



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

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TOWN CLERK'S OFFICE
JUL 11 '22 PM 3:58

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-00017
174 WINCHESTER STREET

Petitioners Jennifer Huang and Garrett Broadrup applied to the Building Commissioner for permission to construct a detached garage at the rear of the property at 174 Winchester Street. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 28, 2022, 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 April 14, 2022 & April 21, 2022 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on Thursday, April 28, 2022 at 7:00pm

Registration Link: <https://bit.ly/3NCWAQQ>

The ZBA will consider the following pursuant to M.G.L. 40A & the Brookline Zoning-Bylaw:

Petitioner: Broadrup TRS, Garrett C & Huang, Jennifer **Address:** 174 Winchester Street

Zoning: T-6 **Precinct:** 9

Description: Demolish existing detached garage and construct new detached garage.

The Board will consider variances and/or special permits from the following sections of the By-law (and any additional zoning relief the Board deems necessary:

§5.53 - ACCESSORY BUILDINGS IN FRONT YARDS

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 **Polly Selkoe (pselkoe@brooklinema.gov)**. All plans and submissions may be found at: <https://brooklinema.gov/DocumentCenter/Index/2352>.*

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.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

Jesse Geller, Chair

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Publish: 4/14/2022 & 4/21/2022

On April 28, 2022, the Zoning Board of Appeals held a public hearing and continued the hearing without testimony to May 26, 2022, at 7:00 p.m. At the continued hearing, Chair Johanna Schneider and Board Members Mark Zuroff and Lark Palermo were present. The case was presented by the attorney for the Petitioner, Attorney Robert Allen Jr., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was the project architect, Isamu Kanda, I-Kanda Architects, 50 Terminal Street, Building 2, Unit #429, Charlestown, Massachusetts. The Petitioner, Garrett Broadrup, was also in attendance.

Zoning Board of Appeals Chair Schneider called the hearing to order at 7:00 pm. Chair Schneider reviewed the standard hearing procedure for virtual hearings and confirmed that all

Board Members and staff could visually and auditorily engage in the hearing. Attorney Allen waived a reading of the published notice.

Attorney Allen presented the case for the Petitioners. Attorney Allen stated that the single-family home at 174 Winchester Street is in a T-6 Zoning District and abuts Winchester Path. He continued that the Petitioners are proposing to build a 25-foot by 25-foot detached garage at approximately the same location as an existing 20-foot by 20-foot garage. He noted that the proposed garage is under 720 square feet and that Brookline Preservation Commission staff determined that the existing garage is not historically significant.

Attorney Allen stated that the proposal was reviewed by the Planning Board on April 28, 2022, and noted that the Planning Board was unanimously supportive. He added that a couple of Planning Board members indicated that drainage may be impacted. However, Attorney Allen stated that the Petitioners will comply with the Stormwater By-Law and that the project construction drawings will be reviewed by the Town's Engineering Department.

Attorney Allen described the neighbor outreach. He stated that four letters were submitted to the Board of Appeals indicating support for the proposed garage, including a letter from the Petitioner's abutter to the left, nearest to the property line of the proposed garage's location.

Attorney Allen reiterated that the existing garage has a footprint of 20-feet by 20-feet and that the new garage will be 25-feet by 25-feet. Attorney Allen stated that there is an existing side yard setback of one-foot along the side of the existing garage, where there is a required setback of 7.5-feet. He stated that the present one-foot setback, a preexisting-nonconformity, would not be increased as a result of this proposal, however, the one-foot setback would be extended five additional feet.

Attorney Allen stated that the Petitioner is requesting a finding under M.G.L. Ch. 40A, Section 6 to allow for the modification of the preexisting nonconforming side yard setback. He

noted that no new nonconformities would be created and that there would not be a substantial detriment to the neighborhood. He stated that the Petitioners would accept a condition to provide landscaping, but added that the existing fence is in good condition and that there is an outstanding question as to whether it is a town-owned fence. Attorney Allen, therefore, requested that the fence plan not be incorporated as part of the Board of Appeals decision.

Attorney Allen then noted that the Board of Appeals has used the special permit requirements enumerated in **Section 9.05** to review substantial detriment in previous cases, stating the followings: 1) Specific site is an appropriate location for such use: The property is located in a residential neighborhood and the detached garage would maintain this use. 2) Use will not adversely affect the neighborhood: There will be no change to the existing use, the proposed garage would not adversely affect the neighborhood, and letters of support had been submitted by abutters, some of which may be the most impacted. 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Chair Schneider then called for public comments in support of or in opposition to the Petition. No comments were submitted. Chair Schneider noted for the record that four letters in support of the Petitioner's proposal had been received, one from each of the following addresses: 170 and 180 Winchester Street and 219 and 233 Mason Terrace.

Chair Schneider then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to present the Planning Board report.

FINDINGS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

ZONING: T-6	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Side Yard Stbk (Garage)	7.5'	1'	1'	Special Permit*

* 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. New fencing may serve as a counterbalancing amenity.

PLANNING DEPARTMENT COMMENTS

The Planning Staff supports this proposal. The Preservation Commission found the existing garage not significant. The new slightly larger garage will be the same distance from the side lot line as the existing garage and will be no taller. Other than the side yard setback relief, all other dimensional requirements are met. Since it is a one-story structure, it should have minimal impact to the side abutter, who has submitted a support letter. Three other support letters were also submitted. The one concern that should be addressed at the Planning Board meeting is the construction and maintenance of the façade that is only one foot from the property line.

PLANNING BOARD RECOMMENDATION

Ms. Selkoe stated that the Planning Board is supportive of the proposal. She noted that the Board asked some questions and raised some minor concerns about drainage around the proposed garage and the structural integrity of the adjacent Winchester Path steps during construction. She continued that, regardless, the Board felt that the application is reasonable and can be approved as proposed.

Ms. Selkoe therefore stated that the Planning Board recommends approval of the site plan by EMB, dated 2/14/22, and architectural plans by I-Kanda Architects, dated 2/10/22, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final 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 final landscaping and fencing plan to the Assistant Director for Regulatory Planning for review and approval. This plan shall be implemented 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, architectural 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 Schneider then called upon Ms. Selkoe to provide the Building Department's report on behalf of Paul R. Campbell, Deputy Building Commissioner. Ms. Selkoe stated that the Building Department has no objection to the requested relief and would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In discussion, Board Member Palermo stated that the proposal was modest and was in support of granting the requested relief. Board Member Zuroff concurred. Chair Schneider stated that the request meets the standards under M.G.L. Ch. 40A, Section 6 and added that as presented, the proposal will not be substantially more detrimental to the neighborhood.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6, namely that Petitioner's one-foot side yard setback is a preexisting nonconforming condition, and, therefore, that Petitioner is entitled to relief from the side yard setback requirements of Zoning By-Law **Section 5.60** and to alter or increase the preexisting nonconforming side yard setback as there will be no new nonconformity created nor detriment to the neighborhood.

In addition, the Board made the following specific findings under Section 9.05 based on the evidence submitted at the hearing and the Board's deliberation:

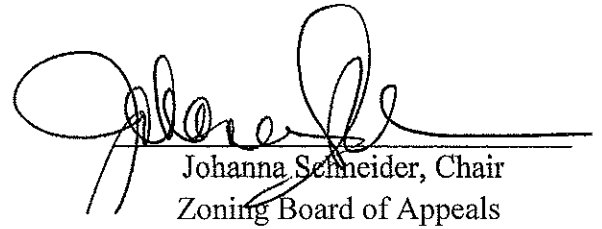
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any 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 revised conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final 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 final landscaping plan to the Assistant Director for Regulatory Planning for review and approval. This plan shall be implemented 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, architectural 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

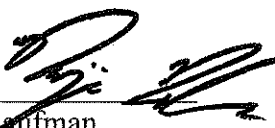


Johanna Schneider, Chair
Zoning Board of Appeals

JUL 1, 2022

JUL 11 2022 JUL 11, 2022
Filing Date: _____

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals