



TOWN OF BROOKLINE
Massachusetts

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BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0040
50 Thorndike Street

Petitioner and owner, Patrick Bonebrake, applied to the Building Department for a building permit to demolish an existing garage and replace it with a new garage, add a mudroom and bathroom off of his existing kitchen on his first floor, in addition to a corridor attached to a new one-story room to house an endless performance pool (a pool with jets that allows lap-style swimming in a small space) placed behind the new proposed 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 September 23, 2021 at 7:00 PM, for a virtual public hearing as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 September 9, 2021 and September 16, 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: 50 Thorndike Street

Petitioner: Patrick Bonebrake

Zoning District:

T-5 (Two-Family & Attached single-Family)

Precinct:

9

Description:

**Demolish detached garage and
construct attached garage**

Date, time, locations of the public hearing are as follows:

Date: 9/23/2021

Time: 7:00 pm

Location Virtual Meeting (see below)

Register for this virtual hearing:

<https://bit.ly/3kEtbYW>

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:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARDS REQUIREMENTS

§5.70 - REAR YARDS REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

Any other relief the Board finds necessary

QUESTIONS PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

Advance 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 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 this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

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

At the time and place specified in the notice, this Board held a public hearing.

Present at the hearing was Chair Johanna Schneider, and Board Members Lark Palermo and Paul Bell.

The case was presented by Attorney Scott C. Gladstone, 822 Boylston St., Suite 300, Chestnut Hill, Massachusetts 02467. Chair Schneider called the hearing to order at 7:30 p.m.

Attorney Gladstone waived the reading of public notice and explained the background of the case as follows: The project is largely to facilitate installation of an indoor therapeutic pool room, which will benefit one of the owners who suffers from a degenerative condition. The current garage is built immediately adjacent to the side lot line and 0.9 feet away from the rear lot line. The abutting neighbor to the rear also has a detached garage built right up to the lot line. The proposed therapeutic pool room will be built within the footprint of the existing garage (with respect to rear and northwest side) so the setbacks are not changing, except that a portion of the current garage that is an incursion onto the neighbor's lot is being removed and the new structure will be entirely on petitioner's lot. The proposed garage is also built on the remaining portion of the footprint of the existing garage (except where needed to remove the existing incursion), so that side setback will not be changing, but will be placed closer to the front lot line. Mr.

Gladstone explained that the impacted side and rear abutters have expressed no objections.

Mr. Gladstone explained that the proposal would actually improve existing conditions in two ways. First, the current garage is over the property line and has been so for in excess of 20 years. Even though the petitioners could maintain that footprint, the new proposal pulls the building back so that it sits completely within the deeded lot lines. Second, much of the current asphalt is being replaced by pavers, which are more attractive than existing conditions and, consistent with a proposed condition of the Planning Board, the pavers will be made permeable if soil conditions allow. Also, in deference to a comment of the Planning Board, the cupola over the proposed garage has been lowered to more closely mimic the cupola of the main house. Petitioners opted not to extend a landscaping strip further along the existing driveway, as the existing extra width is needed for car maneuverability and to better accommodate playing basketball.

Attorney Gladstone explained the standards of relief to be applied, saying:

All relief needed represents either a repetition of the existing pre-existing non-conforming conditions or a slight increase in such condition (although a decrease in the front yard setback incursion). Such relief must be evaluated exclusively under the “not substantially more detrimental standard” of G.L. c. 40A, Section 6, and not under any Town by-law special permit standard. See *Bellalta v. Zoning Board of Appeals of Brookline*, 481 Mass. 372, 385-386 (2019). Attorney Gladstone noted that it is the Planning Department’s opinion that, because the garage is changing from an accessory building to being part of the main building, it loses G.L. c. 40A, Section 6 protection. Attorney Gladstone expressed the opinion that the existing structure would be pre-existing non-conforming regardless of the use classification and so G.L. c. 40A, Section 6 should still apply. Nonetheless, Attorney Gladstone explained that the issue is academic since the proposal also meets the standard for relief under Zoning By-Law Section

5.43 and that counter-balancing amenities would be provided in the form of increased and improved landscaping.

Mr. Gladstone noted that under either formulation, the requirements of Zoning By-Law Section 9.05 have been met (whether as required under Zoning By-Law Section 5.43 or as guidance in applying the standard under Chapter 40A, Section 6) as follows:

a. The site is an appropriate location for such a use, structure, or condition: The proposed project adds living space that adds up to just over .54 F.A.R. in this T-5 zone, which allows up to 1.0 F.A.R.

b. The proposed use will not adversely affect the neighborhood as it will be a visual improvement over the current tired garage structure, the proposed new garage tastefully mimics the architecture of the existing historic home, and all of the added living space is behind the garage and an existing portion of the house and so won't be visible from the street.

c. There will be no nuisance or serious hazard to vehicles or pedestrians since there is already parking on the site and the new parking is in substantially in the same position vis a vis the street.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. See all of the above.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people, as the proposal does not take away any current housing.

Zoning Board of Appeals Chair Schneider invited the Board members to ask questions. Both Members Palermo and Bell had questions about the need for the owners to maneuver their cars so that they could face Thorndike Street upon existing. The architect explained that the owners currently do this due to the traffic on Thorndike Street. Mr. Gladstone stressed that the width of the driveway is not being changed. Member Bell asked for some clarification about the zoning chart and it was explained that the chart reflected the setback both for the garage and the exiting home. Member Bell also discussed the issue surrounding the applicability of G.L. c. 40A, Section 6.

Zoning Board of Appeals Chair Schneider invited the public to make any comments in support or against the application. No one from the public spoke in favor or opposition.

Zoning Board of Appeals Chair Schneider called upon Maria Morelli, Senior Planner for the Town of Brookline, to deliver the findings of the Planning Board. Ms. Morelli explained that the applicant's revised plans responded to the two conditions that the Planning Board had added concerning the dormer and the pavers. Ms. Morelli further explained that the Planning Board is supportive of this proposal. In addition to the conditions that have already been met, the Planning Board requested that the applicant extend the planting strip along the left-side property line towards the rear of the lot, possibly all the way to the garage.

Chair Schneider read the Planning Board's proposed conditions into the record as follows:

The Planning Board recommends approval of the site plan by Peter Nolan & Associates LLC, dated 8/24/21, and architectural plans by MGD Habitat Design, dated 8/10/21, 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 Assistant Director for Regulatory Planning for review and approval. The architectural plans shall be revised to show lowered dormers on the garage that match the height of dormers on the main structure.**
- 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. The Planning Board strongly supports the proposed use of pavers and further requests that the pavers be permeable provided that the soil be appropriate for such permeable pavers.**
- 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.**

The Chair then called upon Paul Campbell to speak on behalf of the Building Department. Mr. Campbell reported that the Building Department has no objection to the

proposal and that the Building Department would ensure that all provision of the code and any conditions would be enforced.

In deliberations Member Palermo asked more about the landscaping plan and the architect explained that where there is now grass, screening shrubs and flowering plants will be installed. Member Palermo expressed that this is important if it is determined that Section 5.43 applied. Member Palermo concluded that the proposal was a reasonable way to accommodate the needs of the homeowner and it falls within the parameters of the special permits being requested.

Member Bell opined that G.L. c. 40A Section 6 did apply and that the proposal is not substantially more detrimental to the neighborhood, applying the lens of the factors set forth in Zoning By-Law Section 9.05. Member Bell also believes that the requirements of Zoning By-Law Section 5.43 have been met. The proposal accommodates the special needs of the owner and is a significant upgrade with a more modern and usable garage and more attractive pavers. Member Bell observed that the replacement of asphalt with pavers is a counter-balancing amenity, as is the placement of the new structure fully on the petitioner's property thus removing the current encroachment. Chair Schneider expressed full agreement with the comments of Member Bell and Member Palermo, finding that the standard for both G.L. c. 40A, Section 6 and Zoning By-Law 5.43 have been met.

The Board of Appeals then determined by unanimous vote that the requirements for a Special Permits under G.L. c. 40A, Section 6 and for Sections 5.60, 5.70, 5.43 and 8.02.2 have been met. The Board found that the elements of Section 9.05 have also been satisfied:

- a. The specific site in 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.

Accordingly, the Board of Appeals voted unanimously to grant the requested relief for the site plan by Peter Nolan & Associates LLC, dated 8/24/21, and architectural plans by MGD Habitat Design, dated 8/10/21 and revised on 9/20/21, 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 Assistant Director for Regulatory Planning for review and approval. The revised architectural plans satisfy the Planning Board request to lower the dormer on the garage so that it proportionally matches the height of dormers on the main structure.
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. The proposed driveway pavers shall be permeable provided that the soil be appropriate for such permeable pavers.
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: 10/13/2021



Johanna Schneider, Chair

Johanna Schneider, Chair

A True Copy

ATTEST

Benjamin Kaufman
Clerk, Board of Appeals

