



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st Floor
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0081
ANTHONY CUKRAS &
SARA TOLANEY

Petitioners, Anthony Cukras and Sara Tolaney, applied to the Building Commissioner for permission to demolish garage and replace the garage with a single story addition with a rear facing dormer, and construct a single-story rear addition and new porch in the side yard setback. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed January 29, 2015 at 7:15p.m., in the Selectmen's Hearing Room 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 January 8, 2015 and January 15, 2015 in the Brookline Tab, a newspaper published 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 public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

43 GLEN RD – ADD ONE STORY PORCH ON SIDE, CONVERT GARAGE TO LIVING SPACE, AND CONSTRUCT ONE STORY ADDITION AT REAR in an S-7, Single-Family residential district, on

January 29, 2015, at 7:15 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: TOLANEY SARA M CUKRAS ANTHONY R; Owner: TOLANEY SARA M CUKRAS ANTHONY R) Precinct 5

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 5.09.2.j: Design Review**
- 2. Section 5.22.3.b.1.b: Exceptions to Floor Area Ratio (FAR) For Residential Units**
- 3. Section 5.43: Exceptions to Yard and Setback Regulations**
- 4. Section 5.50: Front Yard Requirements**
- 5. Section 5.70: Rear Yard Requirements**
- 6. Section 8.02.2: Alteration or Extension**

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 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Johanna Schneider and Avi Liss. The case was presented by Bailey C. Gaffney, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Ms. Gaffney requested that the Board continue the hearing to March 12, 2015. The Board granted Ms. Gaffney’s request for a continuance.

The hearing was continued to March 12, 2015. Present at the continued hearing was Chairman Jesse Geller and Board Members Mark Zuroff and Christopher Hussey.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were homeowners Anthony Cukras and Sara Tolaney and architect Lynn Osborn, Osborn Studio+, 22 Emerson Street, Brookline, MA 02445.

Attorney Allen stated that the Petitioners propose to demolish the attached garage and replace it with a single-story addition with a rear facing dormer. Mr. Allen stated that the sun room will be demolished and replaced with a single-story rear addition and a new porch will be located in the side yard setback. He stated that the new porch does not require setback relief.

Mr. Allen presented to the Board a background of the Petitioners and the proposal, stating that 43 Glen Road is a single-family dwelling located within the Pill Hill Local Historic District in the S-7 Zoning District. Mr. Allen stated that the Petitioners purchased the property in May 2005 and that the Petitioners originally proposed a two-story rear addition in 2013, which proposal received unanimous approval from the Preservation Commission and the Planning Board for design review, included a floor area increase of 28%, and a preexisting, non-conforming rear yard setback. Mr. Allen stated that due to neighborhood opposition, the Board of Appeals allowed the Petitioners to withdraw the 2013 proposal without prejudice.

Attorney Allen stated that the Petitioners revised the proposal in response to neighborhood concerns and on September 9, 2014 received unanimous approval from the Preservation Commission to demolish the attached garage, and replace it with a single-story addition with a rear facing dormer, as well as construct a covered porch. He continued that the Petitioner subsequently submitted an application for zoning relief from Sections 5.09.2.j, 5.22.3.b.1.b, 5.43, 5.70, and 8.02.2 of the Zoning

By-Law on November 20, 2014 and subsequently received a 4-1-0 majority approval from the Planning Board for design review on January 8, 2015.

Lynn Osborn, Osborn Studio+, 22 Emerson Street, Brookline, MA 02445, presented a 3D model of the proposal and stated that the garage will be demolished and re-built on substantially the same footprint. Ms. Osborn stated that the rear sunroom is in poor condition and will be replaced with a single-story addition. She stated that the Petitioners chose to dormer the garage in order to minimize its height.

In response to Chairman Jesse Geller's inquiry, Ms. Osborn confirmed that the changes from the 2013 proposal include a reduced rear yard addition and increased living space where the garage is currently located. Board Member Christopher Hussey requested further detail regarding the covered porch. Ms. Osborn stated that it is permitted by-right and was already approved by the Preservation Commission.

Mr. Allen stated that the proposal triggers design review because the exterior additions require floor area relief pursuant to **Section 5.22.3.b.1.b** of the Zoning By-Law. Mr. Allen stated that the Petitioners request special permit relief for an exterior addition that is less than 20% of the permitted gross floor area; the allowed floor area in the S-7 District for this lot size is 2,327s.f., existing floor area 1,855s.f., and proposed floor area 2,757s.f.; and the existing floor area percentage is 80% and proposed floor area percentage 118%. Attorney Allen further noted that the previously uncounted floor area in the garage is now counted as livable floor area according to the Zoning By-Law.

In addition, Mr. Allen stated that the Petitioners request rear yard setback relief pursuant to **Section 5.70** of the Zoning By-Law. He noted that the required rear yard setback is 30ft, existing is 24.1ft, and proposed is 20.9ft.

He continued that the first floor sun room is pre-existing non-conforming and the proposed single-story addition in the rear yard increases the non-conformity requiring relief under **Section 8.02.2** of the Zoning By-Law for alteration of a pre-existing non-conforming structure. Mr. Allen stated that pursuant to neighborhood concerns, the Petitioners significantly decreased the rear yard setback proposed in 2013 that the front yard setback conforms to the Zoning By-Law.

Attorney Allen, addressing the Planning Board's concern about **Section 5.22.1.e** of the Zoning By-Law relative to displacement of storage equipment, vehicles, or materials to an exterior location, stated that notwithstanding the fact that the Petitioners exclusively use the driveway to park their vehicles, the Preservation Commission unanimously approved relief to demolish the garage and connector to the house and build a new addition. Furthermore, he stated that any interior storage equipment will be relocated to the basement, which will have additional unfinished floor area below the rear addition if the proposal is approved.

Board Member Christopher Hussey noted that the project was cited for design review under **Section 5.09.2.j** of the Zoning By-Law, but an itemized list of relevant design review elements was not provided by the Planning Board. Mr. Hussey asked Attorney Allen to describe relevant impacts. Mr. Allen stated that the Planning Board discussed the impact on the streetscape, counterbalancing amenities, and the density of the proposal before granting majority approval. In addition, Attorney Allen stated that the Preservation Commission discussed design standards relative to grading, landscaping, and building materials before unanimously approving the revised proposal.

Attorney Allen discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location where the Petitioners are modernizing their single family home by adding a small addition that will increase the FAR from 0.28 to 0.41, which will keep their property in line with the density of the immediate neighborhood (21 Glen: 0.42; 37 Glen: 0.41; 31

Glen: 0.38; 25 Glen: 0.30; 46 Glen: 0.26; 36 Glen: 0.23; 30 Glen: 0.39; 26 Glen: 0.30; 46 Hawthorne: 0.42; 40 Hawthorne: 0.53; 34 Hawthorne: 0.42; 28 Hawthorne: 0.46; 20 Hawthorne: 0.61); (2) there will be no adverse effect on the neighborhood where the proposal was determined by the Preservation Commission to be in compliance with the Pill Hill Local Historic District, noting there are letters of support from 7 immediate abutters on Glen Road and 1 abutter on Hawthorn Road, and the Petitioners developed a significant landscaping plan addressing privacy concerns, new landscaping features and a decrepit fence; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the proposal does not depart from the current parking scheme and the curb cut will remain the same; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will have no effect on the supply of housing available for low and moderate income people, but will allow a family that has become entrenched in the community to stay in a neighborhood.

Mr. Allen next discussed zoning relief under **Section 5.43** of the Zoning By-Law, where the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. Mr. Allen restated that the Petitioners hired Blair Hines to develop a significant landscaping plan that includes concrete pavers, new plantings, and a fence in the rear yard, which will be subject to the review and approval of the Assistant Director Regulatory Planning if the proposal is approved.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. Thomas Kennedy, 46 Glen Road, stated that the proposal is modest and if approved will enhance the home itself and the wider neighborhood. Jennifer Bellen, 65 Glen Road, expressed support for the proposal and felt the proposed impact would be trivial. Gloria Gammons, 36 Glen Road, stated that the proposal will not damage the neighborhood and the Petitioners' lives will be significantly improved. Johanna Kennedy, 46 Glen Road, echoed support for the proposal and recognized that the Pill Hill Local Historic District is attractive due to both the architecture and the residents.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in opposition to the application. John Griffin, Greenberg Traurig, 1 International Place, Boston, MA 02110, spoke on behalf of his clients, Peter Manus and Susan Schiro, 40 Hawthorn Road. Attorney Griffin stated that public notices were inconsistent and did not accurately describe the Petitioners' revised proposal. Mr. Griffin additionally argued that the Petitioners propose to alter and extend a non-conforming structure that is located on a non-conforming lot and in this instance M.G.L. c. 40A does not afford relief by a special permit; a variance being the sole remedy. Furthermore, he contested Mr. Allen's characterization of the petitioners' changes as being suggested by the neighbors. For these reasons, Mr. Griffin requested that the Board of Appeals decline to grant special permit relief for the Petitioners' proposal.

Sam Abbott, 15 Cumberland Avenue, submitted a written statement to the Board of Appeals. Mr. Abbott stated that the proposal does not meet the conditions for special permit relief under **Section 9.05** of the Zoning By-Law because there will be a direct adverse impact on the neighborhood. Mr. Abbott noted that the garage conversion violates **Section 5.22.1.e** of the Zoning By-Law because vehicles will be displaced to an exterior location. He stated that previous home owners parked vehicles within the garage at 43 Glen Road and the Petitioners received approval to update their garage doors in 2005, which indicates their own intended vehicular use. He stated that non-compliance with the rear yard setback requirements will result in a loss of privacy for surrounding residents because open space is a premium in the area.

Susan Schiro, 40 Hawthorn Road, echoed Mr. Abbott's concerns and emphasized the size of the first floor addition in the rear yard. Ms. Schiro contested the Brookline Assessor's floor area calculations that Attorney Allen listed because her home also has finished basement space that is taxed.

Peter Manus, 40 Hawthorne Road, described the Glen Road area as a "micro-neighborhood" in which multiple houses share open space, particularly rear and side yard open space. Mr. Manus stated

that this project will result in a reduction of sight lines and other amenities and that the addition is not modest where the massing of the home will push out rather than convert interior space. Mr. Manus stated that zoning regulations are a balance between private and public interest and should provide protections for abutting property owners.

Catherine Zimmerman, 37 Glen Road, expressed concern that her privacy will be negatively impacted and the garage will be closer to her property line.

Cornelia McMurtrie, 35 Hawthorne Road, stated opposition due to the long-term impact of the proposal. Ms. McMurtrie stated that prior property owners utilized the garage to park vehicles and that all residents have adhered to the Pill Hill Local Historic District standards and this proposal should not be treated differently.

Deborah Cureton, 75 Glen Road provided 33 signatures in opposition. Ms. Cureton stated opposition to the partial demolition of this historic property and opined that the proposed 16’x17’ parking area is not adequate for two vehicles to be parked side by side where a 16’x21’ parking area is required and will create significantly more impact on abutters by forever displacing vehicles from the existing garage.

John Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

Section 5.09.2.j – Design Review

Section 5.22.3.b.1.b – Exceptions to Floor Area Ratio (FAR) For Residential Units

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.70 – Rear Yard Requirements

	Required	Existing	Proposed	Finding
Floor Area Ratio	.35	.28	.41	Special Permit*

Floor Area	2,327 s.f.	1,855 s.f.	2,757 s.f.	
FAR Percentage	100%	80%	118%	
Front Yard	20'	20.2'	20.2'	Complies
Rear Yard	30'	24.1'	20.9'	Special Permit**

* Under Section 5.22.3.b.1.b, the Board of Appeals may grant a special permit for an exterior addition that is less than or equal to 20% of the permitted gross floor area.

** Under Section 5.43, the Board of Appeals may waive dimensional requirements in lieu of other dimensions if the applicant provides counterbalancing amenities.

Section 8.02.2: Alteration or Extension: A special permit is required for an alteration.

Mr. Rosa stated that the Planning Board supported the Petitioners proposal by a majority vote. Mr. Rosa stated that the Planning Board felt that the design is consistent with surrounding structures and agreed with Preservation Commission findings that the historic character of the structure will be maintained. Mr. Rosa stated that the Planning Board considered **Section 5.22.1.e** of the Zoning By-Law regarding the displacement of vehicles stored within a garage, but ultimately determined that the regulation was not applicable because the Petitioners do not use the existing garage to store vehicles. Finally, Mr. Rosa stated that the Planning Board reviewed the landscaping plan and felt the features were appropriate counterbalancing amenities. Therefore, Mr. Rosa stated that the Planning Board (4-1) recommended approval of the plans submitted by Osborn Studio +, dated 1/21/15, and the site plan by Boston Survey, Inc., dated 1/21/15. Mr. Rosa stated that should the Zoning Board of Appeals find that the conditions for special permit relief have been met, the Planning Board recommended the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a Building Permit the applicant shall receive a Certificate of Appropriateness from the Brookline Preservation Commission indicating support for all proposed exterior modifications.

3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; 3) a Certificate of Appropriateness issued by the Brookline Preservation Commission, and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Interim Chief Building Inspector Michael Yanovitch delivered the comments of the Building Department. Mr. Yanovitch stated that the Building Department had no opposition to the proposal. He stated that the exceptions to **Section 5.22** of the Zoning By-Law have been challenged in the past but Mr. Yanovitch disagreed with Attorney Griffin's characterization that M.G.L. c. 40A prohibits the expansion of structures through special permit relief. Mr. Yanovitch stated that strict enforcement would most likely result in illegal front-yard parking throughout various neighborhoods in Brookline, and Pill Hill is not unique in this instance. Finally, he stated that should the Board of Appeals find that the necessary requirements for special permit relief are met, the Building Department will work with the Petitioners to ensure compliance with all building codes.

In deliberation, Board Member Mark Zuroff noted that the Petitioners' proposal already complied with the Preservation Commissions' guidelines. Mr. Zuroff stated that the proposal will not be detrimental to the neighborhood and the conditions for special permit relief under **Section 9.05** of the Zoning By-Law have been met. Mr. Zuroff did raise his concern about the displacement of vehicles from the garage.

Board Member Christopher Hussey stated that he supported the Petitioners' proposal in 2013 and the current modifications are appropriate and adequate in terms of interior modernization. Mr. Hussey stated that for these reasons the Petitioners' proposal is worthy of necessary zoning relief.

Chairman Geller stated that he believed the Petitioners' revised proposal meet the standards under **Section 9.05** of the Zoning By-Law. He raised his concern that the proposal failed under the provisions of **Section 5.22.1.e** of the Zoning By-Law because it involved an interior conversion which resulted in the displacement of vehicles stored internally.

Mr. Allen refuted this opinion and argued that the Preservation Commission minutes from September 9, 2014 indicate approval to "remove garage and connector to house and build a new two-story addition." Mr. Allen stated that the garage will only be one-and-a-half stories, but the characterization of the proposal is such that the Preservation Commission approved demolition for the existing garage. He stated that **Section 5.22.1.e** of the Zoning By-Law does not permit an interior conversion requiring floor area relief to displace interior storage to an exterior location; however, the Petitioners' propose to demolish the attached garage as indicated in the Special Permit Application filed on November 20, 2014. Mr. Allen stated that since this is not an interior conversion, **Section 5.22.1.e** of the Zoning By-Law does not apply.

On inquiry from the Board of Appeals, Mr. Yanovitch confirmed that the Petitioners applied for an exterior addition rather than an interior modification. He stated that the Preservation Commission approved demolition of the existing garage and construction of a new addition.

Board of Appeals Members Geller, Zuroff, and Hussey concurred with Mr. Allen's analysis, with Mr. Geller noting that the Zoning By-Law specifically defines the term "interior Conversion" and the relevant By-Law Section distinguishing between an interior conversion and an exterior addition. Chairman Geller identified proposed landscape and fence improvements as appropriate counterbalancing amenities for the dimensional relief. Mr. Hussey suggested the removal of condition #2 as stated for the record because it is already included within Condition No. 4.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Sections 5.20, and 5.70 of the Zoning By-Law pursuant to Sections 5.22.3.b.1.b, 5.43, and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- 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 have no 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 submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
- 2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; 3) a Certificate of Appropriateness issued by the Brookline Preservation Commission, and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

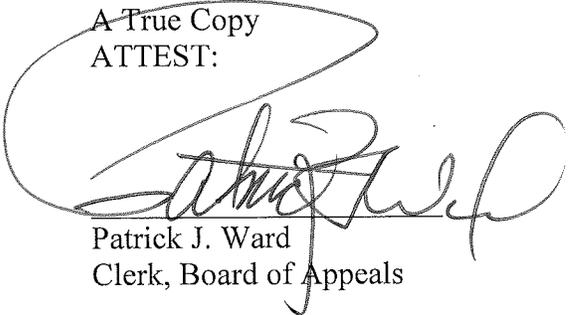
Unanimous Decision of
The Board of Appeals

Filing Date: 5/4/15



Jesse Geller, Chairman

A True Copy
ATTEST:

A large, stylized handwritten signature in black ink, which appears to read "Patrick J. Ward". The signature is written over a horizontal line and is enclosed within a large, hand-drawn oval.

Patrick J. Ward
Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2015 MAY -4 A 11:30