



Jesse Geller, Chair
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Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000062
965 HAMMOND STREET

Petitioner Elias Delany applied to the Building Commissioner for permission to construct a single car garage and deck to replace an existing deck at the front of his home at 965 Hammond 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 November 29, 2021, 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 November 11, 2022, and November 18, 2022, in the Brookline Tab, a newspaper in general circulation in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a **virtual** public hearing on **November 29, 2021** at **7:00PM**

Register for this hearing:

<https://bit.ly/3m0sc72>

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>

965 HAMMOND STREET, MA 02446 – CONSTRUCT AN ATTACHED GARAGE, SHED, AND ROOF DECK. This property is in an S-15 SINGLE FAMILY ZONE. This case is to be heard virtually on 11/29/2021 at 7pm (Petitioner: DELANY, ELIAS S) Precinct 15

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

§5.09.2.J – DESIGN REVIEW

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

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

§5.52 - FENCES AND TERRACES IN FRONT YARDS

§5.53 - ACCESSORY BUILDINGS IN FRONT YARDS

§8.02 - ALTERATION OR EXTENSION

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) and **Paul Campbell** (pcampbell@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 notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at mbaldwin@brooklinema.gov, or by checking the Town meeting calendar at: www.brooklinema.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's 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 any questions regarding the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark Zuroff
Johanna Schneider*

Publish: 11/11/2021 & 11/18/2021

The case was continued until January 19th, 2023, at the request of the Petitioner. At the time and place specified for the continued hearing date, this Board held a public hearing. Present at the hearing was Chairman, Johanna Schneider, and Board Members Randolph Meiklejohn and Wadner Oge. Also present were Attorney Jacob Walters, business address 27 Harvard Street, Brookline, MA, and David O'Sullivan, O Sullivan Architects Inc., 606 Main St #3001, Reading, MA 01867. Attorney Walters presented the case for the petitioners.

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 Walters waived a reading of the published notice.

Attorney Walters presented the case for the Petitioners. He stated that the applicant is seeking to remove the existing front yard deck and stairway and construct a single-car garage with a roof deck above and a small shed in the side yard. He continued, stating all the relief could be granted by way of special permit. Attorney Walters explained that with the proposal, the applicant would be adding 240 square feet of space as a result of the construction of the one car garage, and the additional square footage would bring the FAR to 116% of that allowed. He

stated that pursuant to § 5.22.3.B.1.B, an increase in floor area for an external addition up to 120% of the allowed FAR is permitted.

Attorney Walters continued, stating that because the front yard setback will be less than required, a Special Permit under § 5.43 is needed. Pursuant to § 5.43 the Zoning Board of Appeals can provide relief from setback requirements if an applicant can provide adequate a counterbalancing amenity that mitigates the negative impact arising from the requested deviation from the setback requirements. The applicant is offering additional landscaping throughout the property as a counterbalancing amenity. He added that although the front setback is only five feet from the lot line, the distance from the garage to Hammond Pond Parkway is actually thirty-five feet.

Attorney Walters then stated that the Planning Board reviewed the proposed plans submitted by the applicant, along with an environmental impact statement also submitted by the applicant, and unanimously approved the proposed project design pursuant to § 5.09.2.J. He then stated that the final required special permit was under § 8.02 alteration or extension, needed because the dwelling being altered is a pre-existing non-conforming structure. He continued, explaining that the garage and deck are rather modest in scope and the proposal will result in improvements to the aesthetic and safety of the front yard. He further stated that prior to this hearing the petitioner showed and discussed the proposed plans with his abutters and is not aware of any concerns or objections from any of them.

Attorney Walters then stated that the requested Special Permits conform to the requirements of § 9.05 of the By-Law in that: (a) the specific site is an appropriate location for the proposed structure and use, (b) the use as developed will not adversely affect the neighborhood, (c) there will be no nuisance or hazard to vehicles or pedestrians, (d) adequate and

appropriate facilities will be provided for the proper operation of the proposed use and the proposed addition will not have a significant adverse effect on the supply of housing available to low and moderate income people.

At the request of Board Member Meiklejohn, Mr. O'Sullivan displayed the proposed plans using a digital presentation. Mr. O'Sullivan stated the distance from the new construction to Hammond Pond Parkway is 35'.

Board Member Oge asked if there was a rendering of the addition anywhere that would show what the proposal would look like when completed. Mr. O'Sullivan displayed the proposed elevations, which showed a drawing of what the finished exterior would look like, but stated they did not do any three-dimensional renderings.

Chair Schneider then asked if anyone in attendance wished to speak in support or in opposition to the petitioner's proposal. No one asked to be heard.

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

FINDINGS

§5.09.2.J - DESIGN REVIEW

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

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

§5.52 - FENCES AND TERRACES IN FRONT YARDS

§5.53 - ACCESSORY BUILDINGS IN FRONT YARDS

§8.02 - ALTERATION OR EXTENSION

ZONING: S-15	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	Single-family	Single-family	
Lot Size	15,000sf	24,009sf	24,009sf	
Floor Area Ratio	0.25 (100%) 6,002sf	0.26 (104%) ~6,242sf	0.29 (116%) ~6,963sf	<u>Special Permit</u> ^{1,3}
Height	35'	25'	25'	
Front Setback From Hammond Street	25'	46.1'	46.1'	
From Hammond Pond Parkway	25'	10.6'	3.5', <u>now 5' at closest point</u>	<u>Special Permit</u> ^{1,2}
Side Yard Setback	15'	23.3'	23.3'	
Rear Yard Setback	40'	N/A	N/A	
Open Space (Landscaped/ Usable)	10%/60% 693sf/4,178sf	82% / 80%	79% / 67%	

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.

² **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.

³ **Section 5.22.3.B.1.B, Exceptions to Floor Area Ratio (FAR) For Residential Units:** In all S Districts, a special permit may be granted for an increase in floor area above the permitted gross floor area for an exterior addition that is less than or equal to 20% of the permitted gross floor area.

Other Zoning Relief Needed

Section 5.09.2.J, Design Review: Any exterior addition or exterior modification for which a special permit is requested pursuant to §5.22 requires Design Review. The applicant has submitted an Impact Statement explaining how the project meets the Community and Environmental Impact and Design Standards.

Section 5.52, Fences and Terraces in Front Yards: Uncovered porches or decks may not extend into the yard more than fifty per cent of the required yard setback but in no case closer than six feet to the property line. This proposal includes a deck above the garage about 3 feet from the property line. Relief from this Section can be granted through Section 5.43 (see above).

Section 5.53, Accessory Buildings in Front Yards: Accessory buildings shall not be permitted within required front yards though relief from this Section can be granted through Section 5.43 (see above).

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

PLANNING DEPARTMENT COMMENTS

The applicant has now revised the proposal by angling the garage to address the Planning Board's concern of the applicant backing out of the garage onto the DCR right-of-way. The proposed setback of the garage along Hammond Pond Parkway is now 5' at its closest point to the Hammond Pond Parkway right-of-way, and well over 35 feet from the edge of the roadway. Because of this condition, the Planning Department is not concerned with any safety-related issues arising from vehicles exiting the proposed garage and entering Hammond Pond Parkway.

PLANNING BOARD COMMENTS

The Planning Board is pleased that the applicant has addressed its concerns by angling the garage so that cars can now back out onto its own property without using the DCR right-of-way. The Planning Board suggested some design improvements to the architect, including making the windows of the garage match more closely the windows of the existing garage, and enclosing or putting lattice work underneath the stairs to make them look more solid, and usable for storage. The architect was amenable to exploring these improvements.

Therefore, the Planning Board recommends approval of the architectural and site plans by O'Sullivan Architects Inc., revised 12-2-22, the Planning Department recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final garage 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 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 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.

The Chair then called upon Paul Campbell to provide the Building Department report.

Mr. Campbell stated that the Building Department has no objections to the request for relief and stated if the Board grants relief the Building Department will ensure compliance with the Building Code.

The Board then deliberated. Board Member Meiklejohn stated that he believes the proposal has met the criteria necessary for relief and he would be in favor of granting the relief. Board Member Oge agreed, stating the proposal met the criteria under **§ 9.05** and will likely be an improvement to the property.

Chair Schneider stated she agreed with her fellow board members and noted the impact assessment provided by the applicant, stating that the criteria for design review have been met. She added that she appreciates the applicant's willingness to work with the Planning Board and update the design of the garage and noted that the criteria under **§ 9.05** has been met.

The Board then determined, by unanimous vote, to grant the requested Special Permits and that the petitioner has satisfied the requirements necessary for relief under **§ 5.09.2.J**, **5.43**, **5.22.3.B.1.B**, and **8.02.2** of the Zoning By-Law. In addition, the Board made the following specific findings under said **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberation:

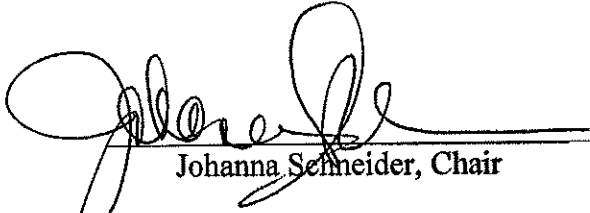
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 garage 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 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 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

Filing Date: 3/8/2023

A True Copy
ATTEST:

A handwritten signature in black ink, appearing to be 'J. L.', written in a cursive style.

Clerk, Board of Appeals