



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0012  
MATTHEW & LILLY KESNER  
117 WOLCOTT, BROOKLINE, MA

Petitioners, Mathew and Lilly Kesner, applied to the Building Commissioner for permission to remove an attached garage and construct a rear addition with a 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 February 1, 2018 at 7:05 PM., 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 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 January 18, 2018 and January 25, 2018 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:

**117 WOLCOTT ROAD, BROOKLINE, MA 02467 - Construct 1.5 Story Garage Addition in a(n) S-15 SINGLE-FAMILY on 02/01/2018 at 7:05 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Matthew Kesner) Precinct 16**

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:

**§5.09.2.J – DESIGN REVIEW**

**§5.22.3.B.1.B – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS**

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

**§6.04.5.C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**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](http://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 [lgellineau@brooklinema.gov](mailto:lgellineau@brooklinema.gov)*

*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

**Publish: 01/18/2018 & 01/25/2018**

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 Kate Poverman and Randolph Meiklejohn. Also present

at the hearing were Zoning Coordinator and Planner, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch.

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 Petitioners, Matt and Lilly Kesner, with their daughter, Reya and the architect, David O'Sullivan.

Chairman Geller called the hearing to order at 7:05 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal stating that the Petitioner proposes to construct a one and a one half story garage addition. Attorney Allen stated that the Preservation Commission determined that the building was non-significant. He continued that the revised proposal is now for a side yard addition; The proposal having been revised based on the feedback of immediate abutters, Charlie Capace and Judy Moses, 123 Wolcott Road, Brookline, Massachusetts. The Petitioner previously had unanimous approval of the Planning Board but decided to work with the neighbor, which led to a different design. Attorney Allen explained that the new proposal relocates the garage and increases the side yard to make it conform. However, Attorney Allen noted that the result of relocating the garage under the revised plan is that the driveway will now not conform with the Zoning By-Law. Architect, David O'Sullivan reviewed the project with the Board Members.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 5.50** under **Section 5.43** for a pre-existing nonconforming front yard setback that is not changing, from **Section 6.04** pursuant to **Section 6.04.c.2** for design of all off street parking facilities, from **Section 5.20** pursuant to **Section 5.22.3.b.1.b** for floor area ratio, from **Section 5.09.2.j** for design review, and from **Section 8.02.2** pursuant to **Section 9.05** to alter or extend a nonconforming use or structure.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the use since the home will retain its style and maintain its existing use; the use developed will not adversely affect the neighborhood since cars will now be parked in the garage and the streetscape will be enhanced; there will be no nuisance or serious hazard to vehicles or pedestrians; adequate and appropriate facilities will be provided for the proper operation and proposed use; and there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen noted for the record that many neighbors provided letters of support for the revised proposal.

Mr. Allen then argued that relief under 5.22.3.b.1.b should be granted because the home's FAR will not exceed the By-Law's maximum of one hundred twenty percent of what is permitted in the S-15 District, which is allowed by special permit. Attorney Allen stated that the requirements for Section 5.09.2.j were also met. Attorney Allen continued that relief under Section 5.50 is warranted under Section 5.43 of the Zoning By-Law because the Petitioner is proposing to install landscaping as the required counterbalancing amenity and noted that the Petitioner has been working with an arborist to ensure adequate measures for the preservation of the roots of the neighbor's silver maple tree. With respect to Section 8.02.2, Attorney Allen reiterated that the requirements under Section 9.05 were met for the reasons previously described.

Chairman Geller then asked whether anyone was present to speak in favor of the proposal. Attorney Ken Goldstein, Goldstein & Herndon, LLP, 824 Boylston Street, Suite 100, Chestnut Hill, Massachusetts, spoke representing the abutting neighbors, Mr. Capace and Ms. Moses, 123 Wolcott Road, Brookline, Massachusetts. Attorney Goldstein stated that his clients are in support of the revised proposal. Mr. Goldstein articulated the importance to Mr. Capace and Ms. Moses of the preservation of the silver maple tree.

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal.

No one spoke in opposition to the proposal.

Chairman Geller then called upon Ashley Clark, Zoning Coordinator and Planner, to deliver the findings of the Planning Board. Ms. Clark noted the following:

**FINDINGS**

**Section 5.09.2.j – Design Review:** Any exterior addition for which a special permit is requested pursuant to *Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations)* requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – The proposal does not require the removal of any substantial trees. The most mature trees on the site are located at the very rear. The applicant proposes to re-landscape the rear yard and add a terrace. Overall, overgrown landscaping will be cleaned up and replaced.
- b. Relation of Buildings to Environment – The proposed addition is not expected to have shadow impacts on neighboring properties due to its location at the rear. The portion of the home closest to the left-hand neighbor will be removed, improving light and privacy.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed addition has been designed to fit in with the neighborhood context. The addition will not be taller than the existing building and does not extend into any setbacks. The massing and scaling fit in with the properties on either side and in the neighborhood. It will be minimally visible from the street.

**Section 5.22.3.b.1.b – Floor Area Ratio**

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.25 (100%)	.20 (80%)	.28 (112%)	Special Permit*
Floor Area (s.f.)	2,592	2,079	2,944	

\* Under Section 5.22.3.b.1.b, the Board of Appeals may grant a special permit for an FAR increase totaling no more than 120% of the allowable FAR

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 6.04.5.c.2 – Design of All Off-Street Parking Facilities

<b>Setback</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Front Yard</b>	25 feet	18.5 feet	18.5 feet	Special Permit*
<b>Driveway (Left)</b>	5 feet	~ 4 feet	~1.2 feet	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.*

**PLANNING BOARD COMMENTS**

The Planning Board supports this proposal which has been revised from a previous proposal that the Planning Board previously approved. The applicant did not move forward with their original proposal due to opposition from the abutter to the left. This new proposal increases the setback at the left and moves the garage to the rear of the property where there is ample room. The new addition will be minimally visible from the street and takes advantage of the sloped lot. The front yard setback is not changing and the proposed driveway setback is reasonable. The applicant has the support of many neighbors for this new design.

**Therefore, the Planning Board recommends approval of the site plan dated 11/3/2017 by Michael Clifford and the floor plans and elevations dated 10/25/2017 by O’Sullivan Architects, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, 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 counterbalancing amenities that include measures to protect the significant tree on the abutter’s property, 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 building elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Geller then called upon Mr. Yanovitch to deliver the comments of the Building Department. In response to an inquiry from the Board Members, Mr. Yanovitch stated that the Building Department has no opposition to this request. Mr. Yanovitch explained that before a final inspection or occupancy inspection, any of the walls with more than a thirty inch drop on the low side will require minimum guard rails or fencing. Mr. Yanovitch concluded that should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

The Board then determined, by unanimous vote that the requirements for a special permit from Section 5.20, Section 5.50, and Section 6.04, pursuant to Section 5.09.2.j, Section 5.22.3.b.1.b, Section 5.43, Section 6.04.5.c.2 and Section 9.05 of the Zoning By-Law, respectively, were met finding specifically under 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.

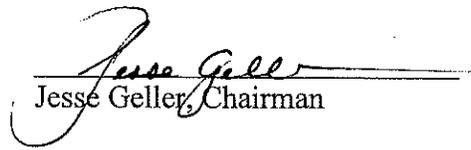
Accordingly, the Board voted unanimously to grant the requested special permit relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.

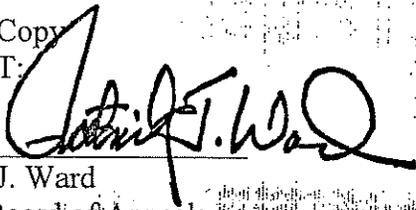
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating counterbalancing amenities that include measures to protect the significant tree on the abutter's property, subject to the review and approval of the Assistant Director of Regulatory Planning.
  
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 building elevations; 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: 2/21/2018

  
Jesse Geller, Chairman

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals