



Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider

# *Town of Brookline*

## *Massachusetts*

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

Benjamin Kaufman, Clerk

TOWN CLERK'S OFFICE  
APR 11 '22 AM 11:23

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2021-0064

Petitioners David and Grace Kim applied to the Building Commissioner for permission to construct a new single family home with an underground garage at 98 Chestnut Street. The application was denied and an appeal was taken to this Board.

On October 12, 2021, the Board administratively determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed November 29<sup>th</sup>, 2021 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 November 1<sup>st</sup> and November 8<sup>th</sup>, 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

**Register for this public hearing: <http://bit.ly/3nol6GR>.**

**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>.**

**98 Chestnut Street - Seeking to construct a single family dwelling and garage in an M 1.0 zone. This case is to be heard virtually on 11/29/2021 at 7:00 p.m. (Petitioners David and Grace Kim).**

**Any other relief the Board finds necessary.**

**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 Monique Baldwin ([mbaldwin@brooklinema.gov](mailto:mbaldwin@brooklinema.gov)) and Joe Braga ([Braga@brooklinema.gov](mailto:Braga@brooklinema.gov)). 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 notices to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at [mbaldwin@brooklinema.gov](mailto:mbaldwin@brooklinema.gov), or by checking the Town Meeting calendar at [www.brookline.gov](http://www.brookline.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 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 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  
Mark Zuroff  
Johanna Schneider**

The matter was continued at the request of the applicants and a new hearing date was established for March 24<sup>th</sup>, 2022. At the time and place of the continued hearing, this Board held

a virtual public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Mark Zuroff and Neil Wishinsky. Attorney Jacob Walters, business address 27 Harvard Street, Brookline, MA presented the case for the petitioners.

Mr. Walters began his remarks by stating that the existing dwelling at 98 Chestnut Street has been abandoned for the past few years, has significant structural defects and cannot be preserved. Mr. Walters added that the relief required for the proposed new single-family home and detached garage could be granted by four (4) Special Permits. The first Special Permit would be required under **Section 5.13** of the Zoning By-Law due to the fact the Lot is less than 40' wide at its narrowest point. Mr. Walters stated that the Board may, pursuant to **Section 5.13**, allow a lot width of less than the required minimum for a single family dwelling. Mr. Walters added that the subject Lot complies with the requirements of **Section 5.15** of the Zoning By-Law since the 98 Chestnut Street property was not, on July 27, 1962 or any subsequent date, contiguous to a lot in the same ownership, was in compliance with the Zoning By-Law when the Lot was created and was more than 4,000 square feet. Mr. Walters stated that the remaining Special Permits for side and rear yard setback violations and parking area side setback violation could be granted under **Section 5.43** of the Zoning By-Law. Pursuant to **Section 5.43**, the Zoning Board may provide relief from setback requirements if the applicant can provide adequate counterbalancing amenities that mitigate the negative impact arising from the requested deviation from the setback requirements. The applicants are offering landscaping as a counterbalancing amenity. Mr. Walters observed that the 98 Chestnut Street grounds have not been maintained, resulting in little or no green space with many dead or dying trees. The applicants intend to remove the dead and dying trees, create new greenspace and provide numerous plantings to create attractive front, rear and side yard areas. Mr. Walters added that the applicants would work with the Assistant

Director of Regulatory Planning and the abutters to provide counterbalancing amenities that meet the **Section 5.43** requirements.

Mr. Walters went on to say that the requested Special Permits conform to the requirements of **Section 9.05** of the Zoning By-Law in that the location of the proposed dwelling and garage are appropriate, the structures would have no adverse effect on the neighborhood, no nuisance or hazard to vehicles or pedestrians would be created and the proposed dwelling would have not have an adverse effect on the supply of housing for low and moderate income residents. Mr. Walters concluded his remarks by saying the relief required is modest and the Planning Board's unanimous positive recommendation of the proposal warrant this Board granting the Special Permits.

The Chairman then asked if anyone in attendance wished to speak in support of or in opposition to the petitioners' proposal. Polly Welch, of Franklin Street and the owner of a condominium unit at 96 Chestnut Street spoke in opposition to the garage. Ms Welch stated that garages are not typical in the neighborhood and, given the size of the lot in question, the applicants should be limited to outdoor parking spaces. Ms. Welch also expressed her reservations about the level of landscaping and indicated that to date no one has contacted her about the proposed plantings at the subject property.

Victor Panak delivered the findings of the Planning Department and the recommendation of the Planning Board. Mr. Panak stated that the Planning Board was supportive of the applicants' proposal since their plan will result in a significant improvement to the existing landscape. While the dwelling will be in close proximity to the rear property line, the abutting property contains a parking area. The Planning Board believed the proposed structures were unlikely to have any negative impact on the rear abutter.

**FINDINGS**

<b>ZONING: M-1.0</b>	<b>Requirements</b>		<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
	<b>Existing</b>	<b>Proposed</b>			
<b>Use</b>	2-family detached dwelling	1-family detached dwelling	Two-family	Single-family	
<b>Lot Size</b>	5,000sf	4,000sf	5,006sf	5,006sf	
<b>Lot Width</b>	40'	40'	31.02'	31.02'	<b><u>Special Permit</u></b> <sup>1,3</sup>
<b>Floor Area Ratio</b>	1.0 (100%) 5,006sf	1.0 (100%) 5,006sf	0.54 (54%) 2,708sf	0.80 (80%) 4,005sf	
<b>Height</b>	35'	35'	39'	35'	
<b>Front Setback</b>	15'	15'	61.7'	28.2'	
<b>Side Yard Setback (Left / Right)</b>	10'/10'	7.5' / 7.5'	3.2'/10.2'	6'5" / 4'11"	<b><u>Special Permit</u></b> <sup>1,2</sup>
<b>Rear Yard Setback</b>	30'	30'	1.4'	1.7'	<b><u>Special Permit</u></b> <sup>1,2</sup>
<b>Open Space (Landscaped / Usable)</b>	10%/20% 271sf/542sf	10%/20% 375sf/750sf	77.1% / 78.2%	31% / 40.2%	

<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 5.13, Lot Width:** A special permit from the Board of Appeals may permit lot widths less than the minimum specified for one-family attached dwellings where a building shall be erected. The lot width is 31.02' while the required minimum lot width for the M-1.0 district is 40'.

**Other Zoning Relief Needed**

**Section 5.15, Exceptions to Minimum Lot Size and Lot Width Requirements:** The provisions of §5.10 and §5.13 shall not prevent the construction or alteration of a single-family dwelling: 1. On a lot that was not, on July 27, 1962, or any subsequent date, contiguous to a lot in the same ownership, provided that it meets the following conditions: a. The lot was lawful under zoning and subdivision regulations in effect when the lot was created. b. The yard requirements are observed. c. The lot is 4,000 square feet or more in area.

**Sections 5.63 (Accessory Structures in Side Yards):** Section 5.63 prohibits accessory structures from encroaching on the required side yard setback within 75 feet from the front property line. Although a revised denial letter has not been issued, Planning staff believes that this section will be cited for the revised proposal. Relief from this requirement can be granted through Section 5.43 with the provision of counterbalancing amenities.

**Section 6.04.14, Design of All Off-Street Parking Facilities:** No more than 40% of the width, or twenty-four feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to the entrance of a garage, carport, or covered parking area. The Board of Appeals may grant a Special Permit to waive the requirements of this Section, but only to the extent necessary, if it finds that a garage, carport, or covered parking area, accessed by or facing a side or rear yard on a lot is not feasible or would result in substantially less landscaped or usable open space on the lot.

Ms. Panak concluded by saying the Planning Board felt the proposed structures were well designed and the proposed counterbalancing amenities sufficient under **Section 5.43**. The Planning Board unanimously recommended approval of the Applicants' proposal.

**Therefore, the Planning Board recommends approval of the site plan and the architectural plans by SKA, Inc. dated 1/25/22 and site plan by Peter Nolan and Associates dated 1/21/21 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.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan prepared in consultation with abutters 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 for conformance to the Board of Appeals decision: 1) the site plan, floor plans and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning, and 2) 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 Chairman then called upon Paul Campbell, Building Inspector, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department has no objections to the request for relief and stated that if the Board grants relief the Building Department will ensure compliance with the Building Code.

The Board having deliberated on this matter and having considered the foregoing testimony concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Sections 5.13, 5.43, 6.04.5.b and 9.05 of the Zoning By-Law and 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.

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 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.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan prepared in consultation with abutters 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 for conformance to the Board of Appeals decision: 1) the site plan, floor plans and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning, and 2) 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

  
Jesse Geller, Chair



Filing Date: April 11, 2022

A True Copy  
ATTEST:

A handwritten signature in black ink, appearing to be "D. J. [unclear]", written over a horizontal line.

Clerk, Board of Appeals