



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

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TOWN CLERK'S OFFICE
AUG 1 '22 10:14A

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-00003
41 CODMAN ROAD

Petitioners Peter and Meredith Kellner applied to the Building Commissioner for permission to demolish an existing two-car garage and construct a three-car garage and sunroom. 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 7, 2022, & April 14, 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: Peter and Meredith Kellner **Address:** 41 Codman Road

Zoning: S-40 **Precinct:** 5

Description: Construct a three car garage and sunroom

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

§5.70 - REAR YARD REQUIREMENTS

**§8.02 - ALTERATION OR EXTENSION - PRE-EXISTING NON-CONFORMITIES:
FAR MAXIMUM, REAR YARD SETBACKS**

OR 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

Mark Zuroff

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Publish: 4/7/2022 & 4/14/2022

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 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 was the project

architect, John Day, LDa Architecture and Interiors, LLP, 222 Third Street, Suite 3212, Cambridge, Massachusetts.

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. He stated that the single-family home located at 41 Codman Street is in an S-40 Zoning District and that the Petitioners are proposing the construction of various additions to their home and the replacement of the existing two-car garage with a three-car garage. Attorney Allen continued that the additions consisted of constructing a sunroom, adding home offices above the proposed garage, and expanding the kitchen and living areas, all of which had been strategically designed at the right, left, and rear of the home to preserve its history while also increasing the available space for the Petitioners and their family. He also noted that the home was built in 1919, according to his review of the Assessor's record. Attorney Allen further noted that the Preservation Commission had enacted a stay on changes to the property on July 21, 2021, which was set to expire one year later.

Attorney Allen then recounted the Planning Board's review of the proposal, stating that at the Board's first meeting regarding the Petitioners' plans, on March 3, 2022, the Petitioners' abutting neighbor nearest to the garage had raised concerns relating to tree preservation, privacy, and draining. Attorney Allen continued that, in accordance with the suggestion of the Planning Board, the Petitioners and the neighbor had reached an agreement to submit the final tree preservation plan and landscape plan to the Planning Board for approval. He concluded by noting that the resolution was acceptable to all parties, that the neighbor's counsel was willing to similarly

represent that sentiment to the Zoning Board of Appeals, and that the Planning Board had unanimously supported the present proposal at its meeting on April 13, 2022.

Mr. Day then reviewed the proposed architecture and landscape plans. Using a digital presentation, he reviewed the project components. In referencing the landscaping plan, Mr. Day stated that the Petitioners' meeting with their neighbor to the left had resulted in an increased tree buffer between the properties, and that only minor changes to the lot's grades were planned. He continued that the proposal called for renovating much of the home's exterior by utilizing materials of appropriate age and appearance. Attorney Allen added that while a counterbalancing amenity is not actually required for the relief sought, the Petitioners had undertaken extensive efforts to ensure that the proposed landscaping changes accorded to the wishes of their neighbors. Attorney Allen continued that, to that effect, trees had been added and removed and the driveway had been shaped to address privacy concerns from the neighbor to the left.

Attorney Allen then reviewed the requested zoning relief. He noted that relief is sought to alter or extend two preexisting nonconformities under **M.G.L. Ch. 40A, Section 6** and Zoning By-Law **Section 8.02**. First, he stated that the curved shape of the Petitioners' lot technically results in two rear-yards, and thus, under By-law **Section 5.70**, requires a setback of 50 feet, whereas the existing setback is 42 feet. Second, he stated that the home's existing FAR of 0.18 is in excess of the maximum allowed FAR of 0.15 under By-Law **Section 5.20**. Attorney Allen added that the proposal called for a reduction of the rear-yard setbacks from 42 feet to 33 and 17.5 feet at each corner of the proposed garage, and an increase in FAR to 0.241. He continued that under **M.G.L. Ch. 40A, Section 6**, extending or intensifying such a preexisting nonconforming structure can be accomplished by special permit, provided that the Board of Appeals finds the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

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 addition will maintain this use. 2) Use will not adversely affect the neighborhood: There will be no change to the use and the proposed additions and new garage would not adversely affect the neighborhood. The additions have been sensitively designed and adequate tree protection and landscaping will be provided. 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians. The new garage will be placed in approximately same location as the existing one and the same curb cut location will be used 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 asked whether the area of the basement was included in the total proposed addition of roughly 2,100 square feet, to which Attorney Allen answered in the affirmative.

Chair Schneider then called for public comments in support of or opposition to the Petition. Neal Glick, Kerstein, Coren, & Lichtenstein, LLP, Wellesley, Massachusetts, attorney for Roger and Kristin Servison of 59 Codman Road, immediate abutters to the Petitioners' left, stated that his clients effectively supported the proposal. He added that the parties, pursuant to the suggestion of the Planning Board, had met and reached an agreement that suitably addressed the needs of all concerned via the tree and landscaping plans. He continued that the Planning Board had effectively already reviewed the plans and that his clients were pleased with the arrangement as proposed.

Chair Schneider then called upon the Senior Planner, Maria Morelli, to present the Planning Board report.

FINDINGS

ZONING: S-40	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	1-family detached dwelling	1-family detached dwelling	
Lot Size	40,000sf	43,605sf	43,605sf	
Floor Area Ratio	0.15 (100%) 6,541sf	0.18 (120%) 7,832sf	0.241 (161%) 10,539sf	<u>Special Permit</u>¹
Height	35'	32'8"	32'8"	
Front Setback	30'	65'5"	65'5"	
Rear Yard Setback Left side as viewed from Codman Road Right side as viewed from Codman Road	50' 50'	42'1" 55'1"	33' 54'11"	<u>Special Permit</u>¹
Open Space (Landscaped / Usable)	<i>10%/100%</i> 1,054sf/10,539sf	3,161sf / 33,066sf	1,601sf / 34,118sf	

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.

Other Zoning Relief Needed

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

PLANNING DEPARTMENT COMMENTS

Ms. Morelli stated that the Planning Board is supportive of the proposal and that the Board feels that the additions are well-designed and detailed. Ms. Morelli noted that the Planning Board heard concerns from an abutter regarding tree protection, plantings, and drainage, and had agreed that a condition of the decision should include the submission of a tree protection plan and

landscape plan. She added that the applicants met with the abutter and agreed on a revised driveway layout and detailed tree protection and landscaping plans, which were reviewed and approved by the Planning Board at their meeting on April 13, 2022. Therefore, she stated, the Planning Board recommends approval of the site plan by Snelling & Hamel Associates Inc, dated 4/4/22 and revised 4/28/22, and architectural plans by LDA Architecture & Interiors, dated 12/14/21 and revised 4/28/22, 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 submit a landscape plan and tree protection plan for review and approval by the Assistant Director for Regulatory Planning. Such plans shall be consistent with the Landscape Plan, dated 4/6/2022, by Leblanc Jones Landscape Architects and Tree Preservation Plan, dated 3/22/2022, by Harrison McPhee Arboriculture. The final landscape plan and tree preservation plan shall be provided to the Zoning Board of Appeals. No tree shall be removed until a building permit is issued.
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 Schneider then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department has no objections to the requested relief and added 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 discussion, the Board concurred with the recommended conditions from the Planning Board as proposed. Board Member Wishinsky stated that he was familiar with the site and was pleased with the extent of detail in the Petitioners' proposal and their apparent respect for the

property. He continued that while the addition was sizable, it was not substantially detrimental to the neighborhood, and that he was thus willing to grant the requested relief under Ch. 40A Section 6. Board Member Zuroff agreed that the proposal meets the requirements for relief under Section 6. Board Member Zuroff continued that the proposal also satisfied the requirements of Section 8.02 of the By-Law and that he was also in favor of granting the requested relief. Chair Schneider then agreed with the foregoing comments, stating that she, too, believed that the Petitioners satisfy the standards for the requested relief.

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:

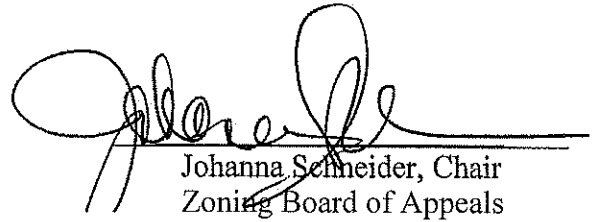
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 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 submit a landscape plan and tree protection plan for review and approval by the Assistant Director for Regulatory Planning. Such plans shall be consistent with the Landscape Plan, dated 4/6/2022 by Leblanc Jones Landscape Architects and Tree Preservation Plan dated, 3/22/2022, by Harrison McPhee Arboriculture. The final landscape plan and tree preservation plan shall be provided to the Zoning Board of Appeals. No tree shall be removed until a building permit is issued.

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



Johanna Schneider, Chair
Zoning Board of Appeals

Filing Date: 8/1/2022

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals