



BOARD OF APPEALS
Jesse Geller, Chair
Johanna Schneider
Lark Palermo

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Benjamin Kaufman, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000071
61 HEDGE ROAD

Petitioners Ken Berman and Katie Pasciucco applied to the Building Commissioner for permission to demolish the existing garage and to construct an attached two-story garage at 61 Hedge Road. The application was denied and an appeal was taken to this Board.

The Board of Appeals 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 January 5, 2023, 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 December 22, 2022, and December 29, 2022, in the Boston Globe, a newspaper of general circulation in Brookline. A copy of said notice is as follows:

TOWN OF BROOKLINE – Zoning Board of Appeals

NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a public hearing on

Date/Time: Thursday, January 5, 2023

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3HNAsm8>

Petitioner: Ken Berman & Katie Pasciucco

Address: 61 Hedge Road

Subject: Construct attached garage

Nature of Action/Relief:

§5.20 - FLOOR AREA RATIO

§5.43 – EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.70 – REAR YARD REQUIREMENTS

8.02 - ALTERATION OR EXTENSION

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/3379>

Interested persons may provide comments at the public hearing or by submitting written comments by email to manthony@brooklinema.gov.

Assistive Listening Devices are available upon request:

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

Publish: 12/22/2022 & 12/29/2022

On January 5, 2023, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Johanna Schneider and Board Members Randolph Meiklejohn and Wadner Oge. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was the project architect, Peter Grover, Slocum Hall Design Group, LLC, 600 Pleasant Street, Watertown, Massachusetts. The Petitioners, Ken Berman and Katie Pasciucco, were 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 Dopazo Gilbert waived a reading of the published notice.

Attorney Dopazo Gilbert presented the case for the Petitioners. Attorney Dopazo Gilbert stated that the single-family home located at 61 Hedge Road is in an S-10 Zoning District and that the Petitioners, who she noted have lived at the home for five years, are seeking to demolish their existing garage and construct a two-story attached garage. She noted that the Petitioners had reached out to each of their neighbors and had received no opposition in response. Attorney

Dopazo Gilbert then stated that the project entailed demolishing the existing dilapidated garage and replacing it with an attached garage with living space above it. She continued that the project would add approximately 533 square feet of living area to the home, with internal modifications aimed at accommodating the Petitioners' growing family and visits by aging parents. Attorney Dopazo Gilbert further noted that after initially imposing a stay on the demolition of the garage, the Preservation Commission had offered its unanimous support for the proposed changes.

Attorney Dopazo Gilbert stated that the Petitioners are first requesting a finding under M.G.L. Ch. 40A, Section 6 to allow for the increase of the preexisting nonconforming floor area ratio (FAR). She continued that the existing FAR is 0.42 and the proposed FAR is 0.48, whereas the S-10 zoning district permits a maximum FAR of 0.30. Attorney Dopazo Gilbert noted that under *Deadrick*, the proposed increase in FAR is permitted, because it is not substantially more detrimental to the neighborhood than the existing nonconformity. She stated that the Petitioners also sought relief for the rear-yard setback and that after meeting with the Building Commissioner, such relief was being sought under Zoning Bylaw §5.43. Attorney Dopazo Gilbert noted that §5.43 permits a reduction in yard or setback regulations if a condition or facility not otherwise required is provided to counterbalance that reduction. She noted that Petitioners were prepared to provide such a counterbalancing amenity in the form of a landscaping plan.

Attorney Dopazo Gilbert then stated that the proposal meets the special permit standards enumerated in **Section 9.05** and noted the following: 1) Specific site is an appropriate location for such use: The property is located in an S-10 district, where a garage is a permitted accessory use for a single-family home, and the new garage will be constructed in the footprint of the existing one. 2) Use will not adversely affect the neighborhood: The plan calls for replacing a dilapidated structure with a new garage, one that is well below the height of the house and located to its rear. As such, the project will be difficult to notice from the street, and neighbors have not expressed

opposition to the proposal. 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, at the suggestion of Board Member Meiklejohn, requested a presentation of the site plan. Project Architect Peter Grover, Slocum Hall Design Group, presented the site plan via a digital presentation. Mr. Grover noted that the existing garage, a detached one-story wooden structure, is undersized and in disrepair. He continued that the proposal, which had been finalized with input from the Building Commissioner, Planning Board, and Preservation Commission, calls for constructing a new garage that would better accommodate modern vehicles while increasing the living space for the family.

Board Member Oge then asked Mr. Grover whether there was a reason that the existing garage had not been previously attached to the home. Mr. Grover noted that such a design would have blocked a number of windows on both of the house's floors. Attorney Dopazo Gilbert added that the design was necessitated by the Preservation Commission's preference that existing detached garages continue to appear detached. Board Member Oge concluded by complimenting the appearance of the design. Mr. Grover responded by stating that the design had been partly necessitated by the Petitioners' desire for the new garage to resemble an old carriage barn.

Board Member Meiklejohn, in reference to the proposal, clarified that the rear-yard setback would be reduced by the design. Mr. Grover responded in the affirmative, noting that an appendage of the existing garage would be removed. Board Member Meiklejohn then inquired as to whether the proposed garage's second-story living space was included in the home's FAR. Deputy Building Commissioner Paul Campbell answered in the affirmative.

Chair Schneider then called for public comments in support of or in opposition to the proposal. No public comments were submitted.

Chair Schneider then asked Attorney Dopazo Gilbert whether any letters from neighbors had been submitted. Attorney Dopazo Gilbert responded that no such letters had been received.

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

FINDINGS

§5.20 – FLOOR AREA RATIO

§5.43 – EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.70 – REAR YARD REQUIREMENTS

§8.02 – ALTERATION OR EXTENSION

ZONING: S-10	Requirements	Existing Conditions	Proposed Conditions	Relief Required
FAR	0.30	0.42	0.48	Special Permit¹
Rear-Yard Setback	30 ft	10.3 ft	12.3 ft	Special Permit¹

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. Anthony stated that staff believes that the new garage will be an aesthetic improvement from the old existing garage and that the addition of the second-floor of the garage will provide the homeowners with more living space without a major alteration of the house itself. Ms. Anthony added that the proposal received the approval of the Preservation Commission and should not be detrimental to the surrounding neighborhood.

Therefore, Ms. Anthony stated, the Planning Board voted unanimously to recommend approval of the site plan by O'Brien Land Surveying, dated 8/2/22 and architectural plans by Slocum Hall Design Group, Inc., dated 9/20/22, 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 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 had no objection 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.

The Board then deliberated. Board Member Oge stated that he was in favor of the project because it met the criteria for a special permit, as triggered by Ch. 40A, Section 6. He continued that he did not believe the proposal would be substantially more detrimental to the neighborhood and that it would not have an effect on the availability of affordable housing. Board Member Oge further stated that the proposal represented an enhancement to the neighborhood and that he would vote in favor of approval. Board Member Meiklejohn then asked whether a counterbalancing amenity had been mentioned. Chair Schneider responded that Attorney Dopazo Gilbert had stated that the Petitioners would provide a landscaping plan. Attorney Dopazo Gilbert reiterated this statement, noting that the Petitioners had no objections to adding a landscaping plan as a condition of approval for the proposal. Board Member Meiklejohn then added that he concurred with Board Member Oge's statements that the design met the requirements for relief under Ch. 40A, §6 and

§5.43. Board Member Meiklejohn added that he, too, would vote in favor of the proposal. Chair Schneider stated that she agreed with the foregoing comments and that the request meets the standards under M.G.L. Ch. 40A, Section 6 and the standards under **Section 9.05** of the Zoning By-Law. She continued that so long as providing the counterbalancing landscaping plan was added as a condition of the approval, she would also vote in favor of the proposal

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6, to allow for an alteration or increase to preexisting nonconforming conditions as established, under **Section 5.20** to permit an increase in the preexisting nonconforming FAR, and under **Section 5.43** to permit the construction of a structure with a nonconforming rear-yard setback of 12.3 feet.

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:

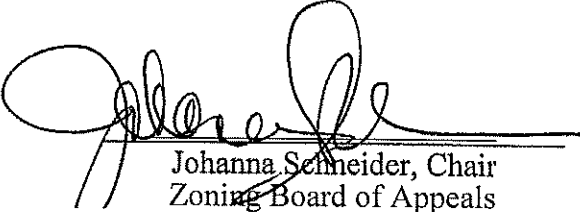
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 revised 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 a final landscaping plan, showing counterbalancing amenities, to the Assistant Director for Regulatory Planning for review and approval.
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: 3/15/23

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals