



# TOWN OF BROOKLINE

## *Massachusetts*

### BOARD OF APPEALS

DIANE R. GORDON, Co-Chair  
HARRY MILLER, Co-Chair  
BAILEY S. SILBERT

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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE  
BOARD OF APPEALS  
NO. BOA060022

Petitioners William and Lynn Osborn applied to the Building Commissioner for permission to construct a single car garage at the rear of the property located at 22 Emerson Street. The Building Commissioner denied the petitioners' application due to the fact that the proposed garage violated the Zoning By-Law. An appeal of the denial was taken to this Board.

On March 30<sup>th</sup>, 2006 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed the date of May 25<sup>th</sup>, 2006 at 7:15 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of 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 May 11<sup>th</sup> and May 18<sup>th</sup>, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEAL  
NOTICE OF HEARING

PURSUANT TO M.G.L. CH. 39, SECTIONS 23A & 23B. THE BOARD OF APPEALS WILL CONDUCT A HEARING TO DISCUSS THE FOLLOWING CASE:

PETITIONER: William and Lynn Osborn

LOCATION OF PREMISES: 22 Emerson Street BRKL

DATE AND PLACE OF HEARING 05/25/2006

TIME OF HEARING 07:15 p.m.

PLACE OF HEARING Selectmen's Hearing Room 6th floor

A public hearing will be held for a variance and/or a special permit from Section 5.43: Exceptions to Yard and Set Back Regulations; Special Permit Required, Section 5.61 Projections into Side Yards ; Variance Required, Section 5.72, Accessory Buildings or Structures in Rear Yards; Variance Required, For the Design of Off Street Parking Facilities, Sections 6.04.5.c.2; Variance Required, Section 6.04.5.c.3; Variance Required, Section 6.04.12; Special Permit Required, and Section 8.02.2 Alteration or Extension; Special Permit Required, to construct a garage per plans,

at 22 Emerson Street BRKL  
Said premises located in a T-5 District

The Town of Brookline does not discriminate on the basis of disability in admission to, or access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Diane R. Gordon  
Harry Miller  
Bailey Silbert

At the time specified in the notice a public hearing was held in the Selectmen's Hearing Room on the sixth floor at Town Hall by this Board. Present were Harry S. Miller, Chair; Bailey S. Silbert and Murray Shockett.

Petitioners were represented by Attorney Jacob Walters of Goldenberg, Walters and Popkewitz of Seven Harvard Street in Brookline. Mr. Walters outlined

the scope of the project which was the construction of a single car garage at the rear of the property, and stated that all the relief required could be granted by Special Permit. Mr Walters cited Section 5.43 as allowing the waiver of certain dimensional requirements provided the applicants provided counterbalancing amenities. In this case the petitioners are proposing to add plantings and provide landscaping throughout the property as the counterbalancing amenity. Mr. Walters further stated that while cited under Section 5.72, the proposed garage neither occupied 25% of the rear yard area nor was fifteen (15') in height and therefore Section 5.72 was not applicable. Mr. Walters went on to say that the only other special permits needed were under Section 6.04.12, which allows the substitution of certain dimensional requirements where new parking is being provided for existing structures, and under Section 8.02.2, Extension or Alteration because the existing rear and side driveway setbacks are non-conforming. Mr. Walters concluded by stating that the small garage would have no impact upon the neighborhood and knew of no opposition from any of the abutters.

The Chairman then called upon Timothy Greenhill of the Brookline Planning Department to present the Planning Board report. Mr. Greenhill stated that the Planning Board supports the finishing of the driveway and construction of the garage at 22 Emerson Street. Mr. Greenhill indicated that the Planning Board was concerned that the proposed garage was too close to the rear of the property and requested that it be moved forward to meet the minimum six foot requirement which the applicants have done. Mr. Greenhill mentioned that the garage will not be visible from the street, and that the applicants have designed the garage to be compatible with the existing structure. Accordingly, the Planning Board recommends approval of the plans prepared by West Hill Architects and dated March 20, 2006, subject to the following conditions:

(1) A landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Chief Planner for review and approval prior to the issuance of a building permit, and (2) Prior to obtaining a building permit, the applicants shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals Decision, (a) a final site plan, showing dimensions, stamped and signed by a registered architect or land surveyor; (b) final building plans for the rear and side elevations stamped and signed by a registered architect and (c) a recorded copy of the Board of Appeals Decision.

The Chairman then called upon Frank Hitchcock of the Brookline Building Department. Mr. Hitchcock stated that the Building Department has no objection to the applicant's proposal which could be granted by two special permits under

Section 5.43 Section 8.02.2. Mr. Hitchcock further stated that at the time of the Building Department denial letter it was unclear if the driveway went all the way to the end of the property, due to snow being on the premises, but having seen the photographs of the site, relief from Article VI of the Zoning By-Law is not needed.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously to grant special permits under Sections 5.43 and Section 8.02.2, with the following conditions:

1) A landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Chief Planner for review and approval prior to the issuance of a building permit, and (2) Prior to obtaining a building permit, the applicants shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals Decision, (a) a final site plan, showing dimensions, stamped and signed by a registered architect or land surveyor; (b) final building plans for the rear and side elevations stamped and signed by a registered architect and (c) a recorded copy of the Board of Appeals Decision.

Unanimous decision of  
the Board of Appeals

  
Harry S. Miller, Chair

Date of Filing: July 10, 2006

A TRUE COPY:  
ATTEST:



Patrick J. Ward  
Board of Appeals