



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Christopher Hussey

RECEIVED
Town of Brookline
Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO.2013-0025
Owner: Sam and Bea Widerman

Petitioners, Sam and Bea Widerman, Trustee, applied to the Building Commissioner for permission to demolish existing garage and construct a new garage with roof terrace at 98 Clinton Road. The application was denied and an appeal was taken to this Board.

On March 21, 2013 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 and fixed May 2, 2013 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its 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 April 11 and April 18, 2013 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Sam and Bea Widerman
Owner: Sam and Bea Widerman
Location of Premises: 98 Clinton Road
Date of Hearing: **May 2, 2013**
Time of Hearing: **07:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor.**

A public hearing will be held for a variance and/or special permit from

1. **5.43; Exceptions to Yard and Setback Regulations**
2. **5.60; Side Yard Requirements**
3. **5.70; Rear Yard Requirements**
4. **5.72; Accessory Buildings or Structures in Rear Yards**
(Accessory structure(garage) over 15 feet high)
(Accessory structure(kitchen) less than 6 foot setback)
5. **5.63; Accessory Buildings and Structures in Side Yard**
(Accessory Structure(garage) less than 6 foot setback)
6. **6.04.5.c.2; Design of All Off-Street Parking Facilities(driveway infill)**
7. **8.02.2; Alteration or Extension**

Of the Zoning By-Law to demolish existing garage and construct a new garage with roof terrace
At 98 Clinton Road
Said Premise located in a S-10 (Single-Family) residential district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

Jesse Geller

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 Jonathan Book and Board Members, Mark Zuroff and Christopher Hussey. Colin Smith, Architect, business address 1666 Massachusetts Avenue, Lexington, presented the case for the petitioner.

Mr. Smith described the property as being located south of Boylston Street and consists of primarily single-family dwellings. 98 Clinton Road is a single-family Colonial style dwelling built in 1920 that abuts the Fisher Hill Local Historic District to the south. There is an existing garage in the rear of the dwelling accessed by a driveway. The top of the garage is accessed by a concrete path that arcs around the slope and to the top of the garage.

Mr. Smith said his clients, Bea and Sam Wilderman, are proposing to demolish the existing garage and replace with a new, slightly larger garage in the same location. The new garage requires side and rear yard setback relief. The applicant is proposing to construct a deck on top of the roof that previously included an outdoor kitchen area near the rear yard property line, but the applicant has agreed to remove the outdoor kitchen. There will also be a seating area and bocce court on the garage roof and all of the roof area will be screened from neighboring properties with a wood fence. There will be a railing around the roof deck that faces to the interior of the property. The proposal includes the construction of retaining walls that will provide a path up to the roof deck area, and will create an outdoor patio in the back corner of the property that will be level with the deck above the proposed garage.

The Chairman asked if anyone in attendance would like to speak in favor of the petition. No one spoke.

The Chairman asked if anyone in attendance would like to speak in opposition to the proposal. Stephen King of 177 Buckminster Road requested some clarification on the patio and drainage for the site. Phillipe and Michelle Schwartz of 106 Clinton Road stated that they were not speaking in favor of or in opposition to the request. Mr. Schwartz said he would like the Board to extend the same relief requested by the petitioner to his property and garage at 106 Clinton Road. Chairman Book told Mr. Schwartz that he can apply for relief and the Board will hear the case when scheduled.

The Chairman called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the comments of the Planning Board.

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Setback

Section 5.63 – Accessory Buildings or Structures in Side Yard

Section 5.70 – Side Yard Setback

Section 5.72 – Accessory Buildings or Structures in Rear Yards

Dimensional Requirements	Required	Existing	Proposed	Relief
Side Yard Setback (west)	6'	.80'	.69'	Special Permit*
Rear Yard Setback	6'	15.5'	9.2'	Special Permit*

* Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The Planning Board suggests that the applicant install additional landscaping as a counterbalancing amenity.

Section 6.04.5.c.2 – Design of All Off-Street Parking Facilities

Section 8.02.2 – Alteration or Extension

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

Ms. Selkoe said the Planning Board supports the proposed replacement of the garage and construction of the roof deck above. The Board feels that this proposal is attractive, and it will help the applicant to better utilize their property, and create usable open space. The construction of the retaining walls will allow the land in the rear corner to be additional usable open space with landscaping surrounding it. The Board does not anticipate a negative impact on the surrounding properties as a result of this proposal. The Board feels that the landscaping included in the proposal will be adequate to satisfy the counterbalancing amenity requirement for a special permit. The Board is please that the applicant has agreed to remove the kitchen after listening to the neighbor's concern.

Therefore, the Planning Board recommends approval of the plans by Colin Smith Architecture Inc., dated 3/14/13, and the site plan by Metrowest Engineering, Inc., dated 2/4/13, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations, indicating all proposed setback dimensions, shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. 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.
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 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.

The Chairman called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch said the Building Department has no objection to the requested relief. He said the structure is well designed and for the most part will be placed in the same spot as the existing garage. He said if the Board grants the relief, the Building Department will make sure the petitioner complies with the Building Code as well as any conditions of the grant.

The Board deliberated on the merits of special permit relief. The Board voted unanimously that the requirements have been met for the issuance of a special permit for sections **5.43, 6.04.5 and 8.02** of the Zoning By-Law. 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.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

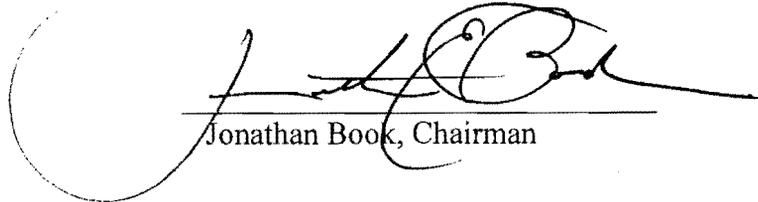
1. Prior to the issuance of a building permit, final plans and elevations, indicating all proposed setback dimensions, shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities to the Assistant Director of Regulatory Planning for review and approval.

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 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.

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2013 JUN -3 P 4: 54
Unanimous Decision of
The Board of Appeals

Filing Date: June 3, 2013


Jonathan Book, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals