BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline
Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0027
135 UNIVERSITY ROAD, BROOKLINE, MA

Petitioner, 135 University Road, LLC, applied to the Building Commissioner for permission to demolish the existing garage and construct a three-car garage with a new deck above the garage. 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 June 11, 2015 at 7:15 p.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 May 28, 2015 and June 4, 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:

135 UNIVERSITY RD – REMOVE EXISTING TWO-CAR GARAGE, CONSTRUCT A THREE-CAR GARAGE, AND INSTALL A NEW DECK ABOVE, in a T-6, Two-Family and

Attached Single-Family, residential district, on June 11, 2015, at 7:15 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: 135 University Road, LLC; Owner: 135 University Road, LLC) ***Precinct 12***

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

1. **Section 5.01: Table of Dimensional Requirements, Footnote 1**
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.50: Front Yard Requirements**
4. **Section 5.60: Side Yard Requirements**
5. **Section 6.04.12: Design of All Off-Street Parking Facilities**
6. **Section 6.04.14: Design of All Off-Street Parking Facilities**
7. **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, or 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.***

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Christopher Hussey and Avi Liss. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the Petitioner's architect, Mark Sangiolo, Sangiolo Associates Architects, 23 Willow Street, W. Harwich, Massachusetts.

Chairman Zuroff called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner proposes to demolish the existing single-car garage and construct a three-car garage with interior access to the basement.

Attorney Allen presented to the Board a background of the property, stating the following: 135 University Road is a two-family dwelling built in 1920 that is in need of repair. Mr. Allen stated that the property is located at the bottom of Aspinwall Hill and is currently served by a single-car garage located at the bottom of a staircase in the front yard setback. The Preservation Commission approved demolition of the single-car garage and issued a certificate of non-significance on March 19, 2015. He stated that the Petitioner proposes to demolish the existing garage and construct the new garage 5.5 feet from the east side yard lot line. He noted that the proposal includes two tandem parking spaces in the left bay and 1 parking space in the right bay. He stated that the garage will have interior access to the home through the basement and there will be a porch located directly above the garage.

Mr. Allen stated that members of the neighborhood were present at the Planning Board meeting to discuss the front yard setback. He noted that the abutters were concerned about vehicle parking in the driveway because it would obstruct pedestrian activity on the sidewalk. He stated that the Planning Board was cognizant of the concern but felt that the 8.8 foot plus setback was important in terms of maintaining driver sight lines and safety.

Mark Sangiolo, 23 Willow Street, W. Harwich, MA, described the project as a single-story three-car garage. Mr. Sangiolo stated that the new garage will block more of the home, but the natural slope of the lot will maintain attractive views of the home. He stated that the design of the garage is intended to pull the structure away from the abutting lot to provide more of a buffer for privacy reasons.

Mr. Allen noted that the existing garage is pre-existing non-conforming with a setback of 10 feet from the front yard lot line. He stated the proposal will increase the pre-existing non-conforming front yard setback for both the garage and the deck by 1.2 feet, which requires relief from **Sections 5.01**, **5.50**, and **5.52** of the Zoning By-Law. In addition, the existing garage is less than 1 foot from the side yard lot line. Mr. Allen noted that the proposed garage will align the proposed garage with the left side of the house, which will improve the setback by moving it away from the lot line 4.5 feet. He stated that this triggers relief from **Section 5.60** of the Zoning By-Law. In addition, the width of the garage will increase from 16 to 21 feet triggering relief from **Sections 6.04.12** and **6.04.14.c** of the Zoning By-Law. Finally, the Petitioner seeks relief from **Section 8.02.2** of the Zoning By-Law to alter the pre-existing non-conforming structure.

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 off-street parking is available on the Petitioner's side of University Drive practically the entire length of the street (57-153 University), the majority of the homes have 2 covered parking spaces that are setback at least 3ft. from the curb, and the front yard garage is the rule rather than the exception on this side of the street; (2) there will be no adverse effect on the neighborhood where there are more than 30 garages with two bays located on the Petitioner's side of University Road, the proposal will create interior storage for trash bins and will have garage doors to help curb tandem parking on the sidewalk; (3) no nuisance or serious hazard to vehicles or pedestrians will be created because the tandem parking is located entirely underground and the 8.8 foot setback is a safer alternative for both drivers pulling onto University Road an the pedestrians along the sidewalk; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

In addition, Mr. Allen discussed front and side yard setback relief pursuant to **Section 5.43** of the Zoning By-Law. Mr. Allen stated that the Petitioner proposes landscaping features to the left and right of the garage including happy returns, Syberian cypress, a Annabelle hydrangea, and pleasant white evergreen azalea bushes.

Chairman Zuroff expressed concern because it is difficult to prevent sidewalk parking, particularly for parking areas that are built into the front yard slope. He stated that a reduced front yard setback would eliminate driveway parking. Mr. Zuroff also noted that proposed front yard retaining walls and landscaping must not obstruct driver site lines in any way. He agreed that an imposed condition prohibiting driveway parking would provide a secondary enforcement agency via the Building Department. Mr. Zuroff suggested that clear condominium documents would preclude driveway parking as well as a "NO PARKING" sign.

Board Member Hussey requested additional garage dimensions, specifically depth. Mr. Sangiolo confirmed that the tandem bay extends back 37 feet from that garage doors and the single car bay extends back 24 feet. Mr. Hussey was satisfied that these dimensions met and exceeded parking stall dimensional requirements.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in favor of this application. No one spoke in favor of the application.

Mark Allen (154 University Road) referenced a letter that he provided to the Board. Mr. Allen stated support for the project if clear conditions preventing driveway parking were included in the event the Board granted relief. Mr. Allen also agreed that similar language should be included in condominium documents. Mr. Allen confirmed that sidewalk parking is an evolving issue on University Road and currently there is little to no enforcement against this practice.

Alexandra Siemon (139 University Road) is the immediate abutter and expressed support for the proposal. Her garage is immediately adjacent and provides a similar 8 foot setback. The proposed 8 foot setback for the new garage is critical for streetscape consistency and vehicular safety. Cars exiting front yard garages require adequate space to see oncoming traffic prior to crossing the sidewalk and entering the street. Ms. Siemon also noted that passing traffic does move quickly in the area.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in opposition to the application. No one spoke in opposition to the application.

Tommy Vitolo (153 University Road) suggested that the location of the garage itself is the most effective way to prevent owners from parking onto the sidewalk. He stated that a setback dimension that either meets the dimension relief for parking in the front yard setback or prohibits a car from actually parking into the front yard setback are more preferable than a written condition that attempting to prevent the practice. Mr. Vitolo noted that most of the parking infractions occur during night hours at a time when the Building Department is not available for enforcement.

Deidre Rynne (140 University Road) stated that the current garage at 135 University Road provides adequate space for two cars, and the prior residents easily utilized outdoor stairs. Ms. Rynne believed that the streetscape and neighborhood aesthetic is changing due to proposed garages like this and the home will not be owner occupied. The developer is attempting to maximize profit, in Ms. Rynne's opinion.

Attorney Allen stated appreciation for the abutter comments and confirmed that the Petitioner has been open to feedback with the clear intent of constructing the safest garage layout for the neighborhood. The Zoning By-Law does provide specific parking requirements, and this additional off-street parking makes the two-family use more compliant with zoning regulations. Attorney Allen reiterated that this exact topic was debated at the Planning Board and the current setback/parking

restriction condition was the outcome of that collaborative discussion. Attorney Allen added that the proposed garage will improve parking during the winter months.

Board Member Hussey stated that backing in to front-yard parking spaces does eliminate many of the stated safety concerns but is obviously challenging to enforce.

Jay Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board and the Building Department:

FINDINGS:

1. **Table 5.01** – Table of Dimensional Requirements, Footnote 1
2. **Section 5.43** – Exceptions to Yard and Setback Regulations
3. **Section 5.50** – Front Yard Requirements
4. **Section 5.60** – Side Yard Requirements
5. **Section 6.04.12** – Design of All Off-street parking Facilities
6. **Section 6.04.14** – Design of All Off-Street Parking Facilities
7. **Section 8.02.2** – Alteration or Extension□A special permit is required to alter this non-conforming structure.

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Sec. 5.01, Footnote 1 Front yard setback (from garage entrance)	20 feet	10 feet	8.8 feet	Special permit/ Variance*
Sec. 5.50 Front yard setback (from deck)	15 feet	N/A	8.8 feet	Special permit/ Variance*
Sec. 5.52 Fences and Terraces in Front Yards	7.5 feet Uncovered deck may not extend more than 50% of required setback into front yard 50% of 15 feet =7.5 ft	N/A	Extends 24 feet into front yard	Special Permit/Variance*
Sec. 5.60 Side yard setback	7.5 feet	< 1 foot	5.5 feet	Special permit/ Variance*
Sec. 6.04.14.c	Width of garage entrance may no more than 40% of the width of the house or 24 feet, whichever is less	16 feet	21 feet [50% of house width]	Special Permit**

* Under **Section 5.43,** the Board of Appeals may waive by special permit yard setback requirements if counterbalancing amenities are provided. **As a counterbalancing amenity, the Petitioner have developed a landscaping plan that the architect will be more than happy to discuss. I also have copies of the plan.**

****Sec. 6.04.14.c**: Under a special permit after a hearing, the Board of Appeals may permit in lieu of the dimensional requirements of this section, where new parking facilities are being installed to serve existing structures and land uses, the substitution of other dimensional requirements provided such substitution is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building, and provided that the provisions of paragraph 6. of this section are met.

Mr. Rosa stated that the Planning Board unanimously supported this proposed three-car garage. He stated that various setback relief is required but the proposed garage will serve to replace a deteriorating garage, conceal three vehicles, and improve an existing streetscape in which front-yard garages are common. He noted that additional useable open space will also be provided as a result of the proposed deck. The Planning Board agreed with the concerned abutters that no driveway parking should be permitted in order to maintain pedestrian safety. Mr. Rosa stated that the Preservation Commission determined the existing garage to be non-significant during the demolition review process. Therefore, the Planning Board recommended approval of plans by Mark Sangiolo, Registered Architect, dated May 5, 2015, and the site plan March 30, 2015 by George C. Collins, Professional Land Surveyor, subject to the following conditions:

1. Prior to the issuance of a building permit, a revised site plan showing proposed curb cuts and final plans and elevations indicating dimensions and materials shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.

2. At no time shall vehicles be parked in front of the garage doors.

3. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities to the Assistant Director of Regulatory Planning for review and approval.

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 building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa next delivered the findings of Michael Yanovitch, Interim Chief Building Inspector. He stated that the Building Department had no objection to the requested relief. He stated that the applicant intends to provide landscaping and overall property improvements as required counterbalancing amenity for requested setback relief. The Building Department typically tries to avoid tandem back out parking but the street is one-way so there is limited cut through traffic despite the proximity to both Washington and Beacon Streets. The proposal represents substantial property improvements and the garage does mimic a similar three-car garage further down University Road. Should the Board find that the standards for special permit relief are met, the Building Department will work with the applicant to ensure compliance with imposed conditions and building codes. Finally, he stated that if the Board of Appeals finds that the standards for special permit relief under **Section 9.05** of the Zoning By-Law have been met, the Building Department will work with the Petitioner to ensure compliance with all building codes.

In deliberation, Chairman Zuroff felt that the proposal is a worthy of requested relief. He stated that neighborhood concern about vehicular and pedestrian safety is valid and that the project should maintain this safety to the greatest extent possible. Mr. Zuroff was comfortable that the proposed 8.8 foot setback appropriately maintains this safety aspect, but suggested additional provisions including restricted parking language in condominium documents and clear signage that prohibits driveway parking. Mr. Zuroff felt that the standard for special permit relief is met under both Sections 8.02 and 9.05, and was therefore in favor of the proposal with stated conditions.

Zoning Board of Appeals Member Christopher Hussey concurred with the Chariman's comments and confirmed that University Road is a one-way street.

Zoning Board of Appeals Member Avi Liss commended the Petitioner and abutters for working closely to develop a proposal that satisfies all parties as "best as possible." He stated that discussion

regarding setback and pedestrian safety displays deliberate consideration. Mr. Liss agreed with the condominium documents parking restrictions as suggested but was hesitant to require signage that may be an unintended precedent and/or eyesore.

Board Chair Zuroff agreed that any signage should be minimal and serve as a "discrete reminder." Attorney Allen stated that the applicant is not opposed to these suggested conditions.

The Board agreed that recommended special permit conditions should be modified, specifically Condition #2, to include these additional provisions.

The Board then determined, by unanimous vote that the requirements for a special permit for **Sections 5.50**, **5.50**, **5.52**, **5.60**, **6.04.12**, **6.04.14.c**, and **Section 8.02.2** of the Zoning By-Law pursuant to **Sections 5.01** and **5.43** 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 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, a revised site plan showing proposed curb cuts and final plans and elevations indicating dimensions and materials shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.

2. **At no time shall vehicles be parked in front of the garage doors. Language enforcing this parking restriction shall be included in all condominium documents, as well as a single sign located on the garage façade, subject to review and approval by the Assistant Director for Regulatory Planning.**

3. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities to the Assistant Director of Regulatory Planning for review and approval.

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 building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 7/17/15

Mark G. Zuroff, Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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