. Yanovitch acknowledged design constraints due to the uniqueness of the structure. Mr. Yanovitch clarified the relief indicated in the Planning Board report and stated that the Petitioners are cited under **Section 5.22.3.b.1.b** of the Zoning By-Law for 120%. Finally, he stated that should the Board of Appeals find that the necessary requirements for special permit relief are met, the Building Department will work with the Petitioners to ensure compliance with all building codes.

On inquiry from Chairman Geller, Mr. Yanovitch confirmed that tandem parking is permitted up to six spaces, in the S-40 District under **Section 6.04.12** of the Zoning By-Law.

Board Member Poverman asked whether the proposal triggers demolition delay under the Preservation Department regulations due to alteration of the silhouette of the home. Attorney Allen refuted the Preservation determination. Mr. Allen stated that the original proposal covered the garage. He stated that the garage was moved in by a foot, therefore complying with dimensional requirements. Attorney Allen argued that the proposal is under 25%, does not introduce a new roof, and is therefore outside of the scope of Preservation Review for demolition.

The Board deliberated on the merits of the proposal. Board Member Hussey stated that he is supportive of the proposal. Board Member Poverman stated that the proposal is worthy of relief and reiterated her support of the proposed design. Chairman Geller stated that he thinks the proposal meets the requirements for the requested relief by special permit. Chairman Geller suggested a modification of the conditions to include a landscaping plan as a counterbalancing amenity and to reflect the removal of the west corridor window at the suggestion of the neighbor.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Sections 5.22.3.b.1.b, 5.50, and 5.60 of the Zoning By-Law pursuant to Sections 5.22, 5.43, and 9.05 of the Zoning By-Law as requested by the Petitioners 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 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 have no 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:

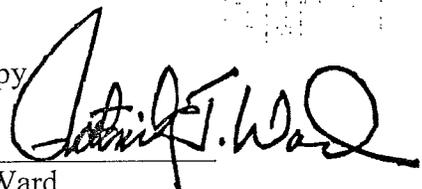
1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, indicating all counterbalancing amenities, and including the removal of the west corner window if required by the abutter, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the 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 floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 4-10-17


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals