



Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

**Benjamin Kaufman, Clerk**

**BOARD OF APPEALS**  
**Jesse Geller, Chairman**  
**Mark Zuroff**  
**Johanna Schneider**

# *Town of Brookline*

## *Massachusetts*

2021 JUL 12 A 11:16

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2021-0022  
101 SUMNER ROAD LLC  
101 SUMNER ROAD, BROOKLINE, MA

Petitioner, 101 Sumner Road LLC, applied to the Building Commissioner for permission to demolish an existing garage and a two-family home and replace them with a new garage and two attached single family homes in a T-6 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 17, 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 3, 2021 and June 10, 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: **101 Sumner Road**  
Petitioner: **101 Sumner Road LLC**  
Zoning District: **T-6 (Two-Family & Attached Single-Family)**  
Precinct: **6**  
Description: **Demolish existing two-family home and construct two attached single-family dwellings**

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

Date: **06/17/2021**  
Time: **7:00 pm**  
Location: **Virtual Meeting (see below)**

**Register for this virtual hearing:**

<https://bit.ly/34jNMdg>

*After registering you will receive a confirmation email containing information about joining the hearing.*

**Our Virtual Meeting Guide for Applicants and the Public can be found here:**

<https://bit.ly/30wRoY3>

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:

**§4.07 – TABLE OF USE REGULATIONS, USE #05**

**§5.10 - MINIMUM LOT SIZE**

**§5.20 - FLOOR AREA RATIO**

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

**§5.72 - ACCESSORY BUILDINGS OR STRUCTURES IN REAR YARDS**

**§5.91 - MINIMUM USABLE OPEN SPACE**

**§6.04.5.C.1 – 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](mailto:vpanak@brooklinema.gov), 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 **Assistive Listening Devices**, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

***Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider***

**Publish: 06/03/2021 & 06/10/2021**

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 Johanna Schneider and Randolph Meiklejohn. Also present at the hearing was Zoning Coordinator and Planner, Karen Chavez and Deputy Building Commissioner, Paul Campbell.

The Petitioner's attorney, Scott C. Gladstone, 822 Boylston St., Suite 300, Chestnut Hill, Massachusetts, waived a reading of the public hearing notice for the record. Also in attendance was the project architect, Henry Bobek.

Mr. Gladstone stated that the petitioner proposes to replace the current two-family home with two single-family attached homes on the existing foundation, and replace the existing garage with a larger garage.

Mr. Gladstone explained that since the proposed new attached single family homes are being built on the same foundation as the existing structure, it will be violating the side, front and rear yard without increase in footprint or creation of new non-conformities. It was noted that the proposed front porch will have a greater front yard setback than the existing front porch, therefore

lessening the nonconformity of the front yard setback. Mr. Gladstone stated that the new structure will increase the available usable open space, although it would remain pre-existing non-conforming because of the increased Gross Floor Area of the new structure. He noted, however, the proposal adds conforming landscaped open space where there currently is none on the lot. Mr. Gladstone explained that the new structure will slightly increase the pre-existing Floor Area Ratio non-conformity, but not more than other pre-existing non-conforming structures in the same T-6 Zone, as evidenced in a chart submitted to the Board by the petitioner. Additionally, most of the additional gross floor area is being added at the basement level, which will not be seen by the public and will not be adding to the massing of the building. The second-floor gross floor area is being reduced to accommodate a porch for each unit. Mr. Gladstone noted that the proposed new garage would be located where the existing garage is, would have the same rear and left side yard setbacks, and would increase the existing front lot line setback non-conformity.

Mr. Gladstone opined that all relief being requested represents either a repetition of the existing non-conforming conditions or a slight increase of such existing condition, and such relief should be evaluated under the “not substantially more detrimental standard” of G.L. c. 40A, Section 6. Mr. Gladstone stated that the proposed structures would be built on the same footprint as the existing structures; the setbacks would remain the same and would not be substantially more detrimental; and although the roof line would be changing, the new design and new construction would be a visual improvement over the existing conditions. With respect to the increase in F.A.R., Mr. Gladstone opined that the new structure would fit within the context of the T-6 zoning district. Mr. Gladstone added that any new non-conformities for setbacks are eligible for a special permit pursuant to Section 5.43 of the Zoning By-Law with counter-balancing amenities, which would consist of improved proposed landscaping and the creation of qualifying usable open space.

Mr. Gladstone stated that the proposal meets all of the requirements for a special permit under **Section 9.05** of the Zoning By-Law noting the following: (1) The site is an appropriate location for such a use, structure, or condition. The proposed project simply replaces the existing two-family home and existing garage in the T-6 district with two attached single family homes built on the same foundation as the existing home and a garage that is only slightly larger than the existing. (2) The proposed use will not adversely affect the neighborhood since it will be a visual improvement over the current structures, built on the same foundation as the current residences, and well within the limits of the other lots in the zoning district that are non-conforming as to F.A.R. (3) There will be no nuisance or serious hazard to vehicles or pedestrians since there is already parking on the site, which is not changing, and the entrance to the driveway over the sidewalk is not changing. (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use. (5) The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people since the proposal does not take away any current housing.

Board Member Randolph Meiklejohn asked if there had been discussions with the MBTA about the interaction with the right of way shown on the surveyed plans. Mr. Gladstone stated that there had not been. Board Member Meiklejohn also noted that the landscape plan contained a note to remove invasive shrubs from the Town-owned land in front of the property, and Mr. Gladstone responded that no changes would be made to Town-owned property.

Mr. Bobek provided an overview of the design. Member Johanna Schneider asked if the Petitioner had considered alternatives to replace the existing structures with structures that were more conforming to the Zoning By-Law. Mr. Gladstone explained that the issue was discussed with the architect, but that the unusual shape of the lot and the need to provide four parking spaces

made it impossible to locate the structure anywhere other than where the original structure had been placed. Chair Geller asked if there was an opportunity to rotate the garage entrance to face another portion of Sumner Road, but it was explained that the drastic change in elevation from the lot to the public right-of-way made it infeasible, and Mr. Gladstone confirmed that vehicles would not encroach onto the sidewalk or the public right-of-way. Board Member Meiklejohn asked for clarification on the revised architectural plans, and inquired whether the garage would be widened. Mr. Gladstone responded that the entrance to the attached structures had been redesigned to address the Planning Board's comments. Project architect, Henry Bobek, confirmed that the garage would be widened and explained that space was needed to fit full-sized vehicles, and to accommodate storage for bikes and the like.

Chair Geller called for public comments in support of the application. No comments were submitted. Mr. Gladstone pointed out that the neighbor across the street had provided a letter of support. No other comments were received in support of the application.

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**

<b>ZONING: T-6</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>Use</b>	<b>Two attached dwellings</b>	<b>Detached two-family</b>	<b>Two attached dwellings</b>	<b><u>Special Permit</u><sup>3</sup></b>
<b>Lot Size</b>	<b>6,000sf</b>	<b>4,092sf</b>	<b>4,092sf</b>	<b><u>Special Permit</u><sup>1</sup></b>

<b>Floor Area Ratio</b>	<b>0.75 (100%) 3,069sf</b>	<b>0.80 (107%) 3,276sf</b>	<b>0.96 (129%) 3,946sf</b>	<b><u>Special Permit</u><sup>1</sup></b>
<b>Height</b>	35'	32'	33'2"	
<b>Front Setback</b>	<b>15'</b>	<b>1'11"</b>	<b>2'5"</b>	<b><u>Special Permit</u><sup>1,2</sup></b>
<b>Side Yard Setback (Left / Right)</b>	<b>10'/10'</b>	<b>4'8.5"/na</b>	<b>4'8.5"/na</b>	<b><u>Special Permit</u><sup>1,2</sup></b>
<b>Rear Yard Setback</b>	30'	<b>19'7"</b>	<b>18'1"</b>	<b><u>Special Permit</u><sup>1,2</sup></b>
<b>Open Space (Landscaped / Usable)</b>	<i>10%/30%</i> <b>395sf/1,184sf</b>	1,255sf / 0 sf	1,763sf / 375sf	<b><u>Special Permit</u><sup>1</sup></b>
<b>Parking</b>	4	4	4	

<sup>1</sup> Under **MGL Chapter 40A, Section 6**, a pre-existing nonconforming structure can extend or intensify the nonconformity by special permit provided the Board of Appeals finds that the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

<sup>2</sup> **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

<sup>3</sup> **Section 4.07, Table of Use Regulations, Use #5:** Attached single-family dwellings are permitted in T districts by Special Permit provided that no row of such units may exceed two units in the T district.

**Other Zoning Relief Needed**

**Section 5.72, Accessory Buildings of Structures in Rear Yards:** This section states that accessory structures may be located in a required rear yard provided that: (1) it does not occupy more than 25 percent of the rear yard, (2) it is no closer than 6 feet from the property line, and (3) it does not exceed 15 feet in height. The proposed detached garage is 0.5 feet from the property line and is 20.5 feet in height, so it does not meet the requirements of this section. ***Relief for the setback may be granted by Special Permit through Section 5.43 (see above), but the relief for the height will require a Variance. [The applicant has agreed to revise the plans to eliminate the need for a Variance]***

**Section 6.04.5.c.1, Design of All Off-Street Parking Facilities:** This section states that parking areas cannot be located within the required front yard (15 feet). Relief from this section can be granted through Section 5.43 (see above).

**Section 8.02, Alteration or Extension:** A special permit is required for the alteration of a non-conforming structure.

**PLANNING DEPARTMENT COMMENTS**

Ms. Chavez stated that the Planning Department is not supportive of this proposal as currently submitted. The Planning Board has previously stated clearly that where an existing building is demolished and replaced by a new building, new buildings should conform as closely to the zoning requirements as possible. This proposal does not meet this expectation and, in several instances, substantially worsens the existing conditions. In particular, the Planning Department is concerned with the increase in FAR and the expansion of paved areas in the front and rear yards. Furthermore, the Planning Department is especially opposed to the creation of a new nonconformity in the height of the proposed detached garage (see Section 5.72).

Replacing existing dwellings with new dwellings that do not provide any appreciable benefits to the community is generally unfortunate, but such proposals are especially problematic when they unnecessarily exacerbate existing zoning nonconformities. While no specific intensification or extension of any existing nonconformities on this site are detrimental to the neighborhood, the proposal involves an intensification of almost all of the existing nonconformities and, taken together, the altered structure is therefore substantially more detrimental to the neighborhood than the existing structure. The Planning Department recommends that the applicant eliminate the attic space above the detached garage to reduce the height below 15 feet, reduce paved areas on the site (both by reducing the back patio and the driveway) and reduce the proposed FAR. A landscape plan should also be submitted showing the extent of tree



removal (several significant trees seem to exist on the property), proposed plantings, and clearly designating proposed counterbalancing amenities that satisfy Section 5.43.

### **PLANNING BOARD RECOMMENDATION**

The Planning Board voted to recommend approval of this proposal, although members of the Board felt that some elements of the site design and building design should be improved. Several Board members were particularly displeased with the location of parking on the site and its interaction with the front entrance. The Board felt that the extent of zoning relief needed is primarily a function of the site itself and is therefore not a sufficient justification for denying the requested relief. Given the outstanding design issues that the Board identified, the Board recommends a condition requiring that the proposal return to the Planning Board for final design review.

Therefore, Ms. Chavez stated the Planning Board recommends approval of the site plan by Spruhan Engineering, P.C., dated 2/9/21, and architectural plans by Signature Designs Architecture, dated 4/16/21 and revised 5/13/21, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Planning Board 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 Planning Board. 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 relief as requested. Board Member Meiklejohn opined that opportunities were not taken to propose a new structure with reduced nonconformities, and in looking at the shape of the site including the curving public frontage and the grade, understood the approach to build on the existing footprint. Board Member Meiklejohn noted that the proposal was not substantially more detrimental and voted in favor of granting the relief. Board Member Schneider expressed her shared view that when structures are demolished, new structures rebuilt in their place should be more compliant to the Zoning By-Law. Board Member Schneider opined that the proposal is not substantially more detrimental, that adequate counterbalancing amenities have been provided in accordance with **Section 5.43** of the Zoning By-Law, and voted in favor of granting the relief. Chair Geller agreed with Board Member Schneider and Board Member Meiklejohn, and made the observation that placing a garage proximate to the front door makes for an incredibly challenged aesthetic and that he did not find it attractive. Chair Geller concluded that the requirements were met under the standards that the Board applies for the grant of relief as requested.

The Board then determined, by unanimous vote, that the requirements for a special permit under G.L. c. 40A, Section 6 and for **Sections 4.07, Use #5, 5.10, 5.20, 5.72, 5.91, 6.04.5.C.1 and 8.02.2** of the Zoning By-Law pursuant to **Section 5.43** and **9.05** of the Zoning By-Law have been met.

The Board made the following specific findings pursuant to said 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:

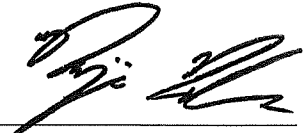
1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Planning Board for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to review by and approval of the Planning Board. 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: 7/12/21

  
\_\_\_\_\_  
Jesse Geller, Chair

A True Copy  
ATTEST:

  
\_\_\_\_\_  
Benjamin Kaufman  
Clerk, Board of Appeals