



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0006
OWNER: JAMES KINSELLA
126 THORNDIKE STREET, BROOKLINE, MA

Petitioner, James Kinsella, applied to the Building Commissioner to construct a detached two-car garage within required side and rear yards at 126 Thorndike Street. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed April 7, 2016 at 7:15 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the modification. Notice of the hearing was mailed to the Petitioner, 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 March 24, 2016 and March 31, 2016 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:

126 THORNDIKE ST – DEMOLISH ATTACHED ONE-CAR GARAGE AND CONSTRUCT A DETACHED TWO-CAR GARAGE IN THE SIDE AND REAR YARDS in a T-5, Two-Family and Attached Single-Family, residential district, on April 7, 2016, at 7:15 PM in Town Hall Room 111 (Petitioner/Owner: JAMES KINSELLA) Precinct 9

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.62: Accessory Structure in Side Yard**
- 3. Section 5.72: Accessory Structure in the Rear Yard**
- 4. Section 6.04.5.c.2: Design of All Off-Street Parking Facilities**
- 5. Section 8.02.2: Alteration or Extension**
- 6. Any Additional Relief the Board May Find Necessary**

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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@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 were Board Chairman Jesse Geller and Board Members Jonathan Book and Christopher Hussey. The project architect, Alex Svirsky of Architex Team Inc., presented project details to the Board. Mr. Svirsky described the proposed garage construction as a simple project that includes the demolition of an existing single-car garage and the construction of a detached two-car garage. Mr. Svirsky explained that the Brookline Preservation Commission

approved the proposed demolition of the existing 11' x 22' garage. Mr. Svirsky further stated that the proposed garage would be 20' x 21' and located approximately 1 foot from the side lot line to the north and .5 feet from the rear lot line to the west. Mr. Svirsky described the subject property as a "tight site" and he noted that there is evidence of a concrete foundation, presumably for a two-car garage previously located on this portion of the property. Mr. Svirsky confirmed that the proposed garage would include a maximum height of 11.5'.

Mr. Svirsky said that the proposed garage location requires zoning relief for the aforementioned side and rear yard setbacks. Mr. Svirsky argued that the Board may waive these setback requirements by special permit if the standards for the grant of relief are met in accordance with Zoning By-Law Section 5.43.

Board Chairman Geller requested that the Petitioner provide additional detail regarding proposed counterbalancing amenities for the requested side and rear yard setback relief as required by By-Law Section 5.43. Mr. Svirsky stated that the Petitioner originally proposed a roof deck above the garage to provide area for plantings and to satisfy usable open space requirements. Subsequently, the abutting neighbor expressed concern about the visual impact of this roof deck and the land surveyor determined that adequate usable open space can be met at the ground level. Currently, the Petitioner is proposing to install shrubs along the southern façade to partially screen the garage structure from abutting neighbors.

Board Member Book questioned whether or not the Petitioner reviewed the project details with his neighbors, particularly those living at 130-132 Thorndike Street and 63-75 Lawton Street. Mr. Svirsky stated that all abutters were appropriately noticed of this proposal prior to public hearings with the Town on this matter. Mr. Svirsky also stated that the resident

living at 71 Lawton Street did provide input on the initial garage proposal that included a roof deck.

Board Member Hussey requested additional detail regarding the side and rear yard setbacks in question because these lot lines are not parallel to garage walls. Mr. Svirsky stated that, at the closest point, the proposed garage would be located 1 foot from the side lot line in question and the garage located on the adjacent property at 130-132 Thorndike Street presents a similar 1 foot side yard setback at the closest point. Mr. Svirsky acknowledged that this area between garage structures would be narrow but would allow access for maintenance and repair if needed. Mr. Svirsky further stated that the subject garage would be constructed of painted cement panel and the adjacent garage is constructed of brick and concrete block.

Board Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Tony Ho, of 71 Lawton Street, stated that he originally opposed the proposed garage roof deck that was subsequently removed from this proposal. Mr. Ho further stated that he was concerned about potential damage to a tree root system as a result of the expanded garage foundation. Mr. Ho stated that a large tree is located on his property and continues to lean toward his residential structure. Mr. Ho requested that the architect consider strategies to mitigate damage to this tree root system, particularly during construction.

Board Member Book questioned whether or not the proposed foundation expansion would result in further damage to the tree root system in questions.

Mr. Svirsky confirmed that the concrete slab foundation would be expanded to accommodate the conversion to a two-car garage and stem walls would extend approximately 4 feet below grade level.

Board Member Hussey suggested that sonotubes and grade beams are viable construction strategies that would minimize potential damage to the tree root system. Mr. Hussey further stated that the scale of construction and excavation required to construct this single-story garage would not result in significant soil erosion.

Board Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board.

FINDINGS

Section 5.62 – Accessory Structure in Side Yard

Section 5.72 – Accessory Structure in Rear Yard

Section 6.04.5.c2 – Design of All Off-Street Parking Facilities (side lot line)

	Required / Allowed	Existing	Proposed	Relief
Accessory structure setback to side lot line	6 ft	5.5 ft	1 ft	Special Permit [*] /Variance
Accessory structure setback to rear lot line	6 ft	0	0.5 ft	Special Permit [*] /Variance
Driveway setback to side lot line	5 ft	Not specified	+/-1 ft	Special Permit [*] /Variance

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Mr. Rosa stated that the Planning Board unanimously recommended approval of the proposed garage construction. The initial roof deck has been eliminated from proposed plans and existing usable open space provided at the ground level would comply with Zoning By-Law requirements. Mr. Rosa further stated that, from a streetscape standpoint, the garage design and location are consistent with several similar detached garages in the immediate neighborhood. Mr. Rosa commented that the Planning Board recommended approval of the site plan by registered land surveyor Peter McManus dated March 21, 2016, and the architectural plans by registered architect Alex A. Svirsky, dated March 28, 2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plan with open space calculations certified by registered land surveyor, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of 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 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 on behalf of the Building Department stated that the Building Department also has no objection to the relief as requested. Mr. Rosa characterized the requested setback relief as extensions of pre-existing nonconformities that are created by the current garage. The two-car garage also reduces the need for tandem parking in the somewhat narrow driveway. Mr. Rosa stated that the potential damage to an existing tree route system is a new concern that was not raised with the Building Department prior to this hearing, however, he did concur with Mr. Hussey's comments that construction techniques may certainly reduce the likelihood of further

tree damage. Mr. Rosa concluded his comments by stating that the Building Department would work with the applicant to ensure compliance with imposed conditions and building codes if the Board finds that the standards for the grant of a special permit are satisfied.

The Board deliberated on the merits of special permit relief as requested. Board Member Hussey stated that he was in favor of granting the requested zoning relief, and he recommended that imposed conditions be modified to include the submission of a revised foundation plan, specifically intended to mitigate potential damage to the tree root system of the tree located on the adjacent property at 71 Lawton Street. Mr. Hussey also stated that the proposed 2 foot separation between the subject garage and the adjacent garage at 130-132 Thorndike Street at the closest point is adequate for property owner access to side portions of both of these accessory structures.

Board Member Book concurred with Mr. Hussey's comments and specifically stated that he believed the standards for the grant of special permit relief, in accordance with Zoning By-Law Section 9.05, are satisfied. Mr. Book also noted that landscaped counterbalancing amenities for the request side and rear yard setback relief as proposed by the Petitioner are sufficient.

Chairman Geller concurred with Board Member comments and further supported the modification of the draft conditions in order to provide additional protection for the existing tree root systems.

The Board determined that the requirements have been met for the issuance of a special permit under Sections 9.05 and 5.43 of the Zoning By-Law, granting relief from the provisions

of Sections 5.62, 5.72, 6.04.5.c.2, and 8.02.2. The Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant special permit relief as requested, subject to the following revised conditions:

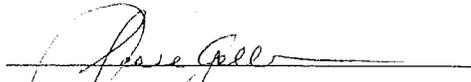
- 1. Prior to the issuance of a building permit, the applicant shall submit a final site plan with open space calculations and updated parking configuration certified by registered land surveyor, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit final garage elevations and floor plans that include a revised foundation plan that indicates construction techniques to mitigate adverse impact to the root systems of existing trees located on the adjacent parcel at 71 Lawton Street, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 3. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of 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 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

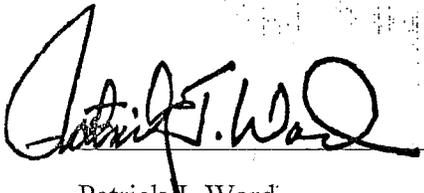
Filing Date: 8/19/16

A True Copy



Jesse Geller, Chairman

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals