

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark G. Zuroff

# Town of Brookline

## Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0062  
ALAN KURD & KATHARINE ESSELEN  
85 DEAN ROAD, BROOKLINE, MA

Petitioners, Alan Kurd and Katharine Esselen, applied to the Building Commissioner for permission to construct an attached 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 January 10, 2019 at 7:00 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 December 27, 2018 and January 3, 2019 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:

**85 DEAN ROAD, BROOKLINE, MA 02445 - Construct attached garage in a(n) S-7 SINGLE-FAMILY on January 10, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Law Office of Robert Allen) 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:

**§5.20 - FLOOR AREA RATIO**

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

**§5.70 - REAR YARD REQUIREMENTS**

**§8.02.2 – ALTERATION AND EXTENSION**

**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 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](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Mark G. Zuroff*

**Publish: 12/27/18 & 1/3/2019**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Lark Palermo. Also present at the hearing was Planner, Karen Martin.

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 present at the hearing were the Petitioner, Alan Kurd, and the architect for the project, Timothy Burke.

Chairman Zuroff called the hearing to order at 7:10 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described proposal stating that the Petitioner proposes to demolish the existing detached garage and construct an attached garage. He noted that the home is located in the S-7 Zoning District.

Attorney Allen then stated that the Petitioners seek a special permit for relief from Section 5.20 for floor area ratio, Section 5.70 under Section 5.43 for a pre-existing non-conforming rear yard setback, and Section 8.02.2 for alteration or extension of a non-conforming structure, all pursuant to Section 9.05. He argued that with respect to Section 5.20, under M.G.L. ch. 40A, sec. 6, the current floor area ratio, which is over the allowed, could be increased further, provided that there are no new non-conformities and that the increase is not substantially detrimental to the neighborhood.

Attorney Allen noted that the Petitioners attended two Planning Board Meetings and have made changes to the plans as a result of those meetings and comments of the abutter Alex Pierpont, of 73 Dean Road. He stated that the Petitioners have the support of the abutters at 93 Dean Road and the neighbors at 86 Dean Road. He noted that at their second meeting, the Planning Board unanimously recommended approval of the proposal. Mr. Allen stated that the size of the garage was reduced two times, noting that most recently the Petitioners lowered the garage another 18 inches at the request of the Planning Board. He further noted that the window on the side of the garage facing Mr. Pierpont was largely made into a blind opening to avoid privacy concerns. Furthermore, the side setback of the garage

was reduced by 2.5 feet throughout the evolution of the proposal. Tim Burke of Timothy Burke Architecture, 142 Berkeley Street, Boston, Massachusetts 02116, then presented the plans.

Chairman Zuroff inquired whether the applicant would object to a condition whereby the space above the garage would not become living space. Board Member Palermo asked whether there was any plan to heat or cool the space above the garage. Mr. Burke noted that no mechanical engineering had been done yet, but stated that the temperature should be controlled to some extent. Attorney Allen noted that the space could not be turned into a bedroom because there is not an adequate means of egress. He stated that the Petitioners would agree to a condition that that space could not be converted into habitable space. Chairman Zuroff asked about the window facing the neighbor's house. Mr. Burke explained that it was a solid panel blind opening.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed attached garage because the home is currently a single-family dwelling and will continue to be used as such; the proposal will allow for a more usable garage and the housing of one additional car; the use will not adversely affect the neighborhood because the proposed garage is located in nearly the same location as the existing garage and the right side setback will still be in compliance; additionally, the applicants will provide extensive landscaping as a counterbalancing amenity for dimensional relief; there will be no nuisance or serious hazard to vehicles or pedestrians because the property's on-site circulation will not change and an additional car will be housed in the garage and out of view; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. Alex Pierpont, 73 Dean Road, Brookline, Massachusetts, noting that he was neutral on the requested relief,

spoke. Mr. Pierpont noted that the Petitioners are good neighbors and that he thought that the proposal continued to look better. He stated that while he was surprised it was not lowered further, his biggest concern was the windows that would potentially look into his house. He also noted that the issue that impacted him the most was the height of the garage.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Attorney Allen then clarified that the space above the garage was required to be counted as gross floor area towards the floor area ratio. Chairman Zuroff asked what the proposed counterbalancing amenities would be. Attorney Allen stated that the Petitioners would work with the immediate abutter to develop a landscaping plan. Board Member Palermo asked whether Mr. Pierpont was concerned with the window at the top of the garage or all of the windows. Mr. Pierpont and the Petitioner noted that there is currently a fence that would block the view of the bottom two windows. Mr. Burke suggested the use of translucent glass.

Chairman Zuroff then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

## FINDINGS

### Section 5.20 – Floor Area Ratio

<b>Floor Area</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.35 (100%)	.61 (174%)	.70 (200%)	Special Permit*
<b>Floor Area (s.f.)</b>	2,658	4,611	5,313	

*\* Under Deadrick, the Board of Appeals may allow an extension of an existing non-conformity if it finds there is no substantial detriment to the neighborhood.*

**Section 5.43 – Exceptions to Yard and Setback Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.70 – Rear Yard Requirements**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard Setback</b>	7.5 feet	~ 10 feet	7.57 feet	Complies
<b>Rear Yard Setback</b>	30 feet	~ 2 feet	~ 2 feet	Special Permit*/ Variance

*\*Sec. 5.43 – If counterbalancing amenities are provided, the Board of Appeals may waive the required setback by special permit.*

**Section 8.02.2 – Alteration or Extension**

A special permit is required for alterations to a non-conforming structure.

**PLANNING BOARD COMMENTS**

The Board appreciated the applicant’s changes to the garage based on the Board’s original feedback. The Board did feel that the second story storage area is still too high and appears overwhelming and will negatively impact the immediate abutter on the right. The Board asked the applicant to lower the garage height by about 18 inches by reconfiguring the stairs and has included this in condition #1 below.

**Therefore, the Planning Board recommends approval of the site plan by Bruce Bradford, dated 11/29/2018 and the floor plans and elevations by Timothy Burke, dated 12/13/18, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, final floor plans and elevations showing a reduced height of the garage 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 review and approval by 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans building elevations stamped and signed by a registered architect; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Karen Martin to deliver the comments of the Building Department. Ms. Martin stated that the Building Department was not present and provided no report, but

the Planning Department would work with the Petitioner to ensure compliance with the conditions of this decision.

During deliberation, Board Member Schneider stated that she had no issue with the request but wished to add conditions regarding the space above the garage. Chairperson Zuroff and Board Member Palermo agreed.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for relief from Section 5.20 for floor area ratio, under M.G.L. ch. 40A, sec. 6, Section 5.70 under Section 5.43 for rear yard requirements, and Section 8.02.2 for alteration or extension of a non-conforming structure, all pursuant to Section 9.05 of the Zoning By-Law were met, finding specifically under said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed home will remain a single-family and the proposed addition will allow for a more usable garage and the housing of one additional car.
- b. The use as developed will not adversely affect the neighborhood because the new garage will be placed in nearly the same spot as the existing garage and the Petitioners will provide extensive landscaping to screen the garage.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians and the property's on-site circulation will not change except to allow for the housing of one additional car out of view from the streetscape.
- d. Adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling.
- 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 conditions:

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

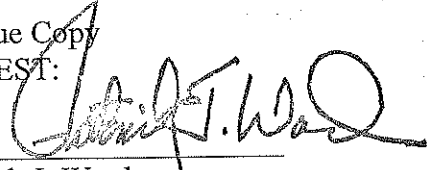
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to review and approval by the Assistant Director of Regulatory Planning.
3. At no point in the future shall the space above the garage be converted into habitable living space and must remain as unfinished storage space.
4. All windows above the garage shall be made of translucent glass or similar opaque material as to not allow any visibility.
5. 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans building elevations stamped and signed by a registered architect; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 2/25/19

  
Mark G. Zurhoff, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals