



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

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Brookline, MA 02445-6899

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AUG 15 '22 PM1:18

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-00019
41 DWIGHT STREET

Petitioner Forty-One Dwight Street Condominium Trust applied to the Building Commissioner for permission to construct a detached garage at the rear of the property at 41 Dwight 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: Forty-One Dwight Street Condominium Trust **Address:** 41 Dwight Street

Zoning: M-1.5 **Precinct:** 8

Description: Install car port

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):

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

§5.72 - ACCESSORY BUILDINGS OR STRUCTURES IN REAR YARDS

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>

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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 June 23, 2022, at 7:00 p.m. At the continued hearing on June 23,

2022, Board of Appeals Chair Jesse Geller called the hearing to order at 7:00 pm. In attendance were the Petitioner, Mr. Gordon, as a Trustee for the condominium association, and Zoning Board of Appeals members Chair Jesse Geller, Randolph Meiklejohn, and Neil Wishinsky. 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. Mr. Gordon waived a reading of the published notice.

Mr. Gordon presented the case stating that the proposed car port needs to extend to the edge of the property in order to fully cover the cars. He continued that because of this, relief is needed from the required setbacks. He added that the parking area is currently surrounded on three sides by tall concrete walls And that the parking area is directly across from the condominium building, with the rear of the building facing the parking area.

In reliance on a digital presentation, Mr. Gordon presented the site plan, beginning with the current conditions, including the common driveway that serves the parking area and runs from the entrance to the neighboring street, Stetson Street. He continued with a display of the design of the proposed carport, noting the sloped roof and stating the maximum height to be around eleven feet.

Mr. Meiklejohn asked Mr. Gordon a clarifying questions concerning the height of the concrete walls around the parking area and the number of properties served by the twelve-foot-wide driveway.

In response to inquiry from Mr. Micklejohn, Mr. Gordon discussed the counter balancing amenity the petitioner is offering under **Section 5.43** of the Zoning By-Law, being beautification, in the form of clean up and installing artwork.

Mr. Gordon discussed the relief being sought. He stated that he is seeking relief from **Section 5.43** to relieve the setback requirements, as well as **Section 5.63** and **Section 5.72** to relieve the accessory on rear and side yard requirements.

No one spoke in support or opposition of the project.

Chair Geller then called upon Maria Morelli, Senior Planner, to present the Planning Department comments and Planning Board report.

FINDINGS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

§5.72 - ACCESSORY BUILDINGS OR STRUCTURES IN REAR YARDS

	Requirements	Proposed Conditions	Relief Required
Side Yards	6'	~3'	<u>Special Permit</u> ¹
Rear Yard	6'	0.8'	<u>Special Permit</u> ¹

¹ **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.

PLANNING DEPARTMENT COMMENTS

The Planning Staff supports the request to install a carport in an existing parking area behind 41 Dwight Street, especially because this parking area is in a defined space surrounded by a high stone wall and separated from the other parked cars behind the alleyway. The residence in the lot behind this parking area is at a much higher level and therefore should not be impacted.

The Planning Board might want to consider whether a lower height of the carport roof would be preferable. In order to meet the requirements for a special permit under Sec. 5.43, the applicant must provide a counterbalancing amenity, and he will install additional plants in the bed in front of the condo.

PLANNING BOARD RECOMMENDATION

The Planning Board is supportive of the proposal. The Board feels that the carport is a reasonable solution in this location to provide basic shelter for the applicant’s vehicles. The Board feels that the design could be improved and that the roof type would be better as a shed roof. Nonetheless, the Board believes that the project should be approved.

The Planning Board recommends approval of the site plan by Rober Survey, dated 12/21/21, subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan and structure plans, 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, subject to review and approval by the Assistant Director of Regulatory Planning.**
- 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 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 made note that should the Board grant the relief, the second condition from the Planning Board Report should read, "Prior to the issuance of a building permit, the applicant shall electronically submit a final landscaping plan, indicating all counterbalancing amenities, subject to review and approval by the Assistant Director of Regulatory Planning. The applicant shall implement the required counterbalancing amenities as a condition of the relief."

Chair Geller then called upon Deputy Director Paul Campbell to provide the Building Department's report. Mr. Campbell stated that the Building Department has no objection to the requested relief and would work with the Petitioner to ensure conformance with the Board's decision and all applicable building codes.

In discussion, Mr. Meiklejohn described the proposal as a neat and orderly improvement project. He added that the historical context that led the parking area being where it is now had been discussed to his satisfaction and he believes the conditions for a special permit have been met and is in favor of granting relief for this project.

Mr. Wishinsky stated he did not have any additional comments to add and is in favor of granting the requested relief.

Chair Geller stated he believes the proposal meets the requirements for a special permit under **Section 9.05** of the Zoning By-Law. He noted that the roof of the carport will be out of the visual line of the rear abutting neighbor and in this specific situation the counterbalancing amenity offered is sufficient. He would be in favor of granting the relied requested, subject to the revised conditions.

The Board then determined, by unanimous vote, that the proposal met the requirements for relief under said **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.

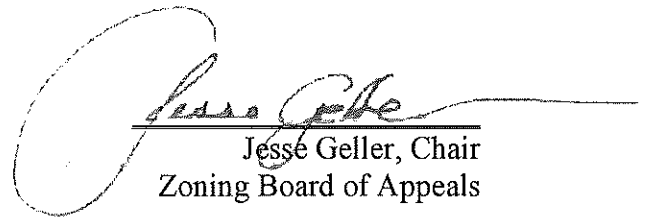
Accordingly, the Board voted unanimously to grant the requested relief, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan and structure plans, 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, indicating all counterbalancing amenities, subject to review and approval by the Assistant Director of Regulatory Planning. The applicant shall implement the required counterbalancing amenities as a condition of the relief.

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 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: 8/15/22

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals