



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0014
KARL CHRISTIAN &
MARIANNE NOURZAD
43 BLAKE ROAD, BROOKLINE, MA

Petitioners, Christian and Marianne Nourzad Karl, applied to the Building Commissioner for permission to add a new garage to north side of their single family house, and add a second story addition. 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 April 26, 2018 at 7:30 PM., in the Select Board'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 April 12, 2018 and April 19, 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:

43 BLAKE ROAD, BROOKLINE, MA 02445 - Interior renovation and addition, exterior addition, garage addition in a(n) S-7 SINGLE-FAMILY on 04/26/2018 at 7:30 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: KARL, CHRISTIAN & MARIANNE NOURZAD) Precinct 6

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.C – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

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 in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer. If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

Jesse Geller, Chair

Christopher Hussey

Mark Zuroff

Publish: 04/12/2018 & 04/19/2018

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Kate Poverman and Chris Hussey. The applicant requested to continue the hearing to June 28, 2018 and the Board unanimously granted the request.

On June 28, 2018 this Board held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Kate Poverman and Randolph Meiklejohn. Deputy Building Commissioner Mike Yanovitch and Planner and Zoning Coordinator Ashley Clark were also present.

The case was presented by the homeowners, Marianne and Christian Karl.

Chairman Schneider called the hearing to order at 7:10 p.m. Mr. Karl waived the reading of the public notice.

Mr. Karl stated that 43 Blake Road is located in an S-7 Residential Zoning District and the neighborhood comprised mostly of two-story single-family homes with garages. He noted that 43 Blake Road is the smallest home in the neighborhood.

Mr. Karl then described the proposal they are seeking zoning relief to construct. He stated that the proposal is to finish some space in the attic, construct a small addition at the rear of the home and construct a garage on the side of the structure. He noted that a single-car garage is a common feature in the neighborhood and will be an improvement to the unprotected parking path that has a steep drop.

Mr. Karl then described the zoning relief being requested. He stated that the proposal requires relief for the provisions of Section 5.20 for Floor Area Ratio. He argued that the Board may grant relief by a special permit under Section 5.22.3.b.1.c which allows an increase of up to 130% of the allowable FAR for a combination of interior and exterior additions and the proposal is to increase the FAR to 129%, as noted in the Planning Board report.

Mr. Karl stated that they met with all neighbors on several occasions to discuss plans had an open house back in April. He noted that many neighbors are supportive of the proposal and some submitted letters to that effect. Mr. Karl further noted that the immediate abutter expressed concerns regarding how the proposal will impact their property. In response to those concerns, Mr. Karl stated, the garage was modified from a two-car garage to a single-car garage in order to provide additional buffer zone to

protect the existing tree. In regards to the tree, Mr. Karl noted that they are concerned about the long term health of the tree and will work with an arborist to find the best and safest solution on how to replace the tree to provide a similar shade condition. These efforts as well as landscaping will provide as a counter balancing amenity for the requested side-yard setback relief.

Mr. Karl stated that the Planning Board reviewed the proposal on two occasions. During the first meeting in April, the Planning Board provided recommendations on the size of the garage, overall design and massing of the roof. He stated that that they incorporated all their suggestions into their new plans, which included scaling back the garage from a two-car garage to a single-story garage as well as revising the roof. Mr. Karl then stated that in June, the Planning Board voted unanimously in favor of the proposal, with the requirement to work with an arborist and meet with the neighbor to discuss the best solution for the tree at the rear of the property.

Mr. Karl stated that he believes the proposed development is in accordance with Section 9.05 of the Brookline Zoning By-Law.

The Board discussed the size of the garage and whether or not it was appropriate. Ms. Karl stated that the current flat parking pad is currently a hazardous condition because of the steep drop and the garage will be a safer condition for their children. Ms. Karl stated that garages near or on the side-yard setbacks is a common condition in the neighborhood.

Chairman Schneider then asked whether anyone was present to speak in favor of the proposal.

Ms. Virginia Conquest, 115 Tappan Street, spoke in support of the proposal, and stated that her garage is on the property line at 43 Blake Road house and that she appreciates the change to the roofline and will be an improved condition.

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

Ms. Phoebe Morse, direct abutter at 49 Blake Road, stated that she submitted photos of the tree and expressed a concern that the proposal will impact her foundation and would like a condition attached to the grant of relief to address that concern. Ms. Morse noted that the house needs a lot of renovation and is concerned about her foundation being negatively impacted. Board Chairman Schneider sought to confirm that Ms. Morse's concerns are related to the proper tree replacement and that the garage be constructed in a way that does not impact Ms. Morse's foundation. Ms. Morse confirmed that she is alright with the proximity of the garage to the setback and is concerned that the foundation is protected and proper measures taken to ensure no damage is done.

Upon inquiry from Board Member Meiklejohn, Mr. Yanovitch stated that there are construction standards for protecting abutting properties and prior to excavation the Building Department works with contractors to ensure that damage is not done to an abutter's property. Board Member Meiklejohn stated that the abutter could communicate with the Building Department about construction related concerns. Mr. Yanovitch apprised the Board that the building inspectors are out on a daily basis monitoring construction sites and ensure any excavation, soil retention, or construction management plans are being followed accordingly. Board Member Meiklejohn encouraged the Petitioners to communicate with the abutters on their construction plans.

Mr. Jeffery Maclis, 61 Blake Road, stated that he came to learn about the proposal and he is in favor of expanding the property at 43 Blake Road. Mr. Maclis stated that he was not contacted prior to the hearing was wondered if the Board had all the information necessary to weigh the proposal and expounded on so-called "Olmsteadian" principles of design in the neighborhood. Mr. Maclis provided the Board with a thorough review of famous architects who might have the solution or who might not for the proposal. Mr. Maclis further stated that the data are not in and requested that the Board ask for more information to optimize this plan so that 100 years from now Aspinwall Hill looks as nice as it

does now.

Ms. Karl stated that they explored many locations for the garage and felt the side yard of the property was the best location in terms of circulation as well as to preserve as much open space as possible.

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

FINDINGS

Sections 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 rear addition infills the existing U-shape of the home and will not impact the landscape or trees. The applicant altered the proposed garage
- b. Relation of Buildings to Environment – The roof will be raised by 4 feet but is not expected to have major impacts on shadows, light or air.
- 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. Most homes on the street have two full stories so this design will not be out of place. Most homes also have a garage, either attached or detached. The garage will not be out of character but is proposed very close to the property line which will impact the spacing of homes along the street front.

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

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.35 (100%)	.27 (78%)	.45 (129%)	Special Permit*
Floor Area (s.f.)	2,407	1,869	3,107	

**Under Section 5.22.3.b.1.c, the Board of Appeals may grant a special permit for an increase in FAR of up to 130% of the allowable FAR through a combination of interior conversion and exterior addition.*

Section 5.43 – Exception to Yard and Setback Regulation

Section 5.60 – Side Yard Requirements

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Side Yard Setback (Garage)	7.5 feet	15.7 feet	2.3 feet	Special Permit*/ Variance

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

STAFF ANALYSIS

The applicants received feedback from the Planning Board to reduce the size of the proposed garage and redesign the proposed second story to maintain more of the original character and charm of the home. The applicants and their architect met with staff to discuss possible design solutions and have submitted these revised plans. Staff supports the reduced garage that is now pushed back further from the street and will not interfere with the existing tree at the property line. The second story has also been altered to maintain more of the proportions of the original roofline. The staff feels that the second story is still large but that this proposal works towards keeping the original proportions of the roofline.

Ms. Clark stated that the Planning Board was pleased with the applicants' revisions to their previous plans and supported the changes to the second story roofline and the reduced garage. She noted that the Planning Board offered suggestions for minor changes to the middle dormer that would expand the windows and also suggested that the garage be reduced in depth by an additional few feet to ensure greater protection of the Norway Maple and added a condition that the applicants and their neighbor to the left shall consult with an arborist regarding the status of the Norway Maple.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Clifford Rober dated 4/18/2017 and the floor plans and elevations by Nordesign & Build LLC dated 5/7/18 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 review and approval by the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities, subject to review and approval by the Assistant Director of Regulatory Planning. The applicant shall also arrange for a consultation with an arborist jointly with the neighbor at 49 Blake Road regarding the Norway Maple on the property

line.

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) final floor plans and elevations stamped and signed by a registered architect; 2) a final site plan, stamped and signed by a registered engineer or land surveyor; and 3) evidence that the final decision has been recorded at the Registry of Deeds.

Ms. Clark further suggested that the Board adopt a condition to require a construction management plan.

Chairman Schneider then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to this request and noted that the FAR relief requested falls within Section 5.22.3.B.1.b of the Brookline Zoning By-Law allow. Mr. Yanovitch noted that the Zoning By-Law seeks to create conforming neighborhoods that are similar in terms of setbacks and stated that this neighborhood appears to have several properties within the required setbacks. Mr. Yanovitch further stated that he would be in support of a condition requiring a construction management plan to ensure the abutter's property is at no risk of damage as a result of construction at 43 Blake Road. Finally, Mr. Yanovitch stated that the Building Department will work with the Petitioners to ensure compliance with the Building Code should the Board find the criteria are met for the grant of the requested relief.

Board Member Poverman stated that she appreciated that the Petitioners are preserving the existing home. Chairman Schneider concurred with Board Member Poverman and appreciated the effort to keep the architectural style consistent with the existing architecture and that the Petitioners made efforts to work with abutters, made changes based on the Planning Board's feedback, and modified the project so that it has greater sensitivity to the abutters. Chairman Schneider noted that while one neighbor spoke in opposition, her concerns were generally with regard to some of the potential construction impacts from

the project, but not an opposition to the design or location on the site. She further stated that the request is modest, especially compared to existing setbacks on surrounding properties and will benefit the neighborhood. For those reasons, Chairman Schneider stated, she would vote in favor for the relief. Board Member Poverman and Meiklejohn concurred. Board Member Meiklejohn stated that the proposal is modest as they are keeping the existing structure, raising the roof by only four feet and felt it was the modest increase was appropriate for the neighborhood and was in support of the Petitioners working with an arborist.

In reliance on the plans identified above, the Board then determined, by unanimous vote that the requirements for a special permit for Sections 5.09.2.j, from the provisions of Section 5.60 pursuant to Section 5.43 and Section 9.05 of the Brookline 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.

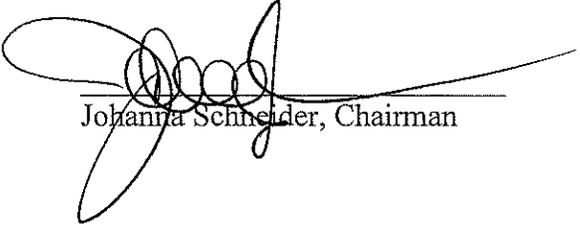
Accordingly, the Board voted unanimously to grant the special permits requested subject to the following revised conditions:

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 all counterbalancing amenities, subject to review and approval by the Assistant Director for 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 building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval a construction management plan.

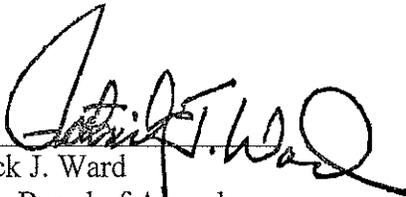
Unanimous Decision of
The Board of Appeals

Filing Date: 8/14/18



Johanna Schneider, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals