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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

Town of Brookline *Massachusetts*

2021 JUL -7 P 2:55

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0020
EVAN MACOSKO AND CANDACE FELDMAN
52 HARRISON STREET, BROOKLINE, MA

Petitioners, Evan Macosko and Candace Feldman, applied to the Building Commissioner for permission to construct a driveway extension in a T-5 Two-Family & Attached Single-Family District. 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 June 24, 2021 at 7:00 p.m. virtually 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 June 10, 2021 and June 17, 2021 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 on the following petition:

Address: 52 Harrison Street
Petitioner: Evan Macosko and Candace Feldman
Zoning District: T-5 (Two-Family & Attached Single-Family)
Precinct: 3
Description: Proposed driveway extension

Date, time, and location of the public hearing are as follows:

Date: 06/24/2021
Time: 7:00 pm
Location: This meeting is being scheduled as an in-person only meeting in the meeting room of the Public Safety Building located at 350 Washington Street because the COVID protocols for remote meeting attendance will end on June 15, 2021, unless extended by state action. Please note that, if the COVID protocols for remote meeting attendance are extended, the meeting will be conducted via ZOOM to allow remote attendance/participation only. The meeting may be accessed by clicking this link <https://bit.ly/3uQn077>. Accordingly, prior to the meeting, please check the Town's website at www.brooklinema.gov and/or the Planning Department's webpage at <https://www.brooklinema.gov/203/Planning-and-Community-Development-Depar> for updated information on the meeting format and how you may attend. Also please feel free to contact Karen Chavez at kchavez@brooklinema.gov.

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:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS
§6.04.5.C – DESIGN OF ALL OFF-STREET PARKING FACILITIES
§8.02 - ALTERATION OR EXTENSION

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

Advanced submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations or questions be sent before the hearing to Karen Chavez (kchavez@brooklinema.gov).

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. Public testimony will be taken during the hearing as normal.*

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters by mail or in the papers. Questions about hearing schedules may be directed to the Planning and Community Development Department at vpanak@brooklinema.gov, 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 Assistive Listening Devices, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark Zuroff
Johanna Schneider*

Publish: 06/10/2021 & 06/17/2021

At the time and place specified in the notice, this Board held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Lark Palermo and Paul Bell. Also present at the hearing was Zoning Coordinator and Planner, Karen Chavez and Deputy Building Commissioner, Paul Campbell.

The Petitioner, Evan Macosko, waived a reading of the public hearing notice for the record and presented project details to the Board.

Mr. Macosko stated that the property has only one narrow parking space with a retaining wall at the end of the driveway. Mr. Macosko described the proposal to extend the driveway 10 feet back in order to accommodate an additional car as well as garbage bins, and opined that it would minimally affect the property.

Mr. Macosko noted that letters of support were requested from abutters, and that the abutters feel comfortable that the proposed scope of work will not affect their properties.

Chair Geller noted that **Section 5.43** of the Zoning By-Law requires that a counterbalancing amenity be provided to offset the nature of the nonconformity, and asked the

applicant to identify the proposed counterbalancing amenity. Mr. Macosko noted that there are a couple of locations on the property where trees and plantings can be added in order to satisfy the requirement.

Board Member Bell asked the applicant to provide clarification on where the proposed counterbalancing amenity would be located in relation to the existing retaining walls. Mr. Macosko stated that there is a retaining wall on one side of the driveway and a raised planter on the other side of the driveway, and portions between the two structures along the south side of the property that do not have trees where the counterbalancing amenity can be placed.

Chair Geller called for public comments in support of the application. No comments were submitted.

Chair Geller called for public comment in opposition to the application. No comments were submitted.

Chair Geller called upon Karen Chavez, Planner and Zoning Coordinator to deliver the findings of the Planning Department and Planning Board:

FINDINGS

Section 6.04.5.C, Design of All Off-Street Parking Facilities: This section requires that parking areas must be set back from side property lines a minimum of 5 feet. The applicant is proposing a setback of approximately 3 feet for the new portion of the driveway. Relief from this requirement can be granted through Section 5.43, where the applicant is required to provide a counterbalancing amenity.

PLANNING DEPARTMENT COMMENTS

Ms. Chavez stated that the Planning Department is supportive of this proposal. She noted that the driveway extension is modest and does not extend closer towards the property line than the existing driveway. Staff does not expect this extension to have any negative impacts on surrounding abutters or the public way.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal. She noted that the Board feels that the request is minimal.

Therefore, Ms. Chavez stated the Planning Board recommends approval of the site plan by WDA Design Group, dated 6/3/21, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Chair Geller called upon Deputy Building Commissioner Paul Campbell to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department has no objection to the relief requested and will work with the Petitioner to ensure compliance with the Building Code.

The Board deliberated on the merits of the application. Board Member Lark Palermo noted that the proposal is a very modest improvement to the property, the applicant is proposing a reasonable counterbalancing amenity by planting trees to extend the line of plantings between the two homes, and supports granting the relief. Board Member Paul Bell agreed with Board Member Palermo, and supports granting the relief subject to conditions. Chair Geller agreed with Board Member Palermo and Board Member Bell, and further added that the proposed scope of work

meets the requirements under Section 5.43 of the Zoning By-Law because of the proposed counterbalancing amenity to offset the nature of the nonconformity.

The Board voted unanimously that the requirements have been met for the issuance of zoning relief under Section 5.43 and Section 9.05 of the Zoning By-Law.

The Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- 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. The development as proposed will not have a significant adverse effect on the supply of housing available for low- and moderate-income people

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

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to the review of and approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Unanimous decision of the
Board of Appeals

Filing Date: 07/07/21


Jesse Geller, Chair

A True Copy
ATTEST:


Benjamin Kaufman
Clerk, Board of Appeals