



# Town of Brookline

## Massachusetts

BOARD OF APPEALS  
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TOWN CLERK'S OFFICE  
JUL 20 12:38 PM '23

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2023-00013  
24 GRASSMERE ROAD

Petitioners Krista Weiss and Luis Suarez applied to the Building Commissioner for permission to demolish an attached single-car garage and to construct a new garage with a second-floor addition above. 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 June 15, 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 Petitioners, 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 June 1, 2023 & June 8, 2022 in the *Boston Herald*, a newspaper published 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, June 15, 2023

**Location:** Virtual Hearing

**Virtual Registration Link:** [bit.ly/43uU6Lq](https://bit.ly/43uU6Lq)

**Petitioner:** Krista Weiss & Luis Suarez

**Address:** 24 Grassmere Road

**Subject:** Demolition of attached single-car garage and the construction of a new garage with 2nd floor addition above

**Nature of Action/Relief:**

§5.20 - FLOOR AREA RATIO

§8.02 - ALTERATION OR EXTENSION

*Plans and submissions may be viewed online at*

<https://www.brooklinema.gov/DocumentCenter/Index/4237>

*Interested persons may provide comments at the public hearing or by submitting written comments by email to [manthony@brooklinema.gov](mailto:manthony@brooklinema.gov).*

**Assistive Listening Devices are available upon request:**

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

**Publish: 6/1/2023 & 6/8/2023**

On June 15, 2023, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Randolph Meiklejohn and Board Members Neil Wishinsky and Wadner Oge. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Lee Silverstone, SB Architects, 1200 Washington Street, Apt. #218, Boston, Massachusetts. The Petitioners, Krista Weiss and Luis Suarez, were also in attendance.

Zoning Board of Appeals Chair Meiklejohn called the hearing to order at 7:00 pm. Chair Meiklejohn 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. Attorney Allen stated that the single-family home located at 24 Grassmere Road is located in an S-7 Zoning District and added that the proposed plan entails the demolition of a small attached garage and the construction of a new attached one-car garage. He stated that the dimensions of the new garage are approximately 21 feet by 17.5 feet, providing sufficient space for one vehicle. Additionally, Attorney Allen added

that a new bedroom will be built above the garage, resulting in a total of four bedrooms within the home.

Attorney Allen stated that the proposed addition complies with the required minimum side yard setback and is approximately 12 feet lower than the maximum height allowed in the district, as well as being lower in height compared to the existing home; these dimensions help to ensure that the new addition aligns with the local regulations and does not disrupt the visual harmony of the neighborhood. He added that the construction of the new garage and bedroom would contribute an additional 246 square feet to the overall living space of the home.

Attorney Allen stated that the Petitioners have gathered a total of eight letters in support of their proposal, including endorsements from the three nearest abutters. He added that the owners of the adjacent property at 32 Grassmere Road, located beside the planned garage addition, as well as the two properties situated behind the proposed construction, have expressed their support. Attorney Allen noted that one neighbor across the street has expressed concerns about the potential impact on their view due to the presence of the garage addition. He stated that the neighborhood boasts an abundance of greenery, with a street tree situated in front of nearly every house. As a result, he noted, the addition would be shielded from view for a significant portion of the year. Moreover, he stated, the home across the street is approximately 70 feet away from the proposed addition, and not directly in line with it. Attorney Allen stated that considering these factors, and the fact that the petitioner proposes to construct an addition 12 feet below the maximum allowable height, he considers it unlikely that there will be any significant privacy concerns or shadow impacts. Furthermore, Attorney Allen stated that the neighbors at the rear of the property, who would be most directly affected by the construction, have shown their support for the proposal. He added that the neighbors provided suggestions for landscaping improvements, which the Petitioners intend to incorporate into their plans; he stated that this demonstrates a collaborative

effort by the petitioner to address any potential concerns and maintain a positive relationship within the neighborhood.

Attorney Allen stated that the Planning Board has shown unanimous support for the proposed project and also provided valuable feedback regarding the windows on the addition above the garage. He added that Ms. Silverstone, the project architect, carefully considered the Planning Board's suggestion and made necessary modifications to the window design. He added that, should the Board decide to grant the requested relief, the Petitioners request that the plan of record date be updated to May 31, 2023, instead of the initial date of January 13, 2023.

Upon inquiry from Board Member Wishinsky, Ms. Silverstone reviewed the architectural plans and site plan showing the setbacks of the proposed garage.

Attorney Allen then reviewed the requested zoning relief. He stated that a finding is requested under M.G.L. ch. 40A Section 6 to allow for the increase of preexisting and nonconforming FAR and rear yard setback. Attorney Allen stated that under *Deadrick (Deadrick v. Board of Appeals of Chatham, 85 Mass. Appt Ct 539)*, the Board of Appeals may 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 argued that the proposed garage expansion and addition would not create any new nonconformity and there would be no substantial detriment to the neighborhood.

Attorney Allen stated that the lot size, at 4,914 square feet, is below the required minimum 7,000 square feet; the Floor Area Ratio (FAR), proposed to increase from 0.50 to 0.59, already exceeds the maximum allowed of 0.35; and the existing rear yard setback of 7.6 feet is below the required minimum 30 feet and the proposed addition maintains the existing setback at one corner but increases it to 8.2 feet at the other corner. Attorney Allen added that the existing side yard and front yard setbacks comply with the minimum setback requirements. Attorney Allen stated that

the proposed project complies with the maximum allowed height, measuring 22.5 feet, which is approximately 12 feet lower than the allowable limit.

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 following: 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 addition will not adversely affect the neighborhood. Eight letters of support have been submitted to the Board. 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.

Attorney Allen stated that in light of these considerations, it can be concluded that the proposed addition is modest and compatible with the neighborhood; the support letters, combined with the efforts made to mitigate any potential impacts, indicate that the project will not have a detrimental effect on the surrounding area.

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

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

## **FINDINGS**

**§5.20-FLOOR AREA RATIO**

**§8.02 – ALTERATIONS OR EXTENSIONS - PRE-EXISTING NON-CONFORMITIES; FAR MAXIMUM, LOT SIZE MINIMUM; REAR YARD SETBACK; FRONT YARD SETBACK**

<b>ZONING: S-7</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>FAR (2nd story over garage)</b>	<b>.35</b>	<b>.50</b>	<b>.59</b>	<b><u>Special Permit<sup>1</sup></u></b>
<b>Rear Yard Setback (garage)</b>	<b>30'</b>	<b>7.6</b>	<b>7.6'</b>	<b><u>Special Permit<sup>1</sup></u></b>

<sup>1</sup> Under Sec. 6, MGL 40A, a special permit may waive pre-existing non-conforming conditions.

**PLANNING DEPARTMENT COMMENTS**

The Planning Department has no objection to the proposed garage and second story living space above. The new garage is approximately 7' wider than the one being replaced and the design of the 2<sup>nd</sup> story addition is attractive and enhances the overall appearance of the house.

**PLANNING BOARD COMMENTS**

The Planning Board also has no objection to this proposal based on the following points:

- the addition is quite modest for its purposes, in both height and width,
- the garage is well below the allowed size to be exempted from gross floor area and does not intrude into the side yard setback,
- the immediate abutters have no issue with this proposal, except for the neighbor directly across the street,
- the house directly across the street has two existing large trees in front of it that would likely block much of the view of the subject house, and
- under MGL Chapter 40A Section 6, review is limited to a determination of "substantial detriment" to the neighborhood, and this proposal clearly is not substantially detrimental to the neighborhood.

**Therefore, the Planning Board recommends approval of the site plan by James L. Nabstedt, PLS, dated January 16, 2023 and architectural plans by SB ARCHITECTS, RA, dated February 7, 2023, subject to the following conditions:**

- 1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations of the garage and house, 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 of the garage 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.**

Ms. Anthony stated that the architectural plan date should be updated to May 31, 2023.

Chair Meiklejohn then called upon Deputy Commissioner Paul Campbell to present the Building Department report. Mr. Campbell conveyed that the Building Department had no objections to the requested relief and expressed their willingness to collaborate with the Petitioner to ensure compliance with the Board's decision and all applicable codes.

During the discussion, Board Member Wishinsky shared his opinion that the proposal was modest and harmonious with the neighborhood's scale. He suggested that it would be appropriate to make a finding that the proposed changes to the preexisting nonconformities do not have a more substantial detrimental impact on the neighborhood compared to the existing condition. Board Member Oge supported the viewpoints of the Planning Board and Board Member Wishinsky. He concurred that the request was modest in nature, appreciated the design, and believed that it would enhance the streetscape. Chair Meiklejohn agreed with Board Members Wishinsky and Oge, emphasizing that the proposal was modest. He further noted that the design solutions successfully accomplished significant improvements for the home while also demonstrating thoughtfulness towards the neighborhood. The consensus among the Board Members was that the proposal is modest, fitting within the neighborhood's character, and offers improvements that are considerate of the surrounding environment.

The Board, through a unanimous vote, concluded that the proposal satisfied the criteria for a finding under M.G.L. Ch. 40A, Section 6. This finding allows for an alteration or increase in preexisting nonconforming conditions as specified in **Section 5.20**, permitting an increase in the preexisting nonconforming Floor Area Ratio (FAR) from 0.50 to 0.59. Additionally, under **Section 5.70**, the finding permits an increase in the preexisting nonconforming rear yard setback from 7.6 feet to 8.2 feet in accordance with the Zoning By-Law. 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.

At the conclusion of the board's deliberations, Chair Meiklejohn made a motion to approve the requested relief subject to conditions [detailed below], which was seconded by Board Member Oge, and on a roll call the members voted unanimously in favor of the motion.

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 of the garage and house, 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 of the garage 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

  
Randolph Meiklejohn, Chair  
Zoning Board of Appeals

Filing Date: 7/20/2023

A True Copy  
ATTEST:





Benjamin Kaufman  
Clerk, Board of Appeals