



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zurroff
Johanna Schneider

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TOWN CLERK'S OFFICE
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0024
51 COLBOURNE CRESCENT

Petitioners David and Jamie Shushan applied to the Building Commissioner for permission to demolish and reconstruct an attached garage and mudroom connection. 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: David Shushan and Jamie Horr **Address:** 51 Colbourne Crescent

Zoning: SC-10 **Precinct:** 12

Description: Demolish and reconstruct attached garage and mudroom connection

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):

§5.20 - FLOOR AREA RATIO

§5.22.3.B.1.C – EXCEPTIONS TO FLOOR AREA RATIO (FAR) FOR RESIDENTIAL UNITS

§8.02 - ALTERATION OR EXTENSION

ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY

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. Present at the hearing were Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The Zoning Board of Appeals voted unanimously to continue the matter of 51 Colbourne Crescent, Case # 2022-0024, to July 7, 2022, without discussion.

On July 7, 2022, the Zoning Board of Appeals held a public hearing. Present at the virtual hearing were Chair Jesse Geller and Board Members Randolph Meiklejohn and Paul Bell. The

case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance were the Petitioners, David and Jamie Shushan, and the project architect, Maggie Baratz, Maggie Baratz Architecture, LLC, 37 Walker Street, Cambridge, Massachusetts.

Zoning Board of Appeals Chair Geller called the virtual hearing to order at 7:00 pm. Chair Geller 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 Petitioner stating that 51 Colbourne Crescent is about one-quarter mile from Brookline High School and is in an SC-10 zoning district. Attorney Allen then stated that the proposal is to demolish the existing two-story attached garage, which is not original to the house and was added to the structure in the 1960's and is the source of numerous water-drainage issues. He continued that the proposal calls for the construction of a new two-story garage with a modest hipped roof with matching slate tile to best complement the existing home. Attorney Allen noted that the new garage would be built in roughly the same place as the existing garage. He added that the required setback for the garage is 7.5 feet, whereas the proposed setback is 12.6 feet. Attorney Allen further stated that a one-story mudroom and bathroom addition was planned for the right side of the house, that a one-story addition to expand the kitchen was planned for the rear of the home, and that Petitioners also seek to complete an unfinished portion of their basement. Attorney Allen added that the proposal amounts to only an additional 274 square feet spread throughout the rear, right-side, and basement of the house, and that the proposal, therefore, is unlikely to create a substantial detriment to the neighborhood. He noted that the Petitioners had submitted six letters of support to the Board: One from the side-abutter at 37 Colbourne Crescent,

one from a rear-abutter at 118 Addington Road, and one each from the neighbors at 29, 34, and 36 Colbourne Crescent.

Ms. Baratz then presented the architectural and site plans. In reliance on a digital presentation, she stated that the proposed garage would be in roughly the same location as the existing one and that it would also connect to the existing basement. Ms. Baratz then stated that an existing vestibule at the right-rear of the home, containing a first-floor mudroom and access to stairs to the basement-level, is to be replaced by a one-story mudroom and bathroom addition and added that at the rear of the home, an addition to the kitchen was planned to expand the seating area. Ms. Baratz continued that the proposed garage would use the existing curb cuts, would not impact any existing street trees, would maximize the usable backyard space, and would employ the same architectural language as the existing home, including brick face, double-hung windows, and the arches of the front façade.

Board Member Bell asked about the purpose of the proposed stairs along the retaining wall on the right of the driveway. Ms. Baratz responded that the elevation gain between the sidewalk and the property's backyard made the stairs the most reasonable means of traversing between the two.

Attorney Allen then reviewed the requested zoning relief, stating that in the SC-10 zoning district, the maximum FAR allowed is .35, and that the structure at 51 Colbourne Crescent currently has an existing FAR of .42, or 120% of the maximum allowed. He continued that the proposal calls for an increase in gross floor area of 274 square feet, almost all of which would be included in the existing footprint of the house, thus bringing the total FAR to 0.44, or 126% of the maximum allowed.

Attorney Allen then stated that the project otherwise complies dimensionally, noting that the proposed garage height and side-yard setbacks were below minimum provided in the Table of Dimensional Requirements of the Zoning By-Law. Attorney Allen added that the proposed driveway and stairs could be constructed by-right. He then stated that the proposal, because it called for the extension of a preexisting nonconforming FAR required a finding pursuant to M.G.L. Ch. 40A, Section 6. He stated that under Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539), the Board of Appeals may in this case allow for the extension of a preexisting nonconformity as long as no new nonconformities are created and there is no substantial detriment to the neighborhood. He stated that the minor addition and garage reconstruction will not create any new nonconformity and stated that there will be no substantial detriment to the neighborhood.

Attorney Allen then noted that the ZBA has used **Section 9.05** of the Zoning By-Law 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 addition will maintain this use while being consistent with the existing home's historical features. The proposed garage is largely within the footprint of the existing garage and maintains a generous side yard setback. 2) Use will not adversely affect the neighborhood: There will be no change to the use and the proposed addition will not adversely affect the neighborhood. Rather, replacing the garage proposed for demolition, which was not a part of the home's original 1928 design, will enable the homeowners to resolve water drainage issues caused by the design of the existing flat roof and to improve the uniformity of the property's appearance. 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians, as a new garage of the same size in approximately the same place is proposed to replace the existing garage. 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 Geller then clarified that this application involves a non-conformity related only to FAR and the proposed property will otherwise comply with all dimensional requirements. Attorney Allen acknowledged Chair Geller's clarification and reiterated that, aside from FAR, the proposal is dimensionally compliant. Chair Geller then inquired into the elevation change from one side of the lot to the other, with Attorney Allen stating that, when facing the front of the property from the street, the elevation decreases from the left-side of the lot to its right-side.

Chair Geller acknowledged receipt of letters in support of and in opposition to the proposed relief and that those letters were entered into the record for the hearing. Chair Geller then called for public comments in support of the Petitioners.

Gregg Snyder, 34 Colbourne Crescent, noted that he and his partner have direct sightlines of the property and that he was appearing in his capacity as one of two elected officers for the Rosemont Home Association, which encompasses property directly across the street from the Petitioners' lot. Mr. Snyder stated that, on behalf of his association, he was thankful for the proposal and the manner in which it seeks to improve the neighborhood by remaining consistent with the overall aesthetic of both the area and the Petitioners' property. Mr. Snyder concluded that he hopes the Board would grant the relief required for the Petitioners to proceed with their project.

Stephon Gross, the Petitioners' rear-abutter at 118 Addington Road, stated that he was in favor of the proposal and felt that the existing garage is an "eye sore." He continued that he believed the proposal would restore the home's harmony and improve the overall aesthetics of the street. He noted that the long-term benefit to the neighborhood far outweighed the temporary

localized costs of construction. He concluded that he was in favor of the Board granting the requested zoning relief.

Chair Geller then called for public comments in opposition to the Petitioners.

Davis Yetman, 61 Colborne Crescent, spoke in opposition to the proposal. Mr. Yetman stated that he felt that the 274 square feet increase in gross floor area did not represent the actual size of the addition and that he had created a table with more accurate floor area calculations. He continued that, while the existing garage is unsightly, the size of the proposed replacement is excessive, and that the height of its roof would be inconsistent with the neighborhood. He concluded by stating that he believed the design to be inappropriate for the neighborhood.

Chair Geller then asked Mr. Yetman where his home was grade-wise in relation to the applicant's lot. Mr. Yetman responded that his home is higher than the Petitioners' home, as it is to the west, or left side of the drawing.

Sherry Lyman, 64 Colbourne Crescent, expressed support for Mr. Yetman's statements.

Chair Geller then called upon Planner and Zoning Coordinator, Madison Anthony to present the Planning Board report.

FINDINGS

Section 5.20 – Floor Area Ratio

ZONING: SC-10	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Floor Area Ratio	0.35 3,806 sf	0.42 6,401 sf	0.44 6,675 sf	<u>Special Permit</u> ¹

¹ 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.

Section 8.02 – Alterations or Extensions of a Non-conforming Structure

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the Planning Department is supportive of this proposal. She noted that the new garage is being straightened so it will be perpendicular to the street. Ms. Anthony continued that the rest of the additions are all very small and finishing the basement will have no impact on abutters, and that in total only 274 s.f. are being added to the house. She concluded that zoning relief may be granted through M.G.L. c.40A §6, and therefore, no counterbalancing amenity is required.

PLANNING BOARD RECOMMENDATION

Ms. Anthony stated that the Planning Board is supportive of this proposal as it feels that the addition is well-designed and appropriate. She added that while Planning Board Members offered several suggestions to the applicant for reducing the height of the addition and limiting its “grandiosity”, the Board is supportive of approving the project regardless. She continued that the Board heard concerns from direct neighbors about the addition’s impact on their view and the impact of construction activities. She noted that the Board does not feel that the concerns related to the view hold merit, and while construction activities are always disruptive, the Board does not feel that the scale of this project requires specific conditions for construction management beyond the regulations contained in the Town’s General By-law.

Therefore, Ms. Anthony stated that the Planning Board recommends approval of the site plan by DGT Associates, dated 3/8/22, and architectural plans by Maggie Baratz, dated 3/8/22, 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 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 then called upon Ms. Anthony to deliver the findings of the Building Department. Ms. Anthony stated that the Building Department concurred with the Planning Board analysis and added that a construction management plan is not required for this project. She concluded that, should the Board grant the requested relief, the Building Department would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In deliberation, Board Member Meiklejohn stated that the proposal is not substantially more detrimental to the neighborhood than the existing nonconforming structure and that the special permit conditions of **Section 9.05** had been met. Board Member Bell then stated that the Board has discretion to decide what constitutes something that is "substantially more detrimental" to the neighborhood, but that the proposal constituted an improvement by practically any measure. He added that, while he was not pleased with the width of the driveway, such a change does not constitute a substantial detriment to the neighborhood.

Chair Geller stated that the standards of **Section 9.05** inform his analysis of whether a proposed design constitutes a "substantial detriment." He then stated the followings: 1) Specific site is an appropriate location for such use: The location is appropriate for the use, structure, and condition, given it is in a residential neighborhood with other garages. 2) Use will not adversely affect the neighborhood: The neighborhood is not simply one or a handful of residents. The potential "grandiosity" of the proposed structure is not a condition that lends itself to application of the "substantial detriment" analysis (because it involves a subjective aesthetic concern), while the increase in FAR has not been accompanied by testimony or evidence that it would have an

adverse effect on the neighborhood. 3) No nuisance or serious hazard to vehicles or pedestrians: There is no testimony that the changes to the garage or the house's FAR would present a nuisance or serious hazard to vehicles or pedestrians. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use. In fact, by updating a half-century old garage, Petitioners are actually making the property more suitable for its function. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people. Therefore, Chair Geller stated that the extension of the F.A.R. as a result of the proposal is not substantially not 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 allowing for an increase of the preexisting nonconforming FAR from a 0.42 to a 0.44. 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 deliberations:

- 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.

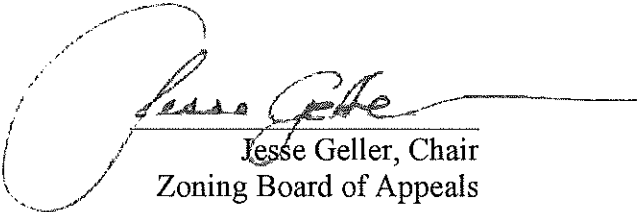
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

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 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



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 7/20/2022

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals